

Division of

**ALCOHOLIC  
BEVERAGE  
CONTROL**

# Bulletin

Richard J. Hughes Justice Complex, CN-087, Trenton, New Jersey 08625-0087

**BULLETIN 2451**

December 31, 1987

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**BULLETIN 2451**

December 31, 1987

**1. NOTICE TO RETAIL AND CLUB LICENSEES: "CRANE" OR "CLAW" MACHINES ARE GAMBLING DEVICES AND ARE PROHIBITED ON LICENSED PREMISES.**

In recent months, the Division has confiscated from licensed premises a number of "crane" or "claw" machines. These are glass enclosed or topped bins filled with various prizes, such as plush animals, which a patron tries to win by picking it up with a claw or pushing it with an arm and maneuvering it to an exit slot. Money is required to activate the machine. These machines are "gambling devices" (i.e., devices in the nature of a slot machine which may be used for the purpose of playing for a valuable thing), and their use constitutes gambling, in violation of *N.J.A.C. 13:2-23.7(a)*.

The restrictions applied to these "crane" or "claw" machines, as well as machines commonly known as "rotaries", are similar to those governing video poker devices discussed in *Bulletin 2430, Item 3 (March 31, 1983)*. Although it can be argued that the "crane" or "claw" machine is a game of skill in which the player is only trying to obtain a stuffed animal or similar prize by maneuvering the claw (or arm in the case of a "rotary"), the machine contains all of the elements of gambling. The player is staking something of value (money placed into the machine) on the chance that he will receive something of value (the stuffed animal or similar prize) in an event with an uncertain outcome. The winning of a prize is distinctly an element of chance. The operator of the machine can determine the outcome through the manner in which the bin is merchandised or packed with prizes, the shape and nature of the surface of the prize, and particularly the tension on the claw, as well as the depth to which it will reach. These factors can completely eliminate the ability to win a prize, no matter how much "skill" a player might have.

The "crane" or "claw" machines are manufactured by several companies and are distributed under such trade names as "Big Choice Crane", "SMS Skill Crane", "Diga Mart Crane", "Sega Big Dipper", "Your Choice Crane", "Bear Claw Crane", "Greyhound Skill Crane", "Kramer Krane", "Let's Celebrate Crane", and others. It should be noted that although these devices are prohibited on alcoholic beverage licensed premises, the majority of them have been certified for use in arcades licensed under the Amusement Games Control Law, where the gambling aspects are legally recognized and permitted. That, however, is the only place where such machines are lawful. No Amusement Games Control licensed arcade may be located on a premises licensed to sell alcoholic beverages.

2. NOTICE TO HOTEL AND MOTEL USERS OF PLENARY RETAIL CONSUMPTION LICENSES: CERTAIN "MINI-BARS" AND DEVICES OF A SIMILAR NATURE UTILIZED FOR DISPENSING OF ALCOHOLIC BEVERAGES IN LICENSED HOTEL OR MOTEL ROOMS ARE PERMITTED UNDER CERTAIN CONDITIONS.

Over the course of the last few years, the Division has been asked on several occasions to permit the use of "mini-bars" and similar devices in hotel or motel rooms. Such devices basically are small cabinets, sometimes refrigerated, which contain alcoholic beverages, normally in containers of 12 ounces for malt alcoholic beverages, 375 ml. for wine, and 50 ml. ("miniatures") for spirits. The devices permit removal of the beverage containers for consumption by the occupant of the hotel or motel room in which such device would be located. The "mini-bar" device would normally be activated by a key and the user would report the "purchase" of the beverages to the licensee on the honor system, or the licensee would inventory the device and then charge the guest for the depletion in inventory. The Division has consistently disapproved the use of these devices because they allow the "sale" (i.e., the removal from the cabinet) of alcoholic beverages at any hour, including times when sale is prohibited by municipal ordinance in the municipality where the hotel or motel is located, and because the system does not afford the licensee sufficient control to prevent access to the "mini-bar" device by persons under the legal age or by intoxicated persons.

The one exception to the prohibition has been an electronic dispensing machine known as the "Bell Captain", which was approved for use in licensed hotels and motels by Director Richard C. McDonough on October 28, 1971. (See *Bulletin 2014, Item 1, December 2, 1971*). The "Bell Captain" was a machine that was electronically controlled from a central location in addition to having a separate key provided to the guest by the front desk at the time of registration. The significant factors which gave rise to the approval were the master switch located at the front desk, which could be utilized to permit only non-alcoholic beverages to be dispensed or to lock-out the device, despite the guest's having been issued the key for it, and the fact that the guest receiving the key to the "Bell Capatin" would have to be a charge customer who submitted proof of age to a non-tip employee at the registration desk.

It should be noted that the Division has no knowledge of the "Bell Captain" machine's having been or being utilized on any licensed hotel or motel premises in New Jersey. None of the other devices for which approval had been requested until recently contained the safeguard features which supported the approval of the "Bell Captain".

Recently, however, the Division received a request for approval to install and use in-room amenity cabinets known as the ROBOBAR<sup>TM</sup> System. This system is represented to consist of a unit located in the hotel or motel room and in which is stored beverages and snack items. The unit is connected to the hotel or motel's front-of-house computer through the T.V. co-axial cable so that removal of items

from the unit can be recorded and charged, inventory lists can be maintained, and proper function of the unit can be monitored. This electronic reporting hook-up can also be utilized as a control system so that the unit can be locked during hours in which the sale of alcoholic beverages is prohibited in the particular municipality or when the room is rented by underage persons.

Inasmuch as the ROBOBAR<sup>TM</sup> System is similar to the "Bell Captain" approved by former Director McDonough, it will be approved provided it continues to meet the general guidelines set forth below for the use of all "mini-bar" in-room systems or devices.

Notwithstanding any previous approvals or disapprovals of any "mini-bar" system, the same are permissible if they are the ROBOBAR<sup>TM</sup> System operated as described above, the "Bell-Captain" (as approved in *Bulletin 2014, Item 1*), or any other system provided the following criteria are met (the ROBOBAR<sup>TM</sup> and "Bell Captain" systems must also meet these criteria before being utilized):

- a) The system may only be utilized by a plenary retail consumption licensee having a hotel or motel as part of the licensed premises;
- b) The rooms in which the dispensing units are located must be part of the licensed premises;
- c) The dispensing units must be electronically connected to the front desk of the motel or hotel and must be capable of being *individually* locked-out; so as to prevent access to any alcoholic beverages contained therein where any of the primary parties to whom a room is rented is under the legal age (i.e., under 21), and/or where any of the occupants of a room is or appears intoxicated, (and it shall be the affirmative responsibility of the licensee to assure that these factors are checked and the lock-out feature is utilized should it be so required);
- d) An automatic timing or similar device must be utilized to lock out the entire system (i.e., each and every dispensing unit) during the hours when sale of alcoholic beverages for consumption on the premises is prohibited in the particular municipality in which the hotel or motel is located; and
- e) The licensee shall, before utilizing the system, advise the Division and the local issuing authority of its existence, the rooms in which units are located, the name and nature of the system, and the manner in which the automatic lock-out [required in "(d)" above] shall operate.

Licensees are reminded, as former Director McDonough also had pointed out in his approval of the "Bell Captain", that, despite the approval of the "mini-bar" system, the licensee has the affirmative duty to conduct its business and control its premises in accordance with the Alcoholic Beverage Control Law and Rules and Regulations, and any abuse of the privileges afforded to the licensee resulting from the use of the system may result in disciplinary proceedings against the licensee. The Division, however, does not expect that a "mini-bar" system, when utilized in accordance with the criteria established herein, will create any unique regulatory problems or

will subject the licensee to any greater dangers beyond those normally associated with the sale and service of alcohol. Licensees utilizing such systems must remain vigilant to prevent abuses from occurring.

**3. NOTICE TO SUPPLIERS, IMPORTERS AND WHOLESALERS - SELECTIVE ADVERTISING SUPPORT FOR RETAILERS OR NATIONAL GIFT SERVICES PROHIBITED.**

A recent review of alcoholic beverage advertisements has identified a particular type of "product" or "brand" advertisement that is inconsistent with Alcoholic Beverage Control regulations and should cease. The type of ad in question involves a promotional identification of a "product" or "brand" placed and paid for by its supplier or importer. That aspect of the advertisement is permitted. What is prohibited is the inclusion in that ad of a name or specific telephone number of a retail licensee or alcoholic beverage gift or delivery service company where the product can be purchased or ordered.

The Alcoholic Beverage Control Law prohibits a manufacturer, supplier or importer from having an interest in a retail license in New Jersey or from being interested, directly or indirectly, in the retailing of any alcoholic beverages. *N.J.S.A. 33:1-43*. Advertising support by a manufacturer or importer to a retailer is not always considered a violation of the law as an impermissible interest in the retailing of alcoholic beverages. *N.J.A.C. 13:2-24.7*, captioned "Marketing initiatives", authorizes the manufacturer or importer to furnish or provide advertising or promotional materials to any retail licensee. So also, and subject to stated conditions, the manufacturer or importer could provide "services" to a retail licensee under *N.J.A.C. 13:2-24.2(a)2*, captioned "Discrimination in services, facilities or equipment".

An advertising support or inclusion of a retailer's name in a supplier's ad could be considered a service under *N.J.A.C. 13:2-24.2(a)2*. This Regulation, however, basically requires a non-discriminatory offering of the service to all retailers. Thus, to select one or several retailers for this advertising service and not all of the thousands of retailers capable of selling the supplier's product is violative of the regulation. The advertisements viewed by the Division which selectively list only a few retailers cannot continue. Similarly, those supplier ads which list the telephone number of an alcoholic beverage gift or delivery service are disapproved. These gift services are not licensed and are permitted to function because they are considered "agents of the consumer" in helping the consumer acquire a gift of alcoholic beverages. If the product manufacturer or importer advertises the gift service's number, this activity is at the very least an indirect interest, if not a direct one, in the retailing of alcoholic beverages and is therefore prohibited under *N.J.S.A. 33:1-43*. Should the Division

continue to encounter this type of advertising in magazines, periodicals, newspapers or other media circulated or offered in New Jersey, appropriate administrative sanctions will be taken against the product's manufacturer or importer or retail licensees that participate in the advertisement.

#### 4. NOTICE REGARDING ORGANIZATIONAL CHANGES WITHIN THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

As the result of an internal management and operations assessment audit conducted within the Division of Alcoholic Beverage Control by the Department of Law and Public Safety, Attorney General Cary Edwards and Director Vassallo have undertaken certain management and organizational changes within the Division.

As of the beginning of 1988, a new Executive Officer position will be implemented. This Executive Officer will handle the day-to-day management and coordination of the activity of the five bureaus within the Division. Craig Wille has been named acting Executive Officer for a period of approximately three months, until a permanent Executive Officer can be appointed.

Among the other changes is the renaming of the Prosecution and Trade Practices bureaus. They will now be known as the Compliance Bureau and the Trade Relations Bureau so as to more accurately identify them with their primary roles. Additionally, the Administrative and Licensing Bureaus are being grouped as the Administrative function of the Division, while the Regulatory and Compliance Bureaus will comprise the Legal functional group. The Trade Relations Bureau will remain alone in the third functional grouping.

#### 5. NOTICE REGARDING A.B.C. BULLETIN SUBSCRIPTIONS.

Since this Bulletin is only the third published during the 1987 calendar year, the Division is extending all subscriptions to the Alcoholic Beverage Control Bulletins that have been entered and paid for 1987 through the 1988 calendar year. Any new subscriber to the bulletin service during 1988 will, upon payment of the \$25.00 subscription fee, receive back copies beginning with *Bulletin 2449*. To begin a subscription, a check or money order for \$25.00, payable to the Division of Alcoholic Beverage Control, should be sent along with the subscriber's name and full mailing address to: Division of Alcoholic Beverage Control (Attention: ABC Bulletin Subscription Service), CN-087, Trenton, NJ 08625-0087.

#### 6. AMENDMENT TO REGULATIONS - ISSUANCE OF IDENTIFICATION CARDS BY COUNTY CLERKS (N.J.A.C. 13:2-40.1, ET SEQ.) - TEXT OF AMENDED SUBSECTIONS

The provisions of *N.J.A.C. 13:40.1, et seq.*, implement *N.J.S.A. 33:1-81.2, et seq.*, as amended by Chapters 422 and 503 of the Laws of 1985, and specifically *N.J.S.A. 33:1-81.3*, which empowers the Director to make rules and regulations regarding the format, preparation and distribution of the identification card. As the result of widespread counterfeiting and altering of cards issued pursuant to criteria established in the regulation, and because each county ended up with a different format and type of card due to various printers and printing methods, so that as a result there was confusion created by the use of the identification cards, the Division, in concert with the County Clerks of the 21 counties, developed a uniform card with safeguards against alteration or counterfeiting. The amended regulations set forth the criteria for the new card.

The proposed amendments appeared in the August 3, 1987, *New Jersey Register* [19 *N.J.R.* 1410(a)]. Following the requisite comment period, during which no comments were received, the amendments were adopted without change from the original proposal and became effective October 5, 1987, upon publication in the *New Jersey Register* [19 *N.J.R.* 1823(a)].

The full text of the amended subsections of *N.J.A.C. 13:2-40* are as follows:

13:2-40.1 Form of application; contents

Application for an identification card by residents of a county who shall have attained the legal age for purchase and consumption of alcoholic beverages may be filed with the county clerk in the county wherein said applicant resides and shall be in the following form:

State of New Jersey, County of \_\_\_\_\_

IDENTIFICATION CARD  
APPLICATION

To: County Clerk of \_\_\_\_\_ County, New Jersey.

The undersigned hereby applies for an identification card as proof of age, and submits the required fee in the amount established by law.

1. Full name of applicant \_\_\_\_\_  
(First) (Middle) (Last)

2. Residence address \_\_\_\_\_

3. Height \_\_\_\_\_ Weight \_\_\_\_\_

4. Date of Birth \_\_\_\_\_

5. Place of Birth \_\_\_\_\_  
(Municipality) (County) (State)

6. Father's name \_\_\_\_\_  
(First) (Middle) (Last)

7. Mother's Maiden Name \_\_\_\_\_  
(First) (Middle) (Last)

8. The applicant presents one or more of the following certificates to establish his or her age (check appropriate line):

- \_\_\_ Birth Certificate
- \_\_\_ Naturalization Certificate
- \_\_\_ Voter Registration Certificate
- \_\_\_ Other ( \_\_\_\_\_ )

9. The applicant submits two (2) recent color photographs, approximately 1 1/2 inches by 1 1/2 inches in size, of himself or herself, full face, without hat.

10. Has the applicant ever previously applied for an identification card? If so, state the details thereof \_\_\_\_\_  
\_\_\_\_\_

WARNING: Any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and shall be sentenced to pay a fine of not more than \$300.00, or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

The applicant hereby certifies that all of the foregoing information and statements are true in all respects.

11. Signature of applicant \_\_\_\_\_ (Date)

12. Signature witnessed by: \_\_\_\_\_ (Date)  
(County Clerk or Duly Authorized Deputy)

DO NOT WRITE BELOW THIS LINE

Photo	Identification Card Number _____
1 1/2" x 1 1/2"	Date of Issuance _____
	Issued by _____

(13:2-40.1 through 13:2-40.4. NO CHANGE).

13:2-40.5 Identification card; form

The identification card shall be 3 1/2 inches wide by 2 1/2 inches high in size, with black print on goldenrod basket weave safety paper containing a hidden Seal of New Jersey and the words State of New Jersey on its front side which is only visible under ultraviolet light, in the following form:

FRONT SIDE

Photo  
1 1/2" x 1 1/2"

) STATE OF NEW JERSEY  
 ) COUNTY OF  
 ) IDENTIFICATION  
 ) CARD NO.  
 ) --THIS IS TO CERTIFY THAT--  
 )  
 ) -----WHO RESIDES AT-----  
 )  
 ) HAS FURNISHED TO THE UNDER-  
 ) SIGNED SATISFACTORY EVIDENCE  
 ) OF HAVING ATTAINED THE AGE OF  
 ) 21 YEARS.

HGT.                    WGT.  
 HAIR                    EYES

DATE OF  
BIRTH

ATTEST: \_\_\_\_\_  
County Clerk or duly authorized deputy

\_\_\_\_\_  
Date of Issuance

Holder's  
Signature \_\_\_\_\_

REVERSE SIDE

WARNING:

It shall be unlawful for the owner of an identification card to transfer said card to any other person for the purpose of aiding such person to secure alcoholic beverages. Any person who shall transfer an identification card for the purposes of aiding the transferee to obtain alcoholic beverages and any person not entitled thereto who shall have unlawfully procured or have issued or transferred to him or her an identification card shall be guilty of a disorderly persons offense and, upon conviction thereof, shall be sentenced to pay a fine of not more than \$300.00, or imprisonment for not more than 60 days. N.J.S.A. 33:1-81.7.

ALCOHOLIC BEVERAGE LICENSEES NOTE:

The presentation of this identification card by any person in connection with the purchase or attempted purchase of any alcoholic beverage shall constitute a defense to a charge under N.J.S.A. 33:1-77, if the retail licensee makes the sale in good faith reliance on this card and the appearance of the purchaser was such that an ordinary prudent person would believe the card holder to be of legal age.

State No. (preprinted sequential control number)

## 13:2-40.6 Issuance of card; procedure

One of the submitted photographs of the applicant shall be mounted on an identification card in the upper left portion of the front side thereof. The card shall be signed by the applicant in the presence of the county clerk or his duly authorized deputy, who shall also sign the card. The official County seal shall be affixed so that it overlaps the photograph and a portion of the printed card. The card shall be inserted into a 10 gauge plastic sleeve that has on its back flap a red ink embossed Great Seal of the State of New Jersey. The plastic will be heat sealed and the laminated card delivered to the applicant. The other photograph of the applicant shall be attached to the application, which shall indicate the date of issuance of the card, the number thereof and the name of the person who issued it. A permanent record thereof shall be retained in the county clerk's office.

## 13:2-40.7 Fees

A fee in the amount established by law shall be paid to the county clerk for the issuance of an original identification card. In the event the card is lost, stolen or destroyed, the holder thereof may apply for a replacement card with new number by filing a new application with payment of fee in the same manner as for an original, along with an affidavit as to the loss, theft or destruction of the original card. Every replacement card shall prominently have stamped, typed or otherwise imprinted on the card the word "Duplicate".

## 7. STATISTICAL INFORMATION - NUMBER OF RETAIL LICENSES SELLING PACKAGE GOODS

The 1986-1987 renewal application for retail licenses asked the following question of Plenary Retail Consumption Licensees: "Approximately what percentage of your alcoholic beverage receipts are from package goods sales?" An answer was required of all such licensees, whether they held the "broad package privilege" (where the fourth and fifth digits of the license number are "32"), or not (where the fourth and fifth digits are "33"), or they were seasonal licensees (where the fourth and fifth digits are "34").

Of the 7,618 licenses renewing (of this number 567 were "32's", 7,032 were "33's", and 19 were "34's", with inactive licenses being included), 4,829 licenses responded with a figure showing some sales of package goods. Broken down into percentiles of ten, the figures reported were: 1-10% of receipts from package goods sales: 1,826 plenary retail consumption licenses; 11-20%: 591; 21-30%: 548; 31-40%: 363; 41-50%: 265; 51-60%: 144; 61-70%: 134; 71-80%: 186; 81-90%: 146; and 91-100%: 626 licenses.

Division figures for the 1986-1987 renewal year also showed 1,863 Plenary Retail Distribution Licenses and 129 Limited Retail Distribution Licenses.

## 8. STATE LICENSE TRANSACTIONS - JUNE 2, 1987 TO DECEMBER 30, 1987

License Type:	License #:	Status:
Transportation License Money Transport Inc. 2994 Orange Avenue P.O. Box 908 Plymouth, FL 32768	3401-20-514-001	New License iss. eff: 6/4/87
Public Warehouse License Timberline Cold Storage, Inc. 55 Commerce Avenue Pitman, NJ 08071	3401-28-515-001	New License iss. eff: 6/4/87
Transportation License Hall's Fast Motor Freight, Inc. 330 Oak Tree Avenue South Plainfield, NJ 07080	3401-20-516-001	New License iss. eff: 6/4/87
State Beverage Distributor Chapman Beer Distributors, Inc. Route 10 Ledgewood Mall Ledgewood, NJ 07852 From: William Chapman 515 Dell Road Landing, NJ 07850	3400-19-221-004	Person to Person Place to Place Transfer eff: 6/12/87
Plenary Retail Transit Harbor Commuter Service, Inc. 500 State Highway 36 Middletown, NJ 07748	3401-13-517-001	New License iss. eff: 6/12/87
Plenary Retail Transit Inland Cruise, Inc. 800 Ashley Avenue Brielle, NJ 08730	3401-13-518-001	New License iss. eff: 6/15/87
Annual State Permit Trump's Castle Associates Huron Avenue Atlantic Citu, NJ 08401	3401-14-520-001	New License iss. eff: 6/18/87
Plenary Winery Bucks Country Vineyards, Inc. Route 130 RD #1 Bordentown, NJ 08505 From: Matthew J. Antuzzi Bridgeboro Rd Delran, NJ 08075	3400-21-165-003	Person to Person Place to Place Transfer eff: 6/26/87
Wine Wholesale License Widmer's Wine Cellars, Inc. West Avenue Naples, NY 14512	3400-26-193-003	Change of Corp- orate Structure eff: 6/25/87
Annual State Permit Hospitality Investments, of Dover Inc. 3 South Bergen Street Dover, NJ 07801	3401-14-521-001	New License iss. eff: 7/1/87
Limited Wholesale License Palmyra Beer Distributors, Inc. Broad & Walnut Streets Palmyra, NJ 08065	3401-25-522-001	New License iss. eff: 7/1/87
Plenary Wholesale License Brown-Forman Internation Ltd 1 Mack Center Drive Paramus, NJ 07652 From: 625 From Road Paramus, NJ 07652	3400-23-015-004	Place to Place Transfer eff: 7/2/87

Limited Wholesale License Guinness Import Company 6 Landmark Square Stanford, Ct 06901	3401-25-527-001	New License iss. eff: 7/17/87
Transportation License National Freight, Inc. 71 West Park Avenue Vineland, NJ 08360	3401-20-526-001	New License iss. eff: 7/16/87
Transportation License Fournier Transport Ltd P.O. Box 273 Rouses Point, NY 12979	3401-20-529-001	New License iss. eff: 7/22/87
Plenary Retail Transit License Princess Cruise Lines, Inc. 42nd Street and Park Road Sea Isle City, NJ 08230	3401-13-525-001	New License iss. eff: 7/8/87
Transportation License Transport Freight Services, Inc. 180 Talmadge Road Edison, NJ 08817	3401-20-530-001	New License iss. eff: 7/23/87
Plenary Retail Transit Licenses Ende Inc. Ancon Inc. Lillu Inc. Balboa Inc. 800 Ashley Avenue Brielle, NJ 08730	3400-13-315-002 3400-13-206-002 3400-13-587-002 3400-13-288-002	Change of Corp- orate Structure eff: 7/22/87
Wine Wholesale License Henri Laroche, Inc. 321 Millburn Avenue Millburn, NJ 07041	3401-26-531-001	New License iss. eff: 7/28/87
Plenary Wholesale License The Somerset Group Inc. 1114 Avenue of the Americas New York, NY 10036	3400-23-068-003	Change of Corp- orate Structure & Corporate Name Change eff: 8/4/87
Plenary Wholesale License Somerset Vintage Cellars, Inc. 1114 Avenue of the Americas New York, NY 10036	3401-23-231-002	Change of Corp- orate Structure & Corporate Name Change eff: 8/4/87
Transportation License Centennial Truck Lines, Inc. 250 North Avenue East Elizabeth, NJ 07201	3401-20-195-002	Place to Place Transfer eff: 8/3/87
Transportation License Dewline, Inc. P.O. Box 450 Federalburg, Maryland 21632	3401-20-532-001	New License iss. eff: 8/4/87
Transportation License May Trucking Inc. P.O. Box 87B RT 512 Verona, Va 24482	3401-20-534-001	New License iss. eff: 8/14/87
Transportation License Nationwide Transport & Whsle 191D Export Street Port Newark, NJ 07114	3401-20-535-001	New License iss. eff: 8/14/87

State Beverage Distributor Hook Rohn Inc. 404 South Avenue East Westfield, NJ 07090 Form: Beverages Unlimited 366 St. George Avenue Rahway, NJ 07065	3400-19-205-003	Person to Person Place to Place Transfers, eff: 8/13/87
Limited Wholesale License May Importing Co., Inc. 103 North 7th Street Second Floor Suite 201 Camden, NJ 08102	3401-25-005-002	Place to Place Transfer eff: 8/13/87
Transportation License NCA Trucking Corp. 149-32 132nd Street Jamaica, NY 11430	3401-20-536-001	New License iss. eff: 8/20/87
Transportation License Virginia-Carolina Freight Lines, Inc. P.O Box 4988 Martinsville, VA 24115-4988	3400-20-534-002	Change of Corp- orate Structure eff: 8/20/87
Limited Wholesale License Monsieur Touton Selection Ltd 140 East 56th Street Suite 9E New York, NY 10023	3401-25-537-001	New License iss. eff: 8/25/87
Wine Wholesale License Quattro Corp. Empire 13 Empire Blvd South Hackensack, NJ 07606 From: 560 Sylvan Avenue Englewood Cliffs, NJ 07632	3401-26-412-002	Place to Place Transfer eff: 8/18/87
Limited Wholesale License Chateau Rouge Corp. 19 Self Blvd. Carteret, NJ 07008	3401-25-524-001	New License iss. eff: 9/3/87
Transportation License Sahadi & Son, Inc. 2220 91st street North Bergen, NJ 07047	3401-20-538-001	New License iss. eff: 9/8/87
Limited Wholesale License Wit Beverage Co., Inc. 315 Cox Street Roselle, NJ 07203	3401-25-539-001	New License iss. eff: 9/9/87
Wine Wholesale License Viceroy Imports, Inc. 1029 Teaneck Road Teaneck, NJ, 07666	3401-26-540-001	New License iss. eff: 9/9/87
Wine Wholesale License Estate Wine & Spirits Group, Inc. 909 State Road Princeton, NJ 08540 From: Fine Wine & Spirits Group, Inc.	3401-26-329-003	Person to Person Transfer eff: 9/8/87
Plenary Retail Transit Razin Wine & Spirits, Inc. 2077 Rt. 9 Howell, NJ 07731 From: Razin International, Inc.	3401-23-418-002	Person to Person Transfer eff: 9/14/87

Plenary Retail Transit License Harbor Commuter Services Inc. "Miss Kitty" #609669 50 Church Street Sea Bright, NJ 07760	3401-13-543-001	New License iss. eff: 9/23/87
Transportation License K J Transportation Inc. 6070 Collett Rd Victor, NY 14564	3401-20-544-001	New License iss. eff: 9/23/87
Plenary Retail Transit License American Trans Air, Inc. P.O. Box 51609 Indianapolis, IN 46251	3401-13-542-001	New License. iss. eff: 9/23/87
Transportation License William Ulbrich Trucking Co., Inc. 838 River Road Edgewater, NJ 07020	3401-20-546-001	New License iss. eff: 9/25/87
Transportation License Leonard Transportation Corp. 475 Division Street Elizabeth, NJ 07207	3401-20-547-001	New License iss. eff: 9/25/87
Plenary Winery Ascenzio Cataldi 89 Walnut Street P.O. Box 247 Penns Grove, NJ 08069	3401-21-548-001	New License. iss. eff: 9/25/87
Transportation License Downs Brothers Hauling, Inc. 2541 East Castor Avenue Philadelphia, PA 19134	3400-20-726-002	Change of Corp- orate Structure eff: 9/30/87
Additional Warehouse License Cameron Craig Ltd 501 Schuyler Avenue Lyndhurst, NJ 07071	3401-24-541-001	New License iss. eff: 10/1/87
Transportation License Rail Head Transfer Inc. 69 North Hook Road Bayonne, NJ 07702 From: 10 Hook Road Bayonne, NJ 07702	3401-20-159-002	Place to Place Transfer eff: 10/2/87
Public Warehouse License Wilco II Corp. Rt 73 7 Broad St Palmyra, NJ 08065	3401-28-551-001	New License iss. eff: 10/6/87
Limited Wholesale License Quattro Corporation 3 Empire Blvd South Hackensack, NJ 07606	3401-25-550-001	New License iss. eff: 10/6/87
Plenary Retail Transit License Harbor Commuter Service, Inc. 50 Church Street Sea Bright, NJ 07760	3401-13-552-001	New License iss. eff: 10/15/87
Transportation License Farruggio's Bristol & Phila. Auto Express, Inc. 1419 Radcliffe Street Bristol, PA 19007	3400-20-432-002	Change of Corp- orate Structure eff: 10/19/87

Annual State Permit Harry M. Stevens, Inc. of N.J. Oceanport Avenue P.O. Box MP Oceanport, NJ 07757	3401-14-555-001	New License iss. eff: 10/26/87
Public Warehouse license The Great A & P Tea Co., Inc. 9220 91st Street North Bergen, NJ 07017	3401-28-553-001	New License iss. eff: 10/26/87
Wine Wholesale License Mosca, Inc. 128 Doremus Avenue Newark, NJ 07105	3401-26-556-001	New License iss. eff: 10/29/87
92 Green Pond Road Rockaway, NJ 07866	(Warehouse Address)	
Transportation License Inter-Route Transit, Inc. 225 North Avenue East Elizabeth, NJ 07201	3401-20-557-001	New License iss. eff: 10/29/87
State Beverage Distributor Michael P. Nash 110 Douglas Drive (Mailing address) Westwood, NJ 07675 From: Imperial Distributing Co.	3400-19-231-003	Person-Person Transfer eff: 10/28/87
Plenary Wholesale License New York Mutual Trading Inc. 165 Chubb Avenue Lyndhurst, NJ 07071	3401-23-533-001	New License iss. eff: 11/5/87
Wine Wholesale License Viceroy Imports, Inc. 1029 Teaneck Road Teaneck, NJ 07666	3401-26-540-002	Change of Corp- orate Structure eff: 11/5/87
Transportation License The Great A & P Tea Co., Inc. 9220 91st Street North Bergen, NJ 07017	3401-20-554-001	New License iss. eff: 11/6/87
Transportation License Maritime-Ontario Freight Lines Ltd 1115 Cardiff Blvd Mississauga, Ontario L4W2H1	3401-20-588-001	New License iss. eff: 11/9/87
Plenary Winery License Bucks Country Vineyards Cherry Hill Mall Cherry Hill NJ 08003 & Monmouth Mall Eatontown, NJ 07724	3400-21-165-004	Additional Sales Premises eff: 11/12/87
Transportation License Glenmont Leasing Inc. 240 Church Street Albany, NY 12202	3401-20-559-001	New License iss. eff: 11/18/87
Transportation License Tose-Fowler, Inc. 345 Hollywood Avenue South Plainfield, NJ 07080 From: 100 Water Street Jersey City, NJ 07304	3401-20-103-002	Place to Place eff: 11/18/87

Public Warehouse License Western Carriers, Inc. West Side Avenue North Bergen, NJ 07047	3401-28-560-001	New License iss. eff: 11/24/87
State Beverage Distributor Gemka Inc. 5 Woodland Avenue Matawan, NJ 07747	3400-19-249-004	Person to Person Transfer eff: 11/25/87
Additional Warehouse License Gallo Wine Sales of NJ Inc. Park Road West and Delaware Hainesport, NJ 08036	3401-24-561-001	New License iss. eff: 12/3/87
State Beverage Distributor Carol A. Casticotta & James Harriott, Jr. 3443 Highway 9 Freehold, NJ 07728 From: Martin F. Cohen Summerfield Avenue Asbury Park, NJ 07712	3401-19-421-002	Person to Person Transfer eff: 12/7/87
Public Warehouse License Standard Warehouse & Distributing Co. Inc. 455 37th Street Pennsauken, NJ 08110	3401-28-562-001	New License iss. eff: 12/7/87
Plenary Wholesale License Royal Distributors and Importers Ltd Inc. 2900 EastState Street Ext Trenton, NJ 08619 From: Dealers Liquor Co. 271 Atlantic Avenue Camden, NJ 08101	3400-23-021-003	Person to Person Place to Place Transfers eff: 12/16/87
Transportation License G. Zavitz Ltd 6604 Thorold Stone Road Niagara Falls, Ontario L2J1B3	3401-20-563-001	New License iss. eff: 12/22/87
Limited Wholesale License Princeton International Imports inc 40 TulaneStreet Princeton, NJ 08640 From: 64 North Mill Road Princeton Jct, NJ 08550	3401-25-416-002	Place to Place eff: 12/22/87
Wine Wholesale License Lake Wine Imports, Inc. 347 Sandford Street New Brunswick, NJ 08901 From: 431 Raritan Avenue Highland Park, NJ 08904	3401-26-228-002	Place to Place Transfer eff: 12/23/87
Transportation License Eddie Wise 87 Dwight Street Jersey City, NJ 07305	3401-20-565-001	New License iss. eff: 12/22/87
Farm Winery Alba Fino Vineyards (S.P.A. Inc.) Space #367 3535 US Route 1 Princeton, NJ 08540	3401-22-166-003	Additional Sales Premise eff: 12/28/87
Wine Wholesale License The Wine Group, Ltd P.O Box 697 Ripon, CA 95366 From: The Wine Group, Inc.	3401-26-237-001	Person to Person Transfer eff: 12/29/87



The submitted Exceptions were directed to the interpretation and application of the seizure law to certain particular facts alleged by the Claimants to concern this matter. The Respondents, however, did not submit a transcript of the proceedings held before the Administrative Law Judge and therefore no facts outside of the record presented to me can be considered. Matter of Morrison, 216 N.J. Super. 143 (App. Div. 1987). Accordingly, since most of the allegations raised in the Exceptions (regarding the asserted convictions of the Leottas in the Clifton Municipal Court) are beyond the record properly presented to me, they shall not be entertained.

Additionally, except as discussed below, I am satisfied that the analysis contained in the Initial Decision sufficiently identified and properly resolved the Claimants' Exceptions concerning the general application and interpretation of the relevant provisions of the law. Therefore, I shall reject such filed Exceptions and shall accept the Initial Decision within the limitations discussed infra.

The time provided to render a final decision was extended by properly executed Order of Extension until November 23, 1987.

## II. Statement of Essential Facts:

This case arose out of an investigation conducted by undercover agents from the Alcoholic Beverage Control Enforcement Bureau, New Jersey Division of State Police. Those agents hired the limousine after reviewing a brochure which indicated the Respondent provided a "free fully stocked bar" in its limousines.

The actual seizure occurred at a parking lot in Clifton on March 21, 1986 after an employee of Respondent Auto Beautique provided alcoholic beverages to the undercover agents at the commencement of the limousine ride. Same was furnished without Auto Beautique having first obtained a license to sell and dispense same as authorized under N.J.S.A. 33:1-12(4) and required by N.J.S.A. 33:1-2(a). The limousine was seized and released later that same day, after a \$3,000 cash bond was posted with the Division on the behalf of Arthur Buick, Inc., the owner of record and lessor of the limousine. Thereafter, Mr. Leotta reimbursed Arthur Buick for the posted bond and the vehicle was returned to Auto Beautique. Claim was made by the Leottas for the return of the \$3,000 bond and this matter was forwarded to the Office of Administrative Law for a hearing as a contested case.

## III. Proceedings Before The Administrative Law Judge

The evidence presented at the hearing included stipulated facts, undisputed facts, and certain disputed facts, all of which were placed into evidence. The Administrative Law Judge, after a

review of all the facts and evidence, determined that unlawful activity had taken place as alleged. The Judge further concluded that the Division was correct in denying the return of the bond.

In conducting my review herein, I specifically take cognizance of undisputed Fact No. 3 which states, "[on] that same date [the date the seizure took place], Mr. Leotta told "Thomas Sullivan" [undercover agent R.] that he had no limo license. Moreover, Mr. Leotta instructed him [R] that should the police stop the limo, he [R] should state that he [R] purchased the alcoholic beverages and brought them into the limousine." Additionally, I note that the record also indicates that Mr. Leotta, on behalf of Auto Beautique, Inc., reimbursed Arthur Buick, Inc., for the \$3,000.00 posted by Arthur Buick, Inc. for the return of the vehicle.

I have reviewed the record and I accept the basic factual findings and conclusions of law contained in the Initial Decision as they relate to the ultimate determination reached to not return any portion of the posted bond to either Respondent Auto Beautique or the Leotta Claimants. I shall therefore accept such facts and conclusions of law and, except as specified below, shall adopt same as my own herein.

#### IV. Apparent Lack of Standing to Assert Claim

Initially, my review leads me to question Auto Beautique's ability to assert a claim for the return of the limousine. As noted, Arthur Buick, Inc. was the owner and lessor of the vehicle. According to the documents of record, it was Arthur Buick, Inc. that posted the \$3,000. cash bond. Thus, facially, only Arthur Buick, Inc. could assert claims based on its status as the identified lien holder. In contrast, however, not only did Arthur Buick, Inc. not make a claim for the return of the posted bond, it never was represented nor did it even appear at the hearing for purposes of seeking the return of the bond.

Once the reimbursement of the \$3,000 cash bond by the Leottas was established, and the claim of Arthur Buick, Inc. vitiated by such action, it would appear to have been proper to have this matter dismissed, since on the record presented to me, the Leottas had no standing under N.J.S.A. 33:1-66f.

If it is suggested that the Leottas had an interest in this property, what is the nature of such interest? Does the mere fact that under the terms of the lease, the Leottas were required to reimburse the lessor from ". . . any money that the lessor pays to release or discharge any expenses incurred by . . . [them]" (Provision 28, "Additional Provisions" to the lease.) result in the Leottas being in a sense automatically subrogated to the claim and status of Arthur Buick, Inc.?

It is noted that subrogation is an equitable concept and not a matter of absolute right. Its purpose is to achieve justice and the one asserting that right cannot thereby profit from his own wrongdoing, but must himself be without fault. Melick v. Stanley, 174 N.J. Super. 271, 283 (L. Div. 1980), aff'd, 181 N.J. Super. 128 (App. Div. 1980). (See, also, discussion infra.)

The parties at the hearing below may have assumed that an automatic ascension to the Lienor's status had occurred in this case, although ABC case law indicates that alleged property interests should be specifically proven. See, e.g., In Re: Seizure Case No. Unlisted, Bulletin 1679, Item # 9 (Decided May 4, 1966). Since the burden is on the Claimant to establish its right to make a claim, the Claimant should have been required to establish such operative fact by the weight of the credible evidence and the application of the relevant law. N.J.A.C. 13:2-31.4(a). See, e.g., In Re: Seizure Case No. 7544, Bulletin 873, Item #9 (decided April 28, 1950).

With respect to the other potential "return" section of the seizure law, clearly the Leottas and Auto Beautique could not successfully advance a claim for the remittance of the bond under the provisions of N.J.S.A. 33:1-66e. Based upon the findings of the Judge, pursuant to Undisputed Fact Findings #3 and 5, and implicit in his decision, there was a complete lack of good faith on the part of the Leottas. Not only were these Claimants not unaware of the law, they were completely conversant with it and still conspired to subvert its consequences in the event they found themselves stopped by police.

Finally, the Leottas could not attain the status of Arthur Buick, Inc. under any premise having an equitable character. Under the general theory of equitable relief, same is denied to persons without "clean hands." The willful, deceitful attempt by the Claimants to subvert the law, foreclosed any equitable considerations on their behalf. Goodwin Motor Corp. v. Mercedes-Benz of N.A., Inc., 172 N.J. Super. 263, 271-272 (App. Div. 1980)

#### V. Discussion Regarding Required Elements Establishing a "Good Faith" Exception to Forfeiture

Assuming arguendo that Auto Beautique could through some artifice of reasoning be said to assume the position of Arthur Buick, Inc., I still believe no claim could be successfully established on their parts.

In reaching my conclusion herein, I note my concern, based upon our review of the available record, with the Judge's finding of the fact that Arthur Buick, Inc. had no knowledge or reason to believe that Auto Beautique was going to serve alcoholic beverages in its vehicle. Furthermore, I specifically reject any indication that, were Arthur Buick to have been the real party in interest herein and it was making a claim for the return of the bond, it " . . . does not have any reason to inspect the vehicle after delivering it to Auto Beautique, Inc." [Initial Decision at 6.]

The provision regarding utilization of the statutory "good faith" exception provides that for a person to be cloaked with such protection it must satisfy "[t]he director . . . [that it] has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use . . . ." N.J.S.A. 33:1-66f. The Division's position concerning the application of this provision has been clear and consistent for decades. More than a mere absence of knowledge is always required. For instance in the case of In Re: Seizure Case No. 10,695, Bulletin 1444, Item # 6 (decided February 23, 1962) the hearing officer concluded that ". . . a careless indifference to what use [a claimant's car] was put . . . [resulted in] . . . the Director . . . [having no] authority to relieve the claimant of forfeiture." Additionally, an affirmative duty is placed upon a claimant seeking to invoke this exception to forfeiture, to conduct an investigation into the activities of its clients to insure that no illegal alcoholic beverage activity is or will be taking place. In Re: Seizure Case No. 11,715, Bulletin 1706, Item #3 (decided October 19, 1966). Indeed, pursuant to a forfeiture Order issued May 25, 1970, the then Director stated

"I wish to give public notice that, henceforth, claimants for the return of seized property, such as vending machines installed at unlicensed premises will not be permitted to rely on any presumed investigation of such premises by any other person or agency, including law enforcement agencies. Personal inspection by such claimants or their agents at reasonable hours (not merely early morning prebusiness hours) will be required in order to show that the claimant neither knew nor should have known of the illicit alcoholic beverage activity taking place in such premises. In Re: Seizure Case No. 12,252, Bulletin 1919, Item #5 (decided May 25, 1970)."

Thus, for many years it has been established that for a claimant to avail itself of the "good faith" exception to the seizure requirement, it is required to affirmatively establish it neither knew nor should have known the illegal activity was taking place. See, also, In Re: Seizure Case No. 12,367, Bulletin 2008, Item #5 (decided September 16, 1971).

Reviewing the history leading up to and after the licensing of such limousines places further doubt upon the Judge's discussion concerning this portion of the case. It is common knowledge that only a few years ago, before such vehicles were eligible for licensure, limousine seizures by ABC agents made the headlines in most New Jersey and many out-of-state newspapers. Indeed, it is widely viewed that seizures of several casino-bound limousines provided the impetus for the Legislature to take official notice of the deficiency in the law and thereafter amend same to permit such licensure.

Sections 1-1 and 1-12 of Title 33 were amended when Governor Kean signed Bill A-661 on April 26, 1985. Those amendments permitted limousines for the first time in over 50 years to be licensed to provide alcoholic beverages to their clientele. Bulletin 2442, Item 1 (June 7, 1985). Thereafter, the Division promulgated an application form and developed instructions on how to apply for such licenses, which notice was given to the trade by press release and bulletin item (Bulletin 2442, Item #3). Since the law was amended, instances continue to occur, as in the instant case, wherein unlicensed limousines are seized for illicit alcoholic beverage activity and such seizures still result in newspaper items.

Given this history, it is simply not creditable to assume that a provider of such limousines, as Arthur Buick, would have no reason to expect (if not believe) that the dispensing of alcohol in its limousines, when same were hired out, was not occurring as a fairly regular occurrence with many of the customers. In view of this background, let there be no doubt that the Division takes a very skeptical viewpoint of any such assertions raised on the part of limousine lessors.

Based upon all of the facts and circumstances surrounding licensure of limousines and the Division's experience with this subject, for such lessors to prevail under the "good faith" exception, we expect that they will be able to establish that, prior to providing such limousine, they undertook a full and complete investigation to determine whether or not their lessees would be providing alcoholic beverages to the clients using the limousines services. In such cases the lessors must insure that proper licensure is obtained. Where, in contrast, a lessee indicates that no such activity is contemplated, we expect that the leasing company will make periodic, continuing inspections to confirm such noncommercial alcoholic beverage activity.

Since, in the present instance, Arthur Buick is not in fact the claimant for the return of the posted bond, this point need not be expounded upon further. However, I felt it advisable to clarify the Division's position and expectations in such matters for future reference purposes.

#### VI. Status of Motion to Compel Discovery

Additionally, the file reveals that, by letter dated June 18, 1987, a Motion was made by the Deputy Attorney General representing the Division to compel discovery after the claimant had failed to respond to her propounded interrogatories. The record submitted from the Office of Administrative Law does not contain any indication of responses being received to such interrogatories and the Judge's Initial Decision is silent as to his ruling on this motion.

It would appear that unless the motion was withdrawn, the Judge, in the absence of a response, should have granted same and dismissed the claim. At the very least the testimony of Arnold Kaston, presented on behalf of and for the benefit of the Claimants, should have been suppressed. N.J.A.C. 1:1-10.5 & 1-14.4(c). Additionally, in the absence of a prior written determination made by the Judge on this motion and communicated to the parties, it would appear that his ruling should also have been included in his Initial Decision. Cf., N.J.A.C. 1:1-12.1(a)2 & 12.2(f) and N.J.A.C. 1:1-18.1(b).

### VII. Orders

The below noted Order shall effectuate the accepted recommendations of the Initial Decision.


Accordingly, it is on this 2nd day of November, 1987,

DETERMINED AND ORDERED that all of the seized property, more particularly set forth in Schedule "A," constitutes unlawful property, and the same be and is hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66, as more particularly set forth below; and it is further

DETERMINED AND ORDERED that the \$3,000.00 cash bond shall be forfeited in accordance with the provisions of N.J.S.A. 33:1-66 and shall be paid over to the General Treasury of the State of New Jersey and accounted for in accordance with law; and it is further

DETERMINED AND ORDERED that the \$250.00 marked money be and the same is hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and shall be repaid to the New Jersey State Police Alcoholic Beverage Control Enforcement Bureau's investigative fund; and it is further

DETERMINED AND ORDERED that the 3 containers of the said alcoholic beverages shall be forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and shall 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 Director of the Division of Alcoholic Beverage Control.

  
JOHN F. VASSALLO, JR.  
DIRECTOR

- APPENDIX: 1. INITIAL DECISION BELOW  
2. SCHEDULE "A"



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 7681-86

AGENCY DKT. NO. 86-15067-R

(H-7186-048V)

STATE OF NEW JERSEY,  
DEPARTMENT OF LAW AND  
PUBLIC SAFETY, DIVISION  
OF ALCOHOLIC BEVERAGE  
CONTROL,

Petitioner,

v.

JOHN SANTO LEOTTA &  
JOHN SCOTT LEOTTA, t/a  
AUTO BEAUTIQUE,

and

ARTHUR BUICK, INC.,

Respondents.

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Nancy M. Mahony, Deputy Attorney General, for petitioner (W. Cary Edwards,  
Attorney General of New Jersey, attorney)

Robin E. Echevarria, Esq., for respondent Auto Beautique, Inc. (Voorhees, Bennett &  
Wherry, attorneys)

Arthur Buick, Inc., respondent, unrepresented

Record Closed: July 23, 1987

Decided: August 24, 1987

BEFORE STEVEN L. CARNES, ALJ:

PROCEDURAL HISTORY

On March 21, 1986, employees of the respondents John Santo Leotta and John Scott Leotta, t/a Auto Beautique, allegedly dispensed alcoholic beverages without a license to undercover agents of the petitioner incident to the rental of respondent's limousine. Later that day, the Leottos were charged with dispensing alcoholic beverages without a license in violation of N.J.S.A. 33:1-50 and N.J.S.A. 33:1-66, and the limousine was seized by the Division of Alcoholic Beverage Control (Division). Finally on that day, Stephen Mazula, on behalf of Arthur Buick, Inc. (owner and lessor of the limousine), posted a \$3,000 cash bond with the Division and secured the release of the limousine.

At the conclusion of the criminal proceedings arising in this case against the Leottas, the Division refused to return the \$3,000 bond to Arthur Buick as permitted in N.J.S.A. 33:1-66. The respondents therefore requested a hearing regarding the return or forfeiture of the bond. The Division directed that a hearing be held, and the matter was transmitted to the Office of Administrative Law on November 13, 1986, for determination as a contested case, pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On January 5, 1987, a prehearing conference was held on the matter before Administrative Law Judge Steven C. Reback.

The issues set forth at the prehearing conference to be resolved at the hearing were:

It is alleged that on or about March 21, 1986 employees of John Santo Leotta and John Scott Leotta, t/a Auto Beautique, sold alcoholic beverages to undercover agents of the Division without a license and committed various other incidental violations as well. Auto Beautique is a company which furnishes limousine services to individuals and the alleged sale of alcoholic beverages took place as an incident to use of a limousine.

The current appeal by Auto Beautique results from the seizure of the limousine at issue by the Division which was thereafter returned to Auto Beautique upon the latter's posting of a \$3,000 bond. Pursuant to N.J.S.A. 33:1-50, Auto Beautique now seeks a return of the moneys which were posted by it. The issue therefore

is whether under the appropriate criteria set forth at the foregoing statute, Auto Beautique is entitled to a return of the moneys which it posted as a bond.

A hearing was scheduled for February 18, 1987. The respondents requested an adjournment of this hearing, which was granted as on that date one of the respondents, John Scott Leotta, was ill. The hearing was rescheduled for March 27, 1987. During prehearing discussions on that date, the Division requested an adjournment of the proceedings which was granted as they determined that Arthur Buick, Inc. was an indispensable party in this case who had not been notified of the proceedings. The hearing was rescheduled for May 7, 1987. The Division requested an adjournment of the hearing on that date, which was granted, as one of their witnesses was going to be in Florida and therefore would be unavailable to testify. The hearing was rescheduled for June 9, 1987. Arthur Buick, Inc. requested an adjournment of that date, which was granted as their representative was hospitalized on that date. The hearing was held on July 7, 1987, at the Office of Administrative Law, 9 Quakerbridge Plaza, Trenton, New Jersey. At the conclusion of the hearing, both sides requested to submit briefs on the issues of law in this case. This request was granted. The Division's brief was received by me on July 14, 1987, and the respondent's reply brief was received on July 23, 1987, at which time the record closed.

### THE FACTS

#### A. Undisputed Facts

The parties stipulated to the following facts at the hearing:

1. On March 12, 1986 a "Thomas Sullivan" (Inspector [A.R.]) telephoned John Leotta and arranged to have a limousine transport him from Clifton to Atlantic City and back to Clifton on March 21, 1986.
2. On that date, Mr. Leotta agreed to stock the limousine with alcoholic beverages and mixes for "Thomas Sullivan" [R.].
3. On that same date, Mr. Leotta told "Thomas Sullivan" [R.] that he had no limo license. Moreover, Mr. Leotta instructed him [R.] that should the police stop the limo, he [R.] should state that he [R.] purchased the alcoholic beverages and brought them into the limousine.

4. On March 20, 1986 "Thomas Sullivan" [R.] telephoned Auto Beautique and confirmed the arrangements for March 21, 1986.
5. On March 21, 1986 "Thomas Sullivan" [R.] and Inspector L.T. entered the 1985 grey Lincoln Limousine (reg# AHX52R) and met the driver from Auto Beautique, John Santo Leotta. Mr. Leotta stated that scotch, vodka and gin were in the liquor rack in the rear seat of the limo.
6. Glasses, mixers, napkins and straws were stocked in the limo.
7. The Inspectors mixed drinks for themselves, i.e., gin and tonics.
8. On March 21, 1986, the Inspectors paid \$250 to Mr. Leotta.
9. Based on the foregoing, Auto Beautique dispensed alcoholic beverages without a license in violation of N.J.S.A. 33:1-50 and such sales constituted "unlawful activity" pursuant to N.J.S.A. 33:1-66.
10. The alcoholic beverages, decanters and limousine were "unlawful property" capable of seizure as described in N.J.S.A. 33:1-66.
11. On March 21, 1986, Inspector [R.] spoke with John Scott Leotta over the telephone informing the latter of the violation. Mr. Leotta stated that it was his belief that alcohol could be consumed in the limo as long as the passengers purchased the alcoholic beverages and brought them on board the limo. The Inspector then advised Leotta that the limousine had been seized and that he (Leotta) could post a bond for its release.
12. A \$3,000 bond was set for the release of the limo. Neither John Scott Leotta nor John Santo Leotta could furnish the money. Rather Stephen Mazula on behalf of Arthur Buick, Inc. (owner and lessor of said limousine) posted the \$3,000 cash on March 21, 1986. The limo was returned to Mr. Mazula on that date.
13. The seven (7) photographs taken on March 21, 1986, of the grey Lincoln Limousine (reg# AHX52R) are authentic in that they accurately depict the appearance of said vehicle on that date.
14. Auto Beautique advertised on one occasion by flyer that it furnished a "free fully-stocked bar" in its limousines.

As the parties knowingly, voluntarily, and intelligently entered into the above stipulation of fact after receiving advice of counsel and questioning by me, I accept the stipulation of fact and FIND the above as fact in this case.

B. Disputed Facts

Arthur Buick, Inc. is the owner of the limousine in question in this case. On October 10, 1985, Arthur Buick, Inc. leased the limousine to Auto Beautique, Inc. (R-1). Section 28 of the lease "Use" provides in pertinent part:

You will keep vehicle free of all taxes, fines, liens, and encumbrances. You will pay any money that the lessor pays to release or discharge any expenses use vehicle illegally, improperly or for hire.

Section 33, "Indemnification," provides in pertinent part:

You also agree to indemnify and hold lessor and its assignees and its employees harmless from all losses, damages, injuries, claims, demands and expenses arising out of the . . . use or operation of the vehicle.

Arthur Buick, Inc. is not related to or doing business with Auto Beautique, Inc. The lease agreement was a good faith at arms length transaction between two independent corporations in the marketplace, and Arthur Buick, Inc. is not responsible for what Auto Beautique, Inc. does with the leased vehicle.

When informed that the vehicle had been seized by the Division, John Sax, President of Arthur Buick, Inc., gave \$3,000 in cash to Mr. Mazula. Mr. Mazula then posted the bond and obtained possession of the vehicle. The vehicle was then returned, pursuant to the lease, to Auto Beautique, Inc., and Mr. Leotta reimbursed Arthur Buick, Inc. the \$3,000 which Arthur Buick, Inc. had posted as bond for the return of the vehicle. Arthur Buick, Inc., as the owner of the vehicle, would have posted the bond for the release of the vehicle irrespective of any potential reimbursement from the lessee Auto Beautique, Inc.

Arthur Buick, Inc. had no knowledge of or reason to believe Auto Beautique, Inc. was going to use the vehicle in any unlawful activity—specifically, that Auto Beautique, Inc. was going to serve alcoholic beverages in the vehicle. Arthur Buick, Inc. did not have any reason to inspect the vehicle after delivering it to Auto Beautique, Inc. The vehicle was not leased equipped with decanters or glasses.

FINDINGS OF FACT

1. Arthur Buick, Inc. is the owner of the limousine in this case and leased it to Auto Beautique, Inc.
2. Arthur Buick, Inc. is not related to or doing business with Auto Beautique, Inc. The lease agreement was a good faith at arms length transaction between two independent corporations in the market place, and Arthur Buick, Inc. is not responsible for what Auto Beautique, Inc. does with the leased vehicle.
3. Arthur Buick, Inc. posted the \$3,000.00 bond with the Division and was reimbursed by Auto Beautique.
4. Arthur Buick, Inc. had no knowledge of or reason to believe Auto Beautique, Inc. was going to serve alcoholic beverages in the vehicle. Arthur Buick, Inc. did not have any reason to inspect the vehicle after delivering it to Auto Beautique, Inc.

APPLICABLE LAW

N.J.S.A. 33:1-50, Manufacture, sale, possession, etc., in violation of chapter; misdemeanor, provides, in pertinent part:

Any person who shall:

- a. Manufacture, sell, distribute . . . or transport any alcoholic beverage in violation of this chapter; or
- b. Import, own, possess, keep or store in this state alcoholic beverages with intent to manufacture, sell, distribute . . . or transport alcoholic beverages in violation of the provisions of this chapter; or
- c. Own, possess, keep or store in this state any implement or paraphernalia for the manufacture, sale, distribution . . . or transportation of alcoholic beverages with intent to use the same in the manufacture, sale, distribution . . . or transportation of alcoholic beverages in violation of this chapter; or

- d. Aid or abet another in the manufacture, sale, distribution, or transportation of alcoholic beverages in violation of this chapter; . . .

. . .

Shall be guilty of a misdemeanor, and punished by a fine of not less than one hundred dollars and not more than one thousand dollars, or imprisonment for not less than thirty days and not more than three years, or both.

N.J.S.A. 33:1-66, Seizure of unlawful property; bond or cash for return; replevin; forfeiture, sale, etc., of unclaimed property; hearing; certain property subject to seizure; manufacture, sale, etc., of unlawful property; return of seized property; liens upon seized property, provides, in pertinent part:

- a. Any officer knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this chapter and to make complaint against such persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the Director of the Division of Alcoholic Beverage Control subject to this chapter.

Any seized property shall be returned to any person claiming the same upon execution and delivery by him to the director of a bond in a form and with sureties satisfactory to the director in a sum double the retail value of the property, as appraised by the director, conditioned, (1) to pay to the director for the use of the State the full retail value of such property in case the same shall appear to have been unlawful property, and (2) in case it shall appear that said property was not unlawful property, to pay such part of the retail value thereof as may represent the value of the outstanding right, title interest, lien or claim of any other person, to such other person, which bond shall be enforceable, as other obligations for payment of money, by civil action in any court of competent jurisdiction, first by the director, to be instituted within one year from the date thereof, and, secondly, by such other person as third party beneficiaries, at any time after final judgment in such action by the director, or after the expiration of said year in case no such action shall have been instituted by the director in the meantime.

...

If the director shall be satisfied that property seized was not unlawful property he may return the same to the person from whom or the place from which the same was taken. If any seized property shall not be reclaimed within thirty days, after determination by him that such property is unlawful property, and subject to rules and regulations, the director shall forfeit such property, and subject to rules and regulations, the director shall forfeit such property and may, in his discretion, order that the seized property in whole or in part be sold, destroyed or retained for the use of hospitals and State, county and municipal institutions. The forfeiture of any seized property shall terminate all property interests therein and in any proceeds therefrom, including the interests of the owner, any conditional vendor, chattel mortgagee or other lienor and all other persons.

...

- c. All alcoholic beverages manufactured, sold, imported or transported in violation of rules and regulations, together with any vehicle containing the same, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section.
- d. Any contrivance, preparation, compound, tablet, substance or recipe advertised, designed or intended for use in the manufacture of alcoholic beverages for personal consumption or otherwise in violation of this chapter is hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section. Any person who shall advertise, manufacture, sell or possess for sale, or cause to be advertised, manufactured, sold or possessed for sale property declared unlawful under this paragraph, shall be guilty of a misdemeanor and punished by a fine of not less than one hundred dollars (\$100.00) and not more than five hundred dollars (\$500.00), or imprisonment for not less than thirty days and not more than six months, or both.
- e. The director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director.

The director may, upon being satisfied that a common carrier, whose vehicle has been seized under the provisions of this chapter, has acted in good faith and had no knowledge at

the time of the seizure, that the vehicle contained illicit alcoholic beverages, order that the seized vehicle be returned to the common carrier.

- f. The director, upon being satisfied that a person having a bona fide and valid lien upon or interest in property seized or forfeited pursuant to the provisions of this section has acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use, may, in his discretion and subject to rules and regulations, recognize the validity and priority of such claim or interest. Where the validity and priority of a lien or interest have been so recognized by the director, he may (1) order, where it appears that the amount or value of such lien or interest exceeds the value of the property plus costs, that the property be returned to the innocent claimant upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director, or (2) order that the property be sold and that the amount of the lien or value of the interest which amount or value shall be established to the satisfaction of the director, be paid out of the proceeds of sale after having deducted therefrom the reasonable costs incurred in connection with the seizure, such costs to be determined by the director.

#### DISCUSSION

The essential facts in this case are not in dispute. The only issue appears to be one of law.

This case refers to the forfeiture of a bond paid subsequent to the seizure of property due to unlawful alcoholic activity. N.J.S.A. 33:1-66a, N.J.S.A. 33:1-50. Where a claimant has established that he acted in good faith, and had no knowledge or reason to believe the property would be utilized in lawful activity, his bond will be returned. Seizure Case No. 11,466, ABC Bulletin No. 1678, Item No. 3 (May 2, 1966); N.J.S.A. 33:1-66e,f. (Good faith was not established and the bond was forfeited.)

The general purpose of the act is to promote temperance and to allow for strict regulation of sales of alcoholic beverages. Faces, Inc. v. Kennedy, 185 N.J. Super. 113 (Law Div. 1981), aff'd, 185 N.J. Super. 77 (App. Div. 1982). (Licensee who failed to get written statement of minor could not recover business profits as that would contravene policy of statute.) (See, N.J.S.A. 33:1-3.1a(1). It is the public policy of New

Jersey . . . "to strictly regulate alcoholic beverages to protect the health, safety and welfare of the people of this State.") The court has noted that the statute in question is a penal statute which must be strictly construed. State v. Pinto, 129 N.J.L. 255, 258 (Sup. Ct. 1942). This fact was noted in a latter case where the court noted the express provision in R.S. 33:1-73 (now N.J.S.A. 33:1-73) which states: "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947). The court concluded that a liberal construction fostered the goals of the legislation, Ibid. The court did this while noting the penal character of the law in question, Ibid. The court also noted the public danger to society, in particular to minors. (Licensee was held guilty of permitting the sale to minors absent knowledge. Id. at 30.)

Thus, we are faced with a law which is both penal and remedial. Penal laws require strict construction, State v. Pinto at 258, while remedial laws require a liberal construction to foster the law's goals. Essex at 31.

These two rules do not conflict since all penal statutes are enacted and enforced in the public interest. State v. Meinken, 10 N.J. 348, 352 (1952). (Gaming law,

both penal and remedial, can be construed liberally to foster statute's intent. Appellant was held not to be hunting under the terms of the statute. Strict construction was affirmed.)

Where a group of provisions are both penal and remedial, as in this case, penal provisions should be strictly construed while remedial provisions should be liberally construed, Ibid. Thus, the forfeiture provision should, given the above language, be strictly construed. However, the court also states:

The rule of strict construction applicable to the penal provisions of a statute, however, does not prevent a court from reading the statute in relation to the mischief and evil sought to be suppressed or prevent a court from giving effect to the terms of the statute in accordance with their fair and natural acceptance. While a penal statute is not to be extended by implication or intendment, its clear implication and intendment is not to be denied. State v. Brenner, 132 N.J.L. 607, 611 (E. & A. 1945); Mayor, etc. of Alpine Borough v. Brewster, supra, 7 N.J. 42, 50-51 (1951), nor is a construction of a penal statute that will aid in its evasion to be

avored, State v. Hand, 71 N.J.L. 137, 141 (Sup. Ct. 1904). In Stricker v. Pennsylvania R.R. Co., 60 N.J.L. 230, 235 (E. & A. 1897), it was stated:

It must be admitted that this is a penal statute, and that, in general, such statutes must be construed strictly, but it is equally well settled that this rule is not violated by adopting the sense of the words which best harmonizes with the object and intent of the legislature, and that the whole context of the statute must be construed together.

Following these principles we shall give to the statute in question its most apparent and reasonable meaning having in mind the legislative purpose, but without extending its provisions by implication or intendment.

[State v. Meinken, 10 N.J. 348, 352, 353 (1952).]

Thus, we must read the statute in relation to the evil it seeks to address: in this case, intoxication. To strictly construe the statute would allow the Leottas to escape a penalty for evasion of the statute. Sections 28 and 33 of the contract provide for the Leottas to reimburse Arthur Buick for the cost of the bond. N.J.S.A. 33:1-66e allows the director to return seized or forfeited property (or the bond which stands in place of the seized property) to one who has acted in good faith and has unknowingly violated the liquor laws. This allows innocent third parties to regain their property and not suffer an unjust penalty if someone else wrongfully uses their property. In this case, since the Leottas were required by contract to reimburse, and in fact did reimburse, Arthur Buick, the bond appears to be the property of the transgressors, the Leottas, and not that of the innocent third party, Arthur Buick. To allow the return of the bond to Arthur Buick would mean that Arthur Buick, who has suffered no loss, would return the money to the Leottas. The Leottas would thus evade the penalty of the forfeiture provisions. Unlike the appellant in Meinken, who was found not to be in violation of the plain terms of the statute there, here a violation of N.J.S.A. 33:1-50 has taken place, triggering the forfeiture provision, N.J.S.A. 33:1-66. We should not aid in the evasion of the statute. State v. Meinken at 353.

Now, we must look at whether the bond forfeiture is in fact a penalty. Under New Jersey law, a penalty is generally a sum paid or required to be paid as a punishment for contravention of law. Zuest v. Ingra, 134 N.J.L. 15, 18 (E. & A. 1945). In determining whether a penalty was present, the court looked at whether the law in question was penal,

i.e., did the law seek to right a public wrong rather an individual claim. Zuest at 18, 19. The court noted the fact that the public welfare was affected by the law. Zuest at 20. (Exaction for violation of the Emergency Price Control was held to be a penalty.) In this case, we have a penal statute, which has as an express goal protection of the public welfare. State v. Pinto at 258; N.J.S.A. 33:1-3.1a(1). Furthermore, in Berry & Ackley v. DeMaris, 76 N.J.L. 301, 306 (Sup. Ct. 1908), a forfeiture was held to be a penalty and the forfeiture was referred to as punishment. (Statute prohibiting traffic in articles including intoxicating liquors within three miles of place of religious services was upheld.) In a statutory forfeiture, as in our case, the proceeding is in rem against the property and the aim of the forfeiture is to penalize the property directly and the owner indirectly for allowing criminal use of the property. State v. Garcia, 114 N.J. Super. 444 (Law Div. 1971). (Forfeiture provisions of Uniform-Narcotics Law Drug Law was held not to be unconstitutionally vague.) (Emphasis added.) These cases seem to support the view that under New Jersey law, a forfeiture is a penalty.

It should also be noted that the fact that a particular statute labels actions taken under it a forfeiture rather than a penalty is not controlling. Helwig v. U.S., 188 U.S. 605, 611 (1902). (Whether the statute defines it in terms as a punishment or penalty is not important if the nature of the provision be of that character.) The court noted that a penalty is a punishment by way of money imposition. Id. at 612. Thus, the terminology used in N.J.S.A. 33:1-66 should not be controlling. Given the fact that the forfeiture in question meets the definition of a penalty delineated in Zuest at 18, the forfeiture in question should be considered a penalty. Since bonds are returned to good faith claimants, clearly, the purpose of the statute is to punish transgressors. See, Seizure Case No. 11, 466, ABC Bulletin No. 1678, Item No. 3 (May 2, 1966). (Good faith was not established and bond was forfeited.) Allowing the terms of the statute to dictate that forfeiture is not a penalty would not promote the statute's goal of protecting the welfare of public in regard to alcoholic beverages, one should look to the character of the action, not its label. Helwig at 611.

It has already been noted that where a claimant can affirmatively establish ownership, good faith, and the absence of knowledge or reason to believe that his property would be utilized in illicit activity, his bond would be returned. Seizure Case No. 11, 850, ABC Bulletin No. 1749, Item No. 6 (June 15, 1967). (Claimant relied on police, investigation and two personal visits to premises, during which no violations occurred.)

See also, Seizure Case No. 11, 519, ABC Bulletin No. 1661, Item No. 3 (January 12, 1966). (Lienor establishing good faith investigation had forfeited property returned to him.) Arthur Buick meets the requirements for return of the bond: ownership, good faith, and no knowledge or reason to believe illicit activity was occurring. Seizure Case No. 11, 466. Absent other circumstances, the director may return a bond if the above elements are present. Seizure Case No. 11, 466; Seizure Case No. 11, 850. A fourth element is implicit; however, the claimant must pay the bond as in Seizure Case No. 11, 850. Here, we have the additional circumstance of a private contract wherein the party paying the bond gets reimbursed. So, in effect, no penalty has really been paid, rendering Seizure Case No. 11, 850 distinguishable.

However, we are dealing here with a penal statute which must be strictly construed. State v. Pinto at 258. Generally, forfeitures are disfavored in law. State v. One 1979 Pontiac Sunbird, 191 N.J. Super. 578, 580 (App. Div. 1983); State v. One Ford Van Econoline, 154 N.J. Super. 326, 331-32 (App. Div. 1977), certif. den. 77 N.J. 474 (1978). Secondly, all elements of doubt must be resolved in favor of the one against whom the forfeiture is sought. State v. LaBella, 88 N.J. Super. 330, 342 (Law Div. 1965); State v. Schaedel, 120 N.J. Super. 21, 23 (App. Div. 1972).

While I find no case directly on point interpreting N.J.S.A. 33:1-66, one may look to guidance from the cases involving other forfeiture statutes in this State. In State v. One 1979 Chevrolet Camaro Z-28, Bearing N.J. Registration 447-UAB, 202 N.J. Super. 222 (App. Div. 1985), the Appellate Division stated that the criminal forfeiture statute had an extraordinarily broad scope, but that since forfeitures are disfavored in law, the statute should be strictly construed in the manner as favorable to the person whose property is to be seized as is consistent with the fair principles of interpretation. In State v. 1979 Pontiac Trans Am, Color Grey, N.J. Registration No. 223-PYX, 98 N.J. 474, 477 (1985), the Supreme Court stated that N.J.S.A. 2C:64-1 exempted innocent lessors and lien holders from forfeiture for use of property in furtherance of unlawful activity if the innocent owner could prove that they were uninvolved in and unaware of unlawful activity and that they had done all they reasonably could be expected to do to prevent the proscribed use of their property. The court so held as they felt it would be difficult to conclude that the forfeiture of property of such owners would serve a legitimate purpose and would not be duly oppressive, and since stricter interpretation of the statute would run afoul of constitutional prohibitions against the taking of property without due process.

While forfeiture statutes must be fairly and reasonably construed, generally forfeitures are not favored in law, particularly where the legislature has provided appropriate exemptions from the scope of the forfeiture provisions. State v. One Ford Van Econoline, White, Bearing Delaware Registration No. C80-195, 154 N.J. Super. 326, 328 (App. Div. 1977). Statutes designed to relieve a party from the rigors of forfeiture are looked on warmly and construed liberally so as to afford maximum relief and where liberal construction of the statute will avoid a position of forfeiture, the statute will be so construed. By providing an exception from the forfeiture of an automobile used in certain violations of criminal statutes in case of an innocent owner, the legislature intended to provide a standard of fixed and precise meaning unaffected by vigorous factual patterns as they might arise in individual cases. State v. One Ford Van Econoline at 329. The respondents argue that since the express requirements of good faith, ownership and lack of reason to know of illicit activities having been met, pursuant to N.J.S.A. 33:1-66e, f, the bond should be returned. However, we have already concluded that a penal statute may be liberally construed where that construction fosters the act's legislative intent and where to do otherwise would lead to evasion of the statute. State v. Meinken, 10 N.J. 348, 352, 353 (1952). A liberal construction is warranted here where the strict or literal construction apparently sought by the respondents would leave the Leottas free of any real penalty for the violation of the statute which triggered the forfeiture provision. Since we have concluded that the forfeiture is a penalty, a construction which would allow said penalty to be avoided should not be utilized. State v. Gill, 47 N.J. 441, 444 (1966). (Rules of statutory interpretation leading to absurd or reasonable results should be avoided.) A strict interpretation flies in the face of the goals of the statute N.J.S.A. 33:3-1. Thus, the lease contract does render the forfeiture unreturnable.

Therefore, I CONCLUDE that the respondents John Santo Leotta and John Scott Leotta t/a Auto Beautique who dispensed alcoholic beverages without a license in violation of N.J.S.A. 33:1-50, such dispersal constituting unlawful activity pursuant to N.J.S.A. 33:1-66, are the real parties interest in this case as pursuant to their contract they reimbursed Arthur Buick, Inc. for the cost of the bond.

I FURTHER CONCLUDE that Arthur Buick, Inc. acted in good faith and had no knowledge or reason to believe the limousine would be utilized in unlawful activity, and absent reimbursement by the Leottas, would have been eligible to recover the bond.

I FURTHER CONCLUDE that the forfeiture provision contained in N.J.S.A. 33:1-66 is a penalty.

Finally, I CONCLUDE that the action of the petitioner in denying return of the bond is CORRECT, and I ORDER that the action of the Division denying return of the bond as forfeited property be AFFIRMED and that this appeal by the respondents be DISMISSED.

This recommended decision may be adopted, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN F. VASSALLO, JR., for consideration.

24 August 1987  
DATE

*Steven L. Carnes*  
STEVEN L. CARNES, ALJ

08.25.87  
DATE

Receipt Acknowledged:  
*John F. Vassallo, Jr.*  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
*Debbie Harris*

AUG 27 1987  
DATE

Mailed To Parties:  
*Ronald J. Parkers*  
OFFICE OF ADMINISTRATIVE LAW

DOCUMENTS IN EVIDENCE

**Joint Exhibits:**

- J-1** Letter of Nancy M. Mahony, DAG to Robin E. Echevarria, Esq., dated June 17, 1987, containing the stipulation of fact.

**For Petitioner:**

- P-1** Photograph of the exterior of the limousine
- P-2** Photograph of the front license plate of the limousine
- P-3** Photograph of the bar in the rear of the limousine
- P-4** Photograph of the rear seat of the limousine
- P-5** Photograph of the bar in the limousine
- P-6** Photograph of the bar in the limousine
- P-7** Photograph of the rear of the limousine
- P-8** Auto Beautique flier indicating "free fully stocked bar"

**For Respondent:**

- R-1** Lease between the Arthur Buick, Inc. and Auto Beautique

WITNESSES

**For Petitioner:**

None

**For Respondent:**

Arnold Kaston, controller and secretary/treasurer of Arthur Buick, Inc.

SCHEDULE A

CASE NUMBER	DATE OF SEIZURE	PERSON FROM WHOM SEIZED	PROPERTY SEIZED
86-15067-R	3/21/86	John Santo Leotta, John Scott Leotta, t/a Auto Beautique	\$250.00 marked currency, \$17.00 misc. alco. beverages, \$3,000.00 cash dep. under protest in lieu of 1985 stretch limo, and misc. fixtures an contents.

\*\*\*\*\*

PUBLICATION OF BULLETIN 2451 IS HEREBY DIRECTED THIS  
31ST DAY OF DECEMBER, 1987.

  
JOHN F. VASSALLO, JR.  
DIRECTOR