

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

BULLETIN 719

JULY 12, 1946.

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MEMORANDUM FOR THE DIRECTOR  
SUBJECT: [Illegible]

[The body of the memorandum contains several paragraphs of text that are almost entirely illegible due to extreme image degradation and noise. Only a few words and phrases are discernible.]

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

BULLETIN 719

JULY 12, 1946.

1. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

EDWARD BECK )  
T/a COMMUNITY HALL )  
1500 - 47th Street )  
North Bergen, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-24 for the fiscal year 1945-46, and C-10 for the fiscal year 1946-47, issued by the Board of Commissioners of the Township of North Bergen. )  
----- )

Edward Beck, Defendant-licensee, Pro se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

The defendant pleaded non vult to a charge alleging that he possessed two 4/5 quart bottles labeled "Teacher's Highland Cream Perfection of Blended Scotch Whisky", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On May 24, 1946, an investigator of the Department of Alcoholic Beverage Control seized the two bottles mentioned in the charge when preliminary tests thereof indicated that the contents appeared to be under proof. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottles varied in solids, acids and proof when compared with an analysis of the contents of a genuine sample of the same product.

Defendant has no previous adjudicated record. I shall, therefore, suspend his license for a period of fifteen days. Re Nurse, Bulletin 680, Item 7.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 3rd day of July, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued for the 1946-47 fiscal year by the Board of Commissioners of the Township of North Bergen to Edward Beck, t/a Community Hall, for premises 1500 - 47th Street, North Bergen, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. July 15, 1946, and terminating at 3:00 a.m. July 30, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

2. APPELLATE DECISIONS - WESTON & CO. ET ALS. v. NEWARK AND MARKS.

WESTON & CO., WOLF'S WINES AND LIQUORS, INC., and NOVELTY BAR & GRILL,

Appellants,

-vs-

ON APPEAL CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and GEORGE MARKS,

Respondents

Kasen, Schnitzer & Kasen, Esqs., by Morris M. Schnitzer, Esq., Attorneys for Appellants Weston & Co. and Wolf's Wines and Liquors, Inc. Andrew B. Crummy, Esq. and Francis W. Hayden, Esq., Attorneys for Appellant Novelty Bar & Grill. George B. Astley, Esq., Attorney for Respondent Board. Harold Simandl, Esq., Attorney for Respondent George Marks.

This is an appeal from the transfer of Plenary Retail Distribution License D-44 from 30-32 Clinton Street to 736 Broad Street, Newark. This transfer was granted on December 27, 1945. Appeal was filed herein on January 24, 1946.

Appellant Weston & Co. is the holder of a plenary retail consumption license for premises 860 Broad Street; appellant Wolf's Wines & Liquors, Inc. is the holder of a plenary retail distribution license for premises 683 Broad Street; and appellant Novelty Bar & Grill is the holder of a plenary retail consumption license for premises 218-220 Market Street, Newark.

Appellants allege, in substance, that the action of respondent was erroneous because:

- (1) The Board should have determined from the evidence before it that the application for transfer was one which sought to accomplish the violation of an ordinance of the City of Newark which prohibits the transfer of existing licenses to premises within 750 feet of existing licensed premises of the same class unless already within the stated distance;
(2) The Board should have determined from the evidence before it that respondent George Marks was not the real party in interest in connection with said application or license; and
(3) The Board should have determined from the evidence before it that it was not in the public interest to approve the application for transfer.

As to (1): The ordinance in question was adopted by the Municipal Board of Alcoholic Beverage Control of the City of Newark on May 4, 1938, and remains in effect at the present time. The pertinent section of the ordinance is known as Section 5 and provides as follows:

"No Plenary Retail Distribution License, excepting renewals for the same premises as have heretofore been licensed, and transfers from person to person, shall be granted or transferred to another premises within a distance of seven hundred and fifty (750) feet from an existing licensed premises covered by a Plenary Retail Distribution License.

In the event a licensee desires to transfer to another premises he shall be permitted to do so within seven hundred and fifty (750) feet of the premises wherein he is located at the time of such transfer. He shall comply with the provisions aforementioned when transferring to premises more than seven hundred and fifty feet from the premises from which a transfer is sought."

The testimony of Robert E. Brown, Clerk to the Chairman of respondent Board, establishes that there is, and was at the time of the transfer, at least one plenary retail distribution license in existence for premises located within 750 feet of 736 Broad Street. This license is held by the Union News Company for premises located in the Public Service Terminal building. It has been stipulated, however, that the distance between 30-32 Clinton Street and 736 Broad Street is less than 750 feet. Hence, under the terms of Section 5, the transfer in question was permissible despite the existence of the plenary retail distribution license held by Union News Company.

Appellants, however, have attempted to go beyond the transfer which they specifically attack. They allege that a prior transfer of License D-44 from 28 Bloomfield Avenue to 30-32 Clinton Street was made with the intention of subsequently transferring the license to 736 Broad Street, and they charge that the license transfers from Bloomfield Avenue to Clinton Street, and thereafter to Broad Street, were related steps in a scheme to defeat the City's ordinance and to flout its policy against over-concentration of licensed premises.

At the hearing herein the attorney for respondent Marks objected to any testimony concerning previous transfer of the license from Bloomfield Avenue to Clinton Street. He based his objection upon the contention that this transfer had been granted on September 20, 1945, and that no appeal had been taken to the Commissioner within thirty days from the date such action was taken. R. S. 33:1-26. Ordinarily the objection would have been sustained because, as stated above, the appeal was not filed herein until January 24, 1946. However, because the pleadings in the case appear to raise a question of possible fraud upon the local issuing authority, the Hearer permitted the introduction of evidence concerning both the transfer of the license from Bloomfield Avenue to Clinton Street as well as the transfer of the license from Clinton Street to 736 Broad Street. After examining the pleadings, I agree with the ruling of the Hearer and, hence, shall consider all the evidence presented at the hearing.

The testimony in this case discloses that respondent George Marks has been on friendly terms with one Hyman Gabriner for a period of six or seven years. Shirley Marks, wife of George Marks, had been employed by Gabriner as bookkeeper for a period of at least two years. Gabriner is president of Black's Drug Store, a corporation. On April 30, 1945 he entered into a lease for a store located on the ground floor of 736 Broad Street. He had no liquor license at that time, but in the lease he agreed to pay to the landlord as rental six per cent of the gross sales of liquor which might be sold in the store. Thereafter the store was opened as one of a chain operated by Black's Drug Store, but no liquor was sold therein until the Marks license was transferred to part of said store on December 27, 1945.

At the hearing herein Marks testified that, prior to August 1945, he had attempted to purchase two liquor stores but that both deals fell through. In the early part of August 1945 he and Gabriner, and Mr. Ravin, an attorney who represented both of them, visited licensed premises conducted by one Myerson at 28 Bloomfield Avenue. This business had previously been conducted as a grocery and liquor store. As a result of this visit, Myerson and Marks entered into an agreement, dated August 17, 1945, whereby the former agreed to sell to the latter for the sum of \$10,000.00, "all merchandise, fixtures and

equipment, the good will thereof, and all of the seller's right, title and interest in and to the 'D' liquor license #44 heretofore issued to the seller by the City of Newark." It is apparent that at that time the license could not have been transferred from Bloomfield Avenue to the premises at 736 Broad Street because the distance between said premises was more than 750 feet and because of the existence of the license held by the Union News Company. However, on the same day, two separate applications were filed by Marks with respondent Board. One application sought a transfer of License D-44 from Myerson to Marks, and the other application sought transfer of the license from 28 Bloomfield Avenue to 30-32 Clinton Street. The latter premises were not within 750 feet of any existing plenary retail distribution license. The premises to which Marks sought the first place-to-place transfer of the license consisted of a space containing approximately seventy square feet, located in the hallway of a six-story business building tenanted principally by insurance companies. The building is off the beaten path, and Marks knew that he could not display any signs on the outside of the building advertising the sale of liquor. It was certainly an ideal place if, as Marks testified at the hearing, he "wanted to have an easy business with few hours." In fact, he would probably have failed completely at the Clinton Street address, as indicated by the fact that he did practically no business while located at that address.

When written objections were filed to the first two applications made by Marks, a hearing was held by respondent Board on September 20, 1945. At that hearing a number of liquor licensees objected to the granting of the application because of rumors that Marks intended to file a subsequent application for transfer of his license to 736 Broad Street. Chairman Hanlon of the Newark Board was apparently impressed by these objections. Mr. Marks, when questioned, stated that he intended to maintain an establishment at 30 Clinton Street "as long as I possibly can." However, when Chairman Hanlon asked Mr. Ravin, who appeared as attorney for Mr. Marks, the following question:

"You deny that you are going to transfer?",

Mr. Ravin replied:

"No; I don't want to deny."

Thereupon Chairman Hanlon voted to deny the applications, but the other two members of the Board voted to grant the applications and, after some delay due to the installation of fixtures, Mr. Marks opened business on October 4, 1945 at the Clinton Street address. Mr. Marks had been operating for a period of approximately a month when, on November 10, 1945, he received a notice from the manager of the Clinton Street building that he would have to vacate because of some ambiguous language in various leases held by tenants of the building, which leases prohibited the operation of a saloon or a similar business therein. It has been testified that this notice greatly disturbed Mr. and Mrs. Marks and that Mr. Gabriner thereupon, as a personal favor, arranged to lease to Mr. Marks a portion of the store occupied by Black's Drug Store, at a rental of ten per cent of the gross sales made by Mr. Marks; six per cent of which was to go to the landlord of this building under the lease, and four per cent of which was to be retained by Mr. Gabriner for rental, including heat, light and porter service.

An examination of all the testimony leads to the conclusion that Marks purchased the Myerson business and license with the ultimate intention of applying for a transfer of the license to 736 Broad Street. The application to transfer the license from Bloomfield Avenue to Clinton Street might well have been denied by the local Board

upon the ground that the premises were unsuitable and that there was no need for a license at that address. The majority of the Board granted the transfer to Clinton Street, and no appeal was filed from said action within the time permitted by the statute. The only possible basis upon which the first transfer might be attacked at this time would be that a fraud was committed upon respondent Board. However, the evidence is not sufficient to establish fraud. Marks said that he intended to remain at the Clinton Street address as long as he possibly could, which, at the least, is an ambiguous statement. His attorney refused to deny that Marks intended to apply for a subsequent transfer. The mere fact that Marks, under the circumstances herein, planned to circumvent the ordinance would not be sufficient to set aside the transfer here appealed from. While it seems apparent that the majority of the Board was not "on its toes" in strictly enforcing the spirit of the ordinance of the City of Newark, I do not find that any fraud was practiced by respondent Marks upon the issuing authority. Hence I am rather reluctantly forced to the conclusion that the first ground alleged in the petition is not sufficient to reverse the action of respondent Board. Cf. Re Dluhy, Bulletin 693, Item 7.

As to (2): When Marks purchased the business from Myerson he obtained a loan of \$3100.00 from Gabriner. The testimony herein establishes that this loan was repaid in cash on the following day. At the hearing, Gabriner testified that he has absolutely no interest in the licensed business except to the extent of four per cent of the gross sales as set forth above. This does not constitute an unlawful interest in the licensed business. Re Club Parsippany, Inc., Bulletin 411, Item 8. Respondent Marks testified that he is the sole person interested in the license and the licensed business. Upon the evidence presented I must conclude that appellants have not sustained the burden of proof in establishing that George Marks was not the real party in interest.

As to (3): In an attempt to support this ground, appellants allege that there was no need for an additional distribution license at 736 Broad Street because of the existence of other licensed premises in the immediate vicinity. The building known as 736 Broad Street is located in the heart of the business district of the City of Newark. For many years a large package goods store was operated in the same premises, although no licensed business has been conducted therein during the past few years.

Upon the evidence presented, appellants have not established that the transfer in question effected an undue concentration of licenses in this busy section of the City of Newark.

For the reasons aforesaid, the action of respondent Municipal Board is affirmed.

Accordingly, it is, on this 28th day of June, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

3. LICENSED PREMISES - "RED BALL", A MACHINE STARTING LIKE MINIATURE POOL GAME BUT ENDING WITH THE FAMILIAR PINS AND OTHER FEATURES, CONSTITUTES BAGATELLE OR PIN BALL MACHINE - BARRED FROM LICENSED PREMISES BY RULE 7 OF STATE REGULATIONS NO. 20.

July 3, 1946

Hercules Sales and Distributing Co.  
Newark 5, N. J.

Gentlemen:

In your letter of June 20th, you inquired whether it is permissible for a machine, designated by you as "Red Ball", to be located at taverns or other liquor places in New Jersey.

On July 2nd, a representative of this Department called at your sales room and viewed the machine in question. His report shows that the machine is somewhat like a miniature pool table, but with an important difference mentioned below.

On insertion of a coin, two red balls and several additional white balls are made available. The player, using a pool cue, propels these balls one at a time over the level pool surface of the machine to slots or holes near the other end of the machine. Passing through these slots or holes, the ball then goes down an inclined surface which is studded with pins and bells. There is a hole on this inclined surface, registering a high score, which is presumably in a direct line from the player. However, if missing this narrow line, the ball bounds about the various pins and bells on the inclined surface and drops into holes scattered about, registering a score depending on the hole it falls into, or else the ball "percolates" down to the end of the inclined surface and drops into various holes located there which count for different scores. The scores are electrically registered on an automatic scoreboard at the end of the machine.

It is clear that the machine, although starting out like a miniature pool game, ends up on the inclined surface with all the familiar features of the pin ball or bagatelle machine.

Under Rule 7 of State Regulations No. 20, any kind of pin ball or bagatelle machine is prohibited at liquor places in this state. I rule that the machine in question, in view of its undeniable pin ball and bagatelle features, falls within the prohibition of this Rule. Hence, the machine may not be permitted at any tavern or other liquor place in New Jersey.

I wish to thank you for your sense of fair play in asking the Department for a specific ruling as to this machine before seeking to place them at liquor places in the state.

Very truly yours,  
ERWIN B. HOCK  
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 25 DAYS.

In the Matter of Disciplinary Proceedings against )

JOHN MARRONE )  
T/a THE CHATTERBOX )  
Highway 29 )  
Mountainside, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-10 for the 1945-46 and 1946-47 fiscal years, issued by the Borough Council of the Borough of Mountainside. )  
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Anthony A. Calandra, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On May 21, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Seagram's Seven Crown Blended Whiskey", a 4/5 quart bottle labeled "Seagram's Five Crown Blended Whiskey", a 4/5 quart bottle labeled "Wilson That's All Blended Whiskey", a 4/5 quart bottle labeled "Gallagher & Burton's Black Label Blended Whiskey" and a 4/5 quart bottle labeled "Calvert Special Whiskey", when his field tests disclosed that the contents thereof were not genuine as labeled. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control verified the findings of the investigator.

Defendant, in mitigation, claims that the bartender broke a 4/5 quart bottle of Old Crow Whiskey and, in order to salvage the contents thereof, poured same into the five bottles in question. The licensee must, however, be held strictly responsible for any "refills" found in his liquor stock even though personally innocent of any tampering therewith. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. Under all the circumstances, I shall suspend defendant's license for a period of twenty-five days.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 3rd day of July, 1946,

ORDERED, that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of Mountainside to John Marrone, t/a The Chatterbox, for premises on Highway 29, Mountainside, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. July 15, 1946, and terminating at 2:00 a.m. August 9, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary Proceedings against )

JOHN CONISHA and GEORGE GRABAWSKY )  
691-695 Summer Street )  
Elizabeth, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-186 for the fiscal years 1945-46 and 1946-47, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth. )  
----- )

Hyman Freeman, Esq., Attorney for Defendant-licensees.  
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant-licensees plead non vult to a charge alleging that, on April 18, 1946, they possessed a 4/5 quart bottle labeled "Old Overholt Straight Rye Whiskey", which bottle contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

Analysis of the bottle in question by the chemist employed by the Department of Alcoholic Beverage Control disclosed variations in proof, solid content, acids and color when compared with an analysis of a genuine sample.

Defendants disclaim any knowledge of the fact that the bottle had been refilled. Even though personally innocent of the violation, a licensee is nonetheless strictly responsible for any "refills" discovered in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendants have no prior adjudicated record. Therefore, a minimum suspension of their license for a period of fifteen days will be imposed. Re Rudolph, Bulletin 680, Item 1.

Although this proceeding was instituted during the 1945-46 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1946-47. State Regulations No. 16.

Accordingly, it is, on this 3rd day of July, 1946,

ORDERED, that Plenary Retail Consumption License C-186, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to John Conisha and George Grabawsky, for premises 691-695 Summer Street, Elizabeth, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. July 15, 1946, and terminating at 2:00 a.m. July 30, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, JUKE BOX, AND CIGARETTE AND CANDY MACHINES IN SPEAKEASY LOCATED IN PRIVATE RESIDENCE ORDERED FORFEITED - APPLICANTS FOR RETURN OF MACHINES FAILED TO ESTABLISH "GOOD FAITH" AND THAT THE LAW WAS UNKNOWINGLY VIOLATED.

|                                       |   |                       |
|---------------------------------------|---|-----------------------|
| In the Matter of the Seizure on       | ) | Case No. 6950         |
| January 26, 1946 of 26 bottles        | ) |                       |
| of beer, a candy vending machine,     | ) |                       |
| a cigarette vending machine, and a    | ) | ON HEARING            |
| music box, at Mike Pack's Settlement, | ) | CONCLUSIONS AND ORDER |
| Shack No. 3B on Freehold Road in      | ) |                       |
| East Windsor Township, County of      | ) |                       |
| Mercer and State of New Jersey.       | ) |                       |
| -----                                 | ) |                       |

Sol Kesselman, Esq., Attorney for Trenton Amusement Co.  
 Morris Zisner, t/a Acme Vending Co., Pro se.  
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, a candy vending machine, a cigarette vending machine, a music machine and merchandise and currency in such machines, itemized in a schedule attached hereto, seized on January 26, 1946 at Mike Pack's Settlement, Shack No. 3B on Freehold Road, East Windsor Township, N. J., constitutes unlawful property and should be forfeited.

On the date aforesaid, upon information that a speakeasy was being operated there, two ABC agents, in company with State Troopers, were admitted into the "shack" in question by Estella Ellis.

Estella Ellis, in a written statement, acknowledged that she had been selling beer in the "shack" since December 1945, for twenty-five cents a bottle. The agents also obtained a written statement from a patron of the place in which he states that he had purchased a drink of whiskey that day from Estella Ellis and had previously purchased beer and whiskey there from both Estella Ellis and her husband, Savannah Ellis. Neither Estella Ellis nor Savannah Ellis held any license authorizing either of them to sell or serve alcoholic beverages.

The ABC agents seized twenty-six bottles of beer in the kitchen and the three machines in a bedroom, arrested Estella Ellis, and later arrested Savannah Ellis, on charge of violating the liquor laws.

Estella Ellis has since pleaded guilty to the charge of selling alcoholic beverages without a license in violation of the local ordinance and was fined \$28.00 by Recorder Franklin K. Hampton of East Windsor Township. Mrs. Ellis and her husband were also held for action of the Grand Jury.

The seized beer was intended for sale at the speakeasy, and hence is illicit. Such illicit alcoholic beverages, together with the various machines, merchandise and coins therein, seized in the "shack", constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(1) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, Morris Zisner appeared and sought return of the candy and cigarette

machines. The Trenton Amusement Co. also entered an appearance and sought return of the music box. Forfeiture of the beer was not opposed by any person.

According to Zisner, he placed the cigarette and candy machines in the "shack" in the summer of 1945 upon the recommendation of the owner of the music machine, whose machine was then at that location.

Zisner's story is that the settlement is a community of farm laborers living in a group of small bungalows or shacks, without any store in the immediate vicinity where the children of the community could obtain candy. Mr. and Mrs. Ellis resided in the "shack" and Mr. Zisner had difficulty gaining entrance thereto during daylight hours on his periodic visits to replace candy and cigarettes and collect the coins, because the Ellises were employed in a nearby poultry farm. Ultimately Mr. Zisner was given a key to the place. He claims that he did not know that alcoholic beverages were being sold there and did not observe anything to cause him to suspect that it was a speakeasy.

Mr. Zisner's machines were in a small bedroom. Although he claims that he placed his machines there because he understood that it was a place of assembly for social purposes for the residents of the community, it is clear that no one could possibly regard the place as a store or a social hall.

Mr. Zisner admits that for the most part the locations where he places his machines are in industrial plants, hospitals, schools, gasoline stations and similar commercial establishments. The bedroom in the "shack" was a strange place for coin operated cigarette and candy vending machines, placed there on a profit-sharing basis.

Locked during the day, it could be of little service to the children of the community. With a music box in the same room, Zisner, who left his machines there for months, might well wonder what activities were being carried on there. However, he did not make any inquiry as to the nature of the place or the character of the occupants. He admits that he did not regard it as a commercial enterprise but, in his words, "from a return of dollars and cents the place is a legitimate place. — It was run by a man and wife. — When a man wants a candy machine, if it brings in money, I put the machine there."

Zisner failed to make any reasonable effort to ascertain whether his machines were in a speakeasy. Consequently, he cannot obtain return of such machines. Cf. Seizure Case No. 6875, Bulletin 716, Item 3.

The owner of the music machine had even less reason than Zisner to place a machine in the "shack". It was not even ostensibly for convenience of children, nor, considering the limited space in the room, for recreational or social purposes for an assembly of neighbors. It could only be used in some enterprise for profit.

The music machine was in the "shack" for about a year. Irving Pearl, an officer of the music company, claims that it provided recreational facilities for the farm workers. He says that he met Mrs. Ellis and she asked him to place a machine in her "colony". Upon

inquiry from Mrs. Ellis' employer, Pearl claims that he was told that she was of good character.

Pearl then visited Mrs. Ellis' "shack" and insists that when he placed the music box in the bedroom he did not see any semblance of sale of alcoholic beverages or of any other merchandise. He admits that he later observed the cigarette and candy vending machines in the room. Pearl maintained that there was a space "five-feet square" in the room for dancing. The absurdity of this statement is self-evident.

When asked whether the location was usual or unusual, Pearl said, "Well, not too unusual; but then it could be unusual. In installing a machine in a community of people, they usually have an assembly here -- something that tells us it is an assembly here -- but in this case it was a small little bungalow." Pearl finally admitted that the "shack" was an unusual location. He estimated the income from the machine to have been between \$25.00 and \$35.00 a week.

Pearl apparently shut his eyes to that which he did not want to see. The location was profitable and he was indifferent to all else. These considerations lead to the denial of the request of the music company for return of the music machine. This is the second music machine, owned by this company, to be seized at such a location and forfeited. See Seizure Case No. 6898, Bulletin 687, Item 1. It may be that in time this music company will learn that it must make a reasonable effort to keep its machines out of speakeasies.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, including the sum of \$25.40 in the music machine and the merchandise in the candy and cigarette vending machines, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: July 3, 1946.

SCHEDULE "A"

- 26 - bottles of beer
- 1 - candy machine, Serial #3727 and contents
- 1 - Wurlitzer Simplex Multi Selection  
Phonograph, Serial #97018, containing  
\$25.40 in currency
- 1 - cigarette machine and contents

7. APPELLATE DECISIONS - GAINÉ v. SPRING LAKE.

JOHN GAINÉ, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 BOROUGH COUNCIL OF THE )  
 BOROUGH OF SPRING LAKE, )  
 )  
 Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

George H. Stanger, Esq. and William F. Hanlon, Esq.,  
 Attorneys for Appellant.  
 Gilbert H. Van Note, Esq., Attorney for Respondent.

This is an appeal from the denial by respondent of appellant's application for a plenary retail distribution license for premises at 100 Salem Avenue, Spring Lake.

The Answer filed herein sets forth that the application was denied because (1) there is no present need for a further retail distribution license in the Borough, and (2) the location of the proposed premises is unsuitable.

At the hearing before the Borough Council a petition was presented containing the names of one hundred eight persons allegedly residents, voters and taxpayers of the Borough of Spring Lake. The petition contained the following language:

"At the present time, there are nine licenses issued for the sale of liquor in Spring Lake, and we believe this is more than ample for Spring Lake.

"We also believe that this license should be refused due to its location adjacent to public garages and hotel help's quarters. We therefore request that this application be refused."

The minutes of the meeting at which the license was denied recite that:

"The Council was of the opinion that the location of the applicant was not suitable due to its proximity to the hotels, hotel employee dormitories and a large garage."

As to (1): The evidence herein shows that the permanent population of the Borough of Spring Lake is 1,650 according to the 1940 census. The peak summer population was variously estimated from 8,000 to 17,000. The Borough Clerk stated that he believed that the summer population is less than 10,000, and quoted figures to sustain his estimate. There are at the present time three plenary retail distribution licenses, one plenary retail consumption license, four seasonal retail consumption licenses, and one club license outstanding

in the Borough. There is one plenary retail distribution license for each 550 permanent residents whereas the Legislature has recently indicated that one such license for each 3,000 of a municipality's population is a reasonable ratio. Moreover, the holder of a plenary retail consumption license or seasonal retail consumption license may, if he desires, sell any alcoholic beverages in original containers for consumption off the licensed premises. Thus, there are already eight licensed places in the Borough which may exercise the same privileges sought by appellant.

As to (2): Appellant's premises are located in a small business section. There are a few stores, some residences, and some large hotels in this section of the Borough. As to the hotel dormitories, the Chief of Police of the Borough testified as follows:

"I feel responsible for the help and the people sent down there, and about 125 feet from this store are dormitories that house I would say from seventy-five to one hundred girls, \*\*\* doing hotel work — they come from good families and they're sent here with the idea that the town police will take care of them, and there's boys there in a separate part of the dormitory. I feel it would create a police problem and aggravate a problem we already have, by having a package store in that vicinity."

Mayor Marucci testified that this portion of the Borough "isn't populated like our other parts of the community" and that previous applications for licenses in this section had been denied.

The evidence herein shows that the reason for denial set forth in the minutes is sufficient to support the unanimous denial of the license by the members of the Borough Council.

In addition, considering the number of the various types of licenses outstanding, appellant has failed to sustain the burden of proof in showing any need for an additional plenary retail distribution license in the Borough. In the absence of such proof, appellant has failed to show that the action of respondent was arbitrary or unreasonable. Hence, I shall affirm the action of respondent.

Accordingly, it is, on this 2nd day of July, 1946,

ORDERED, that the petition herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Deputy Commissioner.

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PURCHASED IN NEW JERSEY FOR UNLAWFUL IMPORTATION INTO ANOTHER STATE - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN THIS STATE IN VEHICLE NOT LICENSED FOR THAT PURPOSE OR AUTHORIZED BY SPECIAL PERMIT - VEHICLE AND ALCOHOLIC BEVERAGES SUBJECT TO SEIZURE AND FORFEITURE - FAILURE OF OWNER OF VEHICLE TO ESTABLISH "GOOD FAITH" AND THAT THE LAW WAS UNKNOWINGLY VIOLATED - ALCOHOLIC BEVERAGES AND VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on )  
May 8, 1946 of 81 4/5 quart )  
bottles and 96 pint bottles of )  
various brands of alcoholic )  
beverages and a Chrysler sedan, )  
in the vicinity of 957 Raymond )  
Boulevard, in the City of Newark, )  
County of Essex and State of New )  
Jersey. )

Case No. 6980

ON HEARING  
CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Mrs. Gladys Faucette.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 177 bottles of alcoholic beverages and a Chrysler sedan, described in a schedule attached hereto, seized on May 8, 1946 at or near 957 Raymond Boulevard, Newark, N. J. constitute unlawful property and should be forfeited.

An alert Newark police officer discovered a number of men transferring alcoholic beverages at about 11:00 o'clock at night on the day in question from a truck to the Chrysler sedan. Both vehicles were parked in the rear of a diner located at the above premises. Suspecting that it was some type of illegal liquor activity, the officer questioned Thomas Owen Faucette, the driver of the sedan, and Louis W. Seward, the driver of the truck. While so engaged, the truck was driven off by some accomplice of Seward's despite the fact that the officer had been given what was represented to be the ignition key to such truck. When Faucette and Seward did not give the officer any satisfactory explanation of their activities he brought the automobile, the alcoholic beverages, and Faucette and Seward, to police headquarters. Thereafter the State Department of Alcoholic Beverage Control was notified of what had transpired.

The immediate facts developed by the ABC agents and the Newark police were that 81 4/5 quart bottles and 96 pint bottles of various brands of alcoholic beverages, apparently tax paid, were in the Chrysler sedan, which bore North Carolina license plates. Faucette and Seward told the officers that these alcoholic beverages had that day been purchased at various retail liquor establishments in Newark and vicinity, transported in the Chrysler sedan, and, according to them, were to be transported in the truck to North Carolina.

The Chrysler sedan was not licensed by the State Department of Alcoholic Beverage Control to transport alcoholic beverages; the quantity exceeded that permitted to be transported for personal consumption without a license or permit; and lastly it was unlawful, under the laws of North Carolina, to import such alcoholic beverages into that State. See Seizure Case No. 6544, Bulletin 657, Item 6. Hence, the transportation of the alcoholic beverages in question in this State was unlawful. R. S. 33:1-2, Rule 2 of State Regulations No. 18, Seizure Case No. 6544, supra.

Alcoholic beverages unlawfully transported are illicit, whether tax paid or not. R. S. 33:1-1(i). Illicit alcoholic beverages and the vehicle in which they are transported constitute unlawful property and are subject to seizure and forfeiture. R. S. 33:1-1(y), R. S. 33:1-66.

Consequently the alcoholic beverages and automobile were turned over to the State Department of Alcoholic Beverage Control and Faucette and Seward were arrested on charges of possessing and transporting illicit alcoholic beverages.

Pending seizure hearing in the case, the Chrysler sedan was returned to Gladys Faucette, wife of Thomas Faucette, upon payment of the sum of \$900.00, the appraised retail value of the car, to the State Commissioner of Alcoholic Beverage Control, under protest, pursuant to R. S. 33:1-66. Mrs. Faucette has stipulated that the Commissioner shall determine, in this proceeding, whether this money should be returned to her.

When the matter came on for hearing, pursuant to R. S. 33:1-66, Mrs. Faucette appeared with counsel and at first sought return of the sum of \$900.00. No one requested the return of the alcoholic beverages or opposed their forfeiture.

However, during the course of the hearing, counsel for Mrs. Faucette, in her presence and with her acquiescence, withdrew her application for the return of the \$900.00 deposited by her.

Accordingly, it is DETERMINED and ORDERED that the Chrysler sedan described in Schedule "A" attached hereto constitutes unlawful property and that the sum of \$900.00 representing the retail value of such car, paid under protest to the State Commissioner of Alcoholic Beverage Control by Gladys Faucette, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the alcoholic beverages described in the aforesaid Schedule "A" constitute unlawful property, and that the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that such alcoholic beverages be sold, in whole or in part, at public sale for the use of the State, subject to the Rules and Regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county and municipal institutions, whichever the State Commissioner of Alcoholic Beverage Control may hereafter determine to be for the best interest of the State.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: July 11, 1946.

SCHEDULE "A"

- 81 - 4/5 quart bottles of assorted brands of whiskey
- 96 - pint bottles of assorted brands of whiskey
- 1 - 1940 Chrysler sedan, Serial No. C-25-45079,  
Engine No. Z-551388-B, bearing 1946 North  
Carolina registration 597168

9. MORAL TURPITUDE - CRIME OF MAINTAINING A DISORDERLY HOUSE (PROSTITUTION) INVOLVES MORAL TURPITUDE.

DISQUALIFICATION - APPLICATION TO LIFT - FACTS EXAMINED - APPLICATION TO LIFT DENIED, WITH LEAVE TO REAPPLY.

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

CONCLUSIONS

Case No. 527. )  
----- )

Petitioner was sentenced on October 6, 1933 by a Judge of a Court of Quarter Sessions to a county penitentiary for three years, and was fined \$500.00 as a result of being convicted of being the proprietor of a bawdy house. The execution of the jail sentence, however, was suspended upon condition that the fine imposed would be paid within a designated time. Petitioner, however, failed to pay the fine and was thereupon apprehended and resented by a Judge of a Court of Quarter Sessions, on January 24, 1934, to eighteen months in a county penitentiary. Again, on June 29, 1936, petitioner was sentenced by a Judge of a Court of Quarter Sessions to a county penitentiary for two years, as a result of being convicted of operating a disorderly house (prostitution). Petitioner was released therefrom on March 4, 1938. The crime of maintaining a house of prostitution per se involves the element of moral turpitude. Re Case No. 148, Bulletin 466, Item 4.

Three witnesses, including a businessman and two lawyers, testified that they have known petitioner ten or more years and that in their opinions he is now a good, law-abiding citizen. They were unanimous in their beliefs that petitioner has completely rehabilitated himself since he left the penal institution in 1938.

Despite the evidence of the character witnesses, I am not inclined, at this time, to grant relief to petitioner. The entry of an order lifting disqualification is discretionary. R.S. 33:1-31.2. Petitioner has been engaged in the hotel business for many years. His two convictions mentioned herein arose from the fact that, on each occasion, his hotel premises were used for immoral purposes. In view of his past record, I am not satisfied that petitioner's association with the alcoholic beverage industry would not be contrary to public interest. Hence, I shall deny his present application.

I shall, however, permit him to file a new petition for relief after ten years have elapsed from the date of his release from prison, namely, on or after March 4, 1948. If such an application is filed it will, of course, be considered on its merits.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: July 12, 1946.

10. STATE LICENSES - NEW APPLICATIONS FILED.

Louis J. Carlesimo  
T/a Roma Distributing Co.  
828-830 Raymond Boulevard  
Newark, N. J.

Application for Wine Wholesale License filed July 12, 1946.

*Erwin B. Hock*