

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

August 14, 1961

BULLETIN 1399

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark 2, N. J.

August 14, 1961.

BULLETIN 1399

1. APPELLATE DECISIONS - 369 PARK INCORPORATED v. ORANGE.

369 PARK INCORPORATED, )  
 )  
Appellant, )  
 ) ON APPEAL  
v. )  
 ) CONCLUSIONS AND ORDER  
MUNICIPAL BOARD OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE CITY )  
OF ORANGE, )  
 )  
Respondent. )  
-----

Thomas E. Durkin, Jr., Esq., Attorney for Appellant.  
Murray and Murray, Esqs., by John R. Murray, Esq.,  
Attorneys for Respondent.  
James A. Palmieri, Esq. and Frank A. LaMorte, Esq.,  
Attorneys for Orange Tavern Owners' Assn.  
Michael N. Steinberg, Esq., Attorney for Landlords of 107  
South Day Street, Orange.  
Edward G. Gerardo, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent which, by resolution dated June 13, 1960, denied appellant's application for transfer of Plenary Retail Consumption License C-44 from Peter and Margaret Rinaldi to appellant and from premises 107 South Day Street to premises 369 Park Avenue, City of Orange.

"Appellant, in its petition of appeal, alleges in substance that respondent's action was erroneous in that the area in which the proposed premises are located is changing in character; that the granting of the transfer will not increase traffic conditions; that there are adequate parking facilities on the proposed premises; that the transfer would remove a license from premises, across the street from which there is a boys club and that respondent Board failed to consider the fact that on numerous occasions those using the facilities on the proposed premises dispensed alcoholic beverages without causing any of the alleged problems upon which respondent predicated its action.

"Respondent, in its answer, denies appellant's allegations and puts appellant to its proof. However, in its resolution respondent sets forth the reasons for its action, which may be summarized as follows: The proposed location is in a highly residential area in which there is no need for a liquor license; the transfer would greatly increase noise and traffic in the area; there are inadequate parking facilities in and upon the proposed premises and the granting of the transfer would promote a greater consumption of alcoholic beverages in the area.

"The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15, and thereafter counsel for the respective parties hereto and for the objectors submitted memoranda.

"The undisputed facts are that title to premises 369 Park Avenue is in Graulich Realty Co., whose officers are officers of Graulich Caterers Inc., which operates a catering service on said premises; that one of the aforesaid officers is an officer of appellant corporation which seeks the transfer of the license in question for the purpose of augmenting the catering business; that the City of Orange adopted a Zoning Ordinance on May 11, 1922; that a proposed amendment thereto was passed on first reading on November 22, 1960, and after publication on December 8, 1960, was scheduled for final consideration by the Board of Commissioners on December 20, 1960; that the Zoning Ordinance and the proposed amendment thereto designates premises 369 Park Avenue in zone A residential; that heretofore the Board of Commissioners approved resolutions of the Board of Adjustment recommending that Graulich Caterers Inc. and Graulich Realty Company, respectively, be granted variances from the provisions of the Zoning Ordinance to permit an addition to the main building and additional parking facilities on the proposed premises and that alcoholic beverages have been dispensed on the proposed premises under one-day permits obtained from the Director by various organizations attending functions catered to by Graulich Caterers Inc.

"It is deemed unnecessary to summarize the voluminous testimony adduced herein since a consideration of applicable legal principles will suffice to dispose of the appeal.

"Graulich Caterers Inc. has been operating its catering and restaurant business at 369 Park Avenue without a liquor license for the past five or six years and there is nothing to show that such use did not exist before the Zoning Ordinance was adopted. While it is clear that Graulich Caterers Inc. may continue to conduct its catering and restaurant business on the premises, it is equally clear that such non-conforming use cannot be extended or enlarged by a new and independent use such as the sale of liquor which is a use not inherent in or incident to a catering and restaurant business. See DeVito v. Pearsall, 115 N.J.L. 323; Dubin v. Wich, 120 N.J.L. 469; Vogel v. Bridgewater, 121 N.J.L. 236; Simone v. Peters, 135 N.J.L. 495; Scerbo v. Jersey City, 4 N.J. Super. 409; Struyk v. Samuel Braen's Sons, 17 N.J. Super. 1 (aff'd. 9 N.J. 294); Gerkin v. Ridgewood, 17 N.J. Super. 472; Speake v. Gloucester (unreported, decided by Supreme Court April 4, 1934); Green v. Newark, 131 N.J.L. 336; National Lumber Products Co. v. Ponzio, 133 N.J.L. 95; Marinaccio v. Ocean, Bulletin 264, Item 11.

"Furthermore, it is a settled principle of law that an operative municipal ordinance is binding upon a municipal governing body so that such governing body has no jurisdiction to grant a license in violation thereof. See Bachman v. Town of Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902).

"I conclude, therefore, that respondent Board could not, as a matter of law, grant appellant's application for transfer of the license in question and I recommend that its action be affirmed."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the appellant pursuant to Rule 14 of State Regulation No. 15. The appellant contends that the single ground for affirmance recommended by the Hearer, namely, that the proposed place-to-place transfer would violate the local zoning regulations, is neither substantiated by the evidence nor a proper consideration upon which to base a decision under the circumstances of this case.

I have carefully considered the entire record herein, including the testimony and exhibits presented, and the briefs, the Hearer's Report, and exceptions and written argument filed, and as a result I find that the appellant has not sustained the burden imposed by Rule 6 of State Regulation No. 15 of establishing that the action of the respondent issuing authority was erroneous and should be reversed. In coming to this conclusion, I have not relied upon the zoning violation ground projected in the Hearer's Report but, instead, have predicated my decision upon the finding that the proofs adduced support respondent's determination that the residential character of the proposed location and the absence of a showing of public convenience and necessity for an additional licensed premises in the area thereof warrant a denial of the transfer sought by appellant. Consequently it will not be necessary to treat the other grounds for denial set forth by respondent.

It appears that the zoning question entered this case not as a legal barrier to the transfer of this license to the Park Avenue premises but as evidence of the changing character of the neighborhood in which such premises is located. From the briefs submitted, the parties and objectors apparently do not contend that the contemplated exercise of the privileges of the license at the new premises would be prohibited by the zoning ordinances. In fact, the respondent did not rely on any such prohibition in either its resolution denying the transfer or its answer filed in the pleadings herein.

Where, as here, (1) the appellant does not concede that the zoning regulations would bar the intended use incidental to the transfer of the license in question, (2) the respondent does not proffer zoning as an impediment to the transfer and (3) it is not clear from the evidence produced that the zoning ordinances so provide, the appropriate forum to litigate such technical issue is not this agency. See Lubliner v. Board of Alcoholic Beverage Control for the City of Paterson, 59 N.J. Super. 419 (App. Div. 1960), affirmed 33 N.J. 428 (1960). Especially is this so where the zoning issue involves the construction of several variances and intricate amendatory ordinances.

With respect to the ground upon which I am basing my decision, the proofs adduced disclose that, although the area in question may be undergoing a change, the change is not a complete one but affects only the degree of residential character of the area. The transition seems to be from individual homes to multi-family residences and some businesses. In this connection, many residents of the area testified in opposition to a liquor license being transferred so near to their residences and it is obvious that the local Board gave consideration to their sentiments.

It has long been held that the question of whether or not a license should be permitted in a particular area or in a particular location is within the sound discretion of the issuing authority, and that my function on appeal is not to substitute my opinion for that of the issuing authority but, rather, to determine whether its exercise of judgment and discretion was reasonable and, if so, to affirm, regardless of my personal view. See Fanwood v. Rocco, 33 N.J. 404, 415 (1960), in which the Court said:

"The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the conveniences of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

Appellant here failed to satisfy the members of the respondent Municipal Board that the public interest would be best served by the transfer of the license to the new premises. Moreover, I find nothing in the record indicating that respondent's refusal to grant appellant's application was inspired by improper motives. In this posture, I conclude that the municipal action was neither unreasonable nor improperly grounded, but constitutes a reasonable exercise of its discretionary powers. I will, therefore, affirm its action and dismiss the instant appeal in toto. Rule 14 of State Regulation No. 6.

Accordingly, it is, on this 29th day of May 1961,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS  
Director

2. APPELLATE DECISIONS - CLUB PARK AVE., INC. v. PATERSON.

CLUB PARK AVE., INC., TRADING )	
AS CLUB PATIO, )	
Appellant, )	ON APPEAL
v. )	
BOARD OF ALCOHOLIC BEVERAGE )	O R D E R S
CONTROL FOR THE CITY OF PATERSON, )	
Respondent. )	

Bruno L. Leopizzi, Esq., Attorney for Appellant.  
Theodore D. Rosenberg, Esq., by Louis Infald, Esq.,  
Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby on March 22, 1961, by resolution and order, it suspended appellant's license for a period of thirty days effective April 1, 1961, after finding it guilty on two charges alleging that it did on February 5, 1961, on two separate occasions sell and deliver alcoholic beverages to a person under the age of twenty-one years, in violation of R.S. 33:1-77 and Rule 1 of State Regulation No. 20.

On March 30, 1961, I entered an order staying respondent's order of suspension pending determination of the appeal herein.

The appeal came on for hearing on May 24, 1961, at which time I was advised by the appellant's attorney that his client desired to withdraw the appeal, and respondent's attorney stated that he had no objection thereto.

No reason appearing to the contrary, it is, on this 31st day of May 1961,

ORDERED that the within appeal be and the same is hereby dismissed; and it is further

ORDERED that my order dated March 30, 1961, shall be

vacated at 3 a.m. Monday, June 12, 1961, and that plenary retail consumption license C-10, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Club Park Ave., Inc., trading as Club Patio, for premises 11 Park Avenue, Paterson, be and the same is hereby suspended for the balance of its term, commencing at 3 a.m. Monday, June 12, 1961; and it is further

ORDERED that any renewal or transfer of said license for the 1961-62 licensing year shall be and remain under suspension until 3 a.m. Wednesday, July 12, 1961.

WILLIAM HOWE DAVIS  
Director

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - EXTENDED LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
279 CLUB, INC.  
279 W. Kinney St.,  
Newark 3, New Jersey  
Holder of Plenary Retail Consumption License C-280, for the 1959-60 licensing period, as extended, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
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CONCLUSIONS  
AND  
ORDER

Waldor & Beckerman, Esqs., by Milton A. Waldor, Esq.,  
Attorneys for Defendant-licensee.  
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

On April 14, 1961, an ABC agent tested defendant's open bottles of liquor and seized a number of bottles for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of five of said bottles, when compared with the contents of genuine bottles of the same brands, varied substantially in acids and solids.

Saul Weissman (president of the defendant corporate licensee), who was present and in charge of the licensed premises during the inspection, stated that he could give no explanation as to why the alcoholic beverages appeared to vary from the contents of genuine bottles of the same brand. In any event, defendant is responsible for the action of its employees or agents. Rule 33 of State Regulation No. 20.

Defendant has a prior adjudicated record. Effective April 16, 1959, defendant's license was suspended for ten days by the local issuing authority for violation of Rule 1 of State Regulation No. 38. The minimum penalty for the violation charged

herein involving five bottles is twenty-five days. Re Riverview Tavern, Inc., Bulletin 1384, Item 5. However, because of the prior dissimilar violation which occurred within a five-year period, an additional five days will be added, making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

The local issuing authority on March 8, 1961, refused to renew defendant's license for the 1960-61 licensing term. Upon an appeal being filed with me from the said action of the local issuing authority, I extended the license which had been issued to the defendant for the 1959-60 licensing period.

Accordingly, it is, on this 25th day of May 1961,

ORDERED that plenary retail consumption license C-280, for the 1959-60 licensing period, as extended, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to 279 Club, Inc., for premises 279 W. Kinney St., Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Thursday, June 1, 1961, and terminating at 2 a.m. Monday, June 26, 1961.

WILLIAM HOWE DAVIS  
Director

4. DISCIPLINARY PROCEEDINGS - GAMBLING - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

GIOVANNI BALDASSARI & PAUL MARTINI )  
t/a Columbus Bar & Grill )  
1512 Calhoun Street )  
Trenton 8, N. J. )

CONCLUSIONS  
AND  
ORDER

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Holders of Plenary Retail Consumption License C-12, issued by the Board of Commissioners of the City of Trenton. )  
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Mario H. Volpe, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On February 7, 8 and 9, 1961, you allowed, permitted and suffered gambling, viz., the making and accepting of horse race bets in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

It appears from the investigative reports that ABC Agents T and S had visited defendants' licensed premises on three occasions prior to February 7, 1961, and had become acquainted with Giovanni Baldassari and Paul Martini (the licensees herein).

On February 7, 1961, Agent T visited the licensed premises alone and engaged in conversation about horse races with Baldassari who was tending bar. When the agent asked for a

racings form, Baldassari told him that his partner Martini, who was off duty, had it and inquired if he wanted to place a bet. The agent said he did, and Baldassari handed him a pad of paper and a ball-point pen. The agent recorded his bets on various horses on a slip of paper and gave it and \$8 to Baldassari who made a telephone call and thereafter returned the betting slip to the agent saying "OK".

At 12:30 p.m. February 8, 1961, Agent T returned to the licensed premises wherein he observed Martini (who was tending bar) perusing a racing form and conversing with patrons who would make notations on pieces of paper. Baldassari entered at 12:35 p.m. and asked the agent if any of the horses he had bet on the previous day had won. Agent T replied in the negative, and asked Martini for the racing form. At this point Agent S entered the premises and sat at the bar next to Agent T. At about 1:05 p.m. Baldassari accepted a bet on horses from each agent and made a 'phone call.

On February 9, 1961, Agents T and S returned to the licensed premises and seated themselves at the bar. Baldassari handed Agent T \$5, saying "See. We pay off right away." Agent T then obtained a racing form from Martini (who was tending bar) and thereafter both agents placed horse race bets with Baldassari who made a telephone call. Baldassari then accepted the five dollars which Agent T had won and seven one-dollar bills, the serial numbers of which had been previously recorded. As pre-arranged, Agent P and two local detectives entered the premises and seized the \$5 and the identifiable currency which they saw Baldassari place on top of a freezer in the kitchen. They also seized the racing form which Martini had on his person, and both licensees were placed under arrest by the detectives.

Defendants have no prior adjudicated record. In attempted mitigation the attorney for defendants has submitted to me a letter which I have carefully considered. However, I find nothing therein which would justify me in imposing less than the minimum penalty imposed in gambling cases involving licensees or their employees. I shall suspend defendants' license for twenty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days. Re Gavenos, Bulletin 1374, Item 3.

Accordingly, it is, on this 31st day of May 1961,

ORDERED that any renewal for the 1961-62 licensing year or transfer of plenary retail consumption license C-12, issued by the Board of Commissioners of the City of Trenton to Giovanni Baldassari & Paul Martini, t/a Columbus Bar & Grill, for premises 1512 Calhoun Street, Trenton, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Wednesday, July 5, 1961, and terminating at 2 a.m. Tuesday, July 25, 1961.

WILLIAM HOWE DAVIS  
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 WEST PATERSON LIQUORS, INC. )  
 Route #46 )  
 West Paterson )  
 PO Little Falls, N. J., )  
 )  
 Holder of Plenary Retail Distribution License D-3, issued by the Mayor and Borough Council of the Borough of West Paterson. )  
 ----- )

CONCLUSIONS AND ORDER

Greenburg, Wilensky & Feinberg, Esqs., by Carl V. Greenburg, Esq.,  
 Attorneys for Defendant-licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On April 28, 1961 and on divers days prior thereto, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly to a person under the age of twenty-one (21) years, viz., John ---, age 16; in violation of Rule 1 of State Regulation No. 20."

Acting on information received from the Totowa Police Department, ABC agents obtained signed, sworn statements from John --- (age 16) and two other minors. John states that at about 8:30 p.m. on Friday, April 28, 1961, he and two minor companions drove to defendant's licensed premises to purchase some beer; that he and one of the minors entered the defendant's licensed premises; that the third minor remained on the outside; that he, without being required to make any written representation of his age, purchased a case of beer (24 twelve-ounce cans) from Leonard C. Burchfield (a clerk); that his friend carried the alcoholic beverages to the car; that he paid for said alcoholic beverages with money contributed by himself and his two companions, and that he had purchased alcoholic beverages from Mr. Burchfield on previous occasions. The foregoing is substantially corroborated by the statements of the other two minors. Thereafter the three minors identified the licensed premises to ABC agents and local police as the place where the alcoholic beverages were obtained, and John and one of the minors identified aforesaid Leonard C. Burchfield as the person who sold the beer as above outlined.

Upon questioning by the agents, Mr. Burchfield admitted aforesaid violation and stated that he had sold alcoholic beverages to John on prior occasions when John had displayed a driver's license indicating the person named thereon was 22 years of age. The clerk, however, failed to obtain a written representation from the minor that he was of legal age, as required by R. S. 33:1-77.

Defendant has no prior adjudicated record. Even if, as alleged by the clerk and in the letter received by the attorneys

for the defendant, John had shown the clerk a card indicating the holder thereof was over 21 years old, this cannot be accepted as a mitigating circumstance in view of the fact that John was only 16 years of age. The ABC agent, who obtained the statement from John ---, reported that he appeared to be no older than 17 or 18 years of age. I shall suspend defendant's license for twenty-five days, the minimum suspension for the sale of alcoholic beverages to a 16-year-old minor. Re Shinkunas and Shinkunas, Bulletin 1253, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 31st day of May 1961,

ORDERED that plenary retail distribution license D-3, issued by the Mayor and Borough Council of the Borough of West Paterson to West Paterson Liquors, Inc., for premises on Route #46, West Paterson, be and the same is hereby suspended for twenty (20) days, commencing at 9 a.m. Tuesday, June 6, 1961, and terminating at 9 a.m. Monday, June 26, 1961.

WILLIAM HOWE DAVIS  
Director

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
ROSARIO LEO SERRA  
t/a Leo's  
435-437 Orange Street  
Newark 7, New Jersey  
Holder of Plenary Retail Consumption License C-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.  
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CONCLUSIONS  
AND  
ORDER

Defendant-licensee, Pro se.  
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed, on his licensed premises, alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On April 21, 1961, an ABC agent tested defendant's open stock of liquor and seized a number of bottles for further tests by the Division's chemist. It appears from the chemist's report of analysis and from other evidence in the file, including the licensee's own admission, that five of the bottles had been re-filled with another brand of whiskey.

Defendant has no prior adjudicated record. I shall suspend his license for twenty-five days, the minimum imposed in "refill" cases involving five bottles. Re Levandoski, Bulletin 1322, Item 9. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 31st day of May, 1961,

ORDERED that Plenary Retail Consumption License C-40, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Rosario Leo Serra, t/a Leo's, for premises 435-437 Orange Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., Tuesday, June 6, 1961, and terminating at 2:00 a.m., Monday, June 26, 1961.

WILLIAM HOWE DAVIS  
Director

7. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL AND EQUIPMENT ON PREMISES - MOTION OF INNOCENT OWNER OF PREMISES TO WAIVE PADLOCKING GRANTED - ILLICIT STILL AND OTHER PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure on :  
January 26, 1961 of a still, six : CASE NO. 10,499  
gallons of alcohol, and a quantity :  
of mash at premises located at : On Hearing  
1126 South 3rd Street, in the City :  
of Camden, County of Camden, and : CONCLUSIONS AND ORDER  
State of New Jersey. :  
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Frank F. Neutze, Esq., Attorney for West Jersey Fleming Building and Loan Association of Camden.  
I. Edward Amada, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapters 1 and 2 and State Regulation No. 28, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment, six gallons of alcohol, and a quantity of mash, described in a schedule attached hereto, and marked "Schedule A", seized on January 26, 1961, at premises located at 1126 South 3rd Street, Camden, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the said premises should be padlocked.

When the matter came on for hearing pursuant to R. S. 33:1-66 and R. S. 33:2-4, an appearance was entered on behalf of West Jersey Fleming Building and Loan Association, the landlord, which opposed padlocking of the premises. No one appeared to oppose forfeiture of the seized property.

Reports of ABC agents and other documents in the file, presented in evidence with the consent of counsel for West Jersey Fleming Building and Loan Association, disclose the following facts: On January 26, 1961 an ABC agent and local police officers, in execution of a search warrant of the premises in question, entered the basement of this two-story building, and observed a still, set up but not in operation, which consisted of two fifty-gallon wooden barrels of mash, a set of copper coils, a copper gooseneck and a fifty-gallon steel drum used as a cooker. The still was seized, together with six one-gallon bottles of alcohol, the finished product.

A sample of the alcohol was analyzed by the Division chemist, who reports that it is alcohol and water, fit for

beverage purposes, with an alcoholic content by volume of 34.5 per cent. A sample of the seized mash was similarly analyzed by the Division chemist, who reports that it is mash for distillation of alcohol therefrom, fit for beverage purposes in the absence of bi-chloride of mercury. The records of this Division fail to disclose any registration of this still, or any of the parts thereof, as required by R. S. 33:2-1 and R. S. 33:2-2. The alcohol is illicit because it was manufactured illegally, and without payment of tax on alcoholic beverages.

Such illicit still, appurtenant equipment, and alcohol seized on the premises constitute unlawful property and are subject to forfeiture, and the premises are subject to padlocking. R. S. 33:1-1(i) and (y); R. S. 33:1-2; R. S. 33:1-66; R. S. 33:2-2,5.

Herbert H. Branin, called as a witness on behalf of the property owner, testified that he is engaged in the real estate business, is secretary of the claimant building and loan association, and is in charge of and is familiar with its operations; that this property, owned by claimant and located in a very run-down neighborhood, was rented to a Mr. and Mrs. Bruton on May 15, 1957 under a purchase lease agreement, whereby they were to pay \$41.00 a month, and upon payment of the total sum of \$2900.00 they were to be given a deed to the property. The Brutons continued to make these payments at claimant's office until some time in May 1960 when they defaulted; that eviction proceedings were instituted in the District Court and a warrant for their removal was obtained on October 6, 1960; that Mrs. Bruton notified him that her husband had deserted her and that she would have difficulty in paying the rent thereafter. Before the constable executed the warrant, Mr. Bruton appeared at the claimant's offices and made a payment of \$235.60 on account of \$313.00 arrearage, in order to forstall the actual removal of this tenant from the premises. He further testified that Bruton then disappeared, and is presently a fugitive from justice.

Mrs. Bruton subsequently vacated the premises and it was re-rented to one Viola Wilson, a widow with four children. This re-rental took place after the date of the seizure. The reason given for re-renting the premises during the pendency of these proceedings was that if the premises were permitted to remain vacant vandals would completely strip the building, and render it valueless.

The witness further testified that only two visits were made to this building during the past three years; the last visit was made in 1960 for the purpose of making plumbing and heating repairs; that on that visit their representative did not notice any still in the basement thereof, or any illicit activity on the premises. This is one of two buildings which were owned by the claimant, and the witness states that claimant had no reason to suspect there was any illegal activity taking place on the premises.

Ciprano Cavallo testified that he is employed by the Thomas C. Fleming Co. in Camden and was engaged by the claimant as the agent in charge of rent collections for these premises. He states that he visited the property twice during the past two years and saw no evidence of any violation of the law on the premises. He states that it is quite customary for casual supervision to be given to this type of premises, because it is in a run-down neighborhood, and it would be uneconomical to employ a special person for closer supervision thereof. He justified the

re-rental to Mrs. Wilson, on the ground that the building would be completely stripped by vandals if it remained vacant for any length of time.

The demeanor of the claimant's witnesses was forthright and credible, and I am satisfied from the evidence presented that the claimant acted in good faith and had no knowledge or reason to believe that these premises would be used in connection with illicit still activities.

I am also persuaded that there would be an undue and unnecessary hardship in requiring Mrs. Wilson and her family to vacate the premises. Under these circumstances, padlocking will be waived.

Accordingly, it is DETERMINED and ORDERED that the seized property, as listed in Schedule "A" attached hereto constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66 and R.S. 33:2-5, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Dated: May 24, 1961

WILLIAM HOWE DAVIS  
Director

SCHEDULE "A"

- 6 - 1 gallon glass jugs of moonshine
- 1 - set of copper coils
- 1 - gooseneck
- 2 - barrels of mash
- 1 - cooker

8. AUTOMATIC SUSPENSION - LICENSE PREVIOUSLY SUSPENDED BY LOCAL ISSUING AUTHORITY - APPLICATION TO LIFT GRANTED.

Auto. Susp. #196- )  
 In the Matter of a Petition to Lift )  
 the Automatic Suspension of Plenary )  
 Retail Consumption License C-6, )  
 issued by the Mayor and Council of ) On Petition  
 the Borough of Mount Arlington to )  
 ) O R D E R  
 )  
 FRED ZUCK )  
 t/a Lake View Hotel )  
 Howard Boulevard )  
 Mount Arlington, N. J. )

BY THE DIRECTOR:

It appears from the petition filed herein that on April 21, 1961, Fred Zuck was fined the sum of \$100 and costs after he pleaded non vult in the Municipal Court of the Borough of Mount Arlington to a charge of selling alcoholic beverages to two minors, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of his license for the balance of its term. R. S. 33:1-31.1. The license has not been picked up because of the pendency of this proceeding.

It further appears from the records of this Division that petitioner's license was suspended by the local issuing authority for fifteen days after petitioner pleaded non vult in disciplinary proceedings to a charge alleging sales to the same minors. The suspension was in effect from 12:01 a.m. April 28, 1961, to 12:01 a.m. May 13, 1961. Said suspension appears to be adequate. I shall grant the request to lift the automatic suspension.

Accordingly, it is, on this 29th day of May 1961,

ORDERED that the statutory automatic suspension of said License C-6 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS  
Director

9. DISCIPLINARY PROCEEDINGS - PIN-BALL MACHINE ON PREMISES - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 GOLD CORPORATION )  
 t/a Kendall Lanes )  
 3550 Lincoln Highway )  
 South Brunswick Township )  
 PO Franklin Park, New Jersey )  
 )  
 Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of South Brunswick. )  
 ----- )

CONCLUSIONS AND ORDER

Defendant-licensee, by Lloyd R. Ludwig, President. Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On April 5, 1961 and prior thereto, you allowed, permitted and suffered in and upon your licensed premises five machines or devices commonly known as bagatelle or pinball machines named 'Gottliebs Spot A Card', 'Williams Crossword', 'Gottliebs Dancing Dolls', 'William Two Players Serenade' and 'Williams Music Man'; in violation of Rule 7 of State Regulation No. 20."

On April 5, 1961, ABC agents made a routine inspection of the defendant's licensed premises on which it operates a large bowling alley establishment, and observed five ball bumper-type bagatelle machines in an alcove facing the promenade and bowling alleys, which machines are more particularly described and set forth in the above charge.

By way of mitigation, the president of the corporate-licensee stated in a letter dated May 25, 1961 that the machines in question were placed there by a contractor with the understanding that no machines were to be placed which would be contrary to the statutes of the State, and that the licensee was "deluded into thinking that whatever would be installed would be completely within the purview of federal, state and local laws". I have carefully considered the contents of this letter but the facts herein do not warrant the imposition of any but the usual penalty for a violation of this type.

Defendant has a prior adjudicated record. Effective August 1, 1960 its license was suspended by this Division for ten days for sale of alcoholic beverages to minors. Bulletin 1353, Item 5. I shall suspend defendant's license for ten days, which is the minimum period for this type of violation. Re Devino, Bulletin 1042, Item 5. Since another dissimilar violation occurred within the past five years, five days will be added thereto. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 7th day of June 1961,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of South Brunswick to Gold Corporation, t/a Kendall Lanes, for premises 3550 Lincoln Highway, South Brunswick Township, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m., Monday, June 19, 1961 and terminating at 2:00 a.m., Thursday, June 29, 1961.

WILLIAM HOWE DAVIS  
Director

10. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JENNIE CICALSE  
311 Chestnut Street )  
Newark 5, N. J. )

CONCLUSIONS  
AND  
ORDER

Holder of Plenary Retail Consumption License C-909, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )  
----- )

Defendant-licensee, Pro se.  
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that she possessed on her licensed premises alcoholic beverages in bottles bearing labels which did not truly describe the contents, in violation of Rule 27 of State Regulation No. 20.

On May 1, 1961 an ABC agent tested defendant's open stock of liquor and seized two quart bottles, the contents of which appeared to be off in color. Subsequent analysis by the Division's chemist discloses that both bottles contained whiskey which was slightly low in solids, low in acids and too light in color, when compared with genuine products of the named brands.

Defendant has a prior adjudicated record. Effective June 6, 1960, her license was suspended for ten days by the local issuing authority for an "hours" violation. The minimum penalty imposed in "refill" cases involving two bottles is a suspension of the license for fifteen days (Re Broad Street Bar, Inc., Bulletin 1246, Item 5), to which will be added five days for the prior dissimilar violation which occurred within a five-year period. I shall suspend defendant's license for twenty days and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 7th day of June 1961,

ORDERED that Plenary Retail Consumption License C-909, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jennie Cicalse, for premises 311 Chestnut Street, Newark, be and the same is hereby suspended for fifteen

(15) days, commencing at 2:00 a.m., Wednesday, June 14, 1961  
and terminating at 2:00 a.m., Thursday, June 29, 1961.

  
WILLIAM HOWE DAVIS  
Director