

STATE OF NEW JERSEY
Department of Law and Public Safety Director
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1858

May 29, 1969

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1. STATE REGULATIONS - REGULATION NO. 30, RULE 4 AMENDED - TEMPORARY CHANGE IN MINIMUM CONSUMER RESALE PRICES AUTHORIZED UPON FINDING OF EMERGENCY. TAX INCREASE - NOTICE TO RETAIL LICENSEES - EMERGENCY INCREASE IN CURRENTLY EFFECTIVE MINIMUM CONSUMER RESALE PRICES.

TO ALL RETAIL LICENSEES:

P.L. 1969, Ch. 52, amending R.S. 54:43-1 (the Alcoholic Beverage Tax Law) increasing the tax on liquors from \$1.80 to \$2.30 a gallon, is effective June 1, 1969. Such "liquors" include all alcoholic beverages other than malt alcoholic beverages, wines, sparkling wines and vermouth.

Wholesalers have been authorized to amend their price filings in the second quarter-annual Wholesale Price List which became effective April 1, 1969, to increase their currently effective wholesale prices on liquors effective June 1, 1969 and to change their amended prices ("post-offs") for the month of June to reflect the tax increase and their mark-up, if any, thereon, by filing new prices at this office on or before May 27, 1969 and May 23, 1969, respectively. They are required to give written notice to their retailers of such increased prices on or before June 4, 1969. The new prices will become effective June 1, 1969 notwithstanding the fact retailers receive notice thereof subsequent to such date, and will remain in effect until the end of June. On July 1, 1969, the third quarter-annual Wholesale Price List will take effect in the usual manner.

Additionally, filers of minimum consumer resale prices have been afforded the opportunity to adjust their prices to become effective July 1, 1969 to reflect the tax increase. These new prices will be included in the third-quarter Minimum Consumer Resale Price List, effective July 1, 1969.

However, in the interim, to prevent circumvention of the purposes of State Regulation No. 30 (Minimum Consumer Resale Prices of Alcoholic Beverages), which is designed to maintain a stable and orderly price market, Rule 4 of State Regulation No. 30 is being amended to provide for an emergency increase of minimum consumer resale prices prior to the publication of the next quarterly Minimum Consumer Resale Price List, effective July 1, 1969, to include any increased cost of liquors to retailers by reason of the tax increase and mark-up thereon effective June 1, 1969.

Accordingly, pursuant to authority of R.S. 33:1-39, Rule 4 of State Regulation No. 30 is hereby amended, effective immediately to read as follows (new matter underscored):

Rule 4. The Director may, upon adequate cause appearing therefor, suspend or defer the foregoing provisions as to the time of filing minimum consumer resale price listings, time of publication of minimum Consumer Resale Price Lists, and time of mailing to retailers, to permit changes in minimum consumer resale prices to take effect upon such shorter or longer notice as he may prescribe. Any Minimum Consumer Resale Price List and any minimum consumer resale price of a private label brand or exclusive brand then currently effective may be continued in effect after the scheduled publication date of the next succeeding Minimum Consumer Resale Price List or, in the case of private label brands and exclusive brands, after the scheduled effective date of the next succeeding minimum consumer resale price filing for such brands, and any prices in such Price List or of such private label brand or exclusive brand may be changed, temporarily, by announcement of the Director upon his finding that an emergency exists.

I find that an emergency situation exists by reason of the tax increase. Consequently, effective June 5, 1969 the date by which all retail licensees should receive written notice of any increase in wholesale costs of liquors due to the tax increase, and until midnight June 30, 1969, all currently effective minimum consumer resale prices filed with the Division for private label or exclusive brands of liquors and all currently effective prices of liquors in the second quarterly Minimum Consumer Resale Price List are hereby increased by the amount of the above increase of wholesaler-to-retailer prices filed with this Division plus 33 1/3% of such increase for distilled spirits and mixtures thereof and 45% for cordials and liqueurs. No licensee during such period may sell or offer to sell at retail any alcoholic beverage at less than such increased price or advertise upon the licensed premises or elsewhere a price for any alcoholic beverage other than such increased price. Such activity shall be deemed in violation of Rules 5 and 6 of State Regulation No. 30 and cause for suspension or revocation of license.

Joseph M. Keegan
Director

Promulgated: May 23, 1969

Effective: May 23, 1969

Filed with the Secretary of State (N.J.) May 23, 1969.

2. TAX INCREASE - NOTICE RE MINIMUM CONSUMER RESALE PRICE FILINGS.
STATE REGULATION NO. 30 - THIRD QUARTER PRICE FILINGS REOPENED.

TO ALL FILERS OF MINIMUM CONSUMER RESALE PRICES FOR LIQUORS:

The New Jersey tax on liquors (as defined by the New Jersey Alcoholic Beverage Tax Law) has been increased from \$1.80 to \$2.30 per gallon, effective June 1, 1969, by P. L. 1969, ch. 52. "Liquors" is so defined as to include all alcoholic beverages other than malt alcoholic beverages, wines, sparkling wines and vermouth.

In order to afford filers of minimum consumer resale prices the opportunity to adjust their filed prices to reflect the tax increase, minimum consumer resale price filings for the third quarter-annual period to become effective July 1, 1969 are hereby reopened to permit the filing of new minimum resale prices on all liquors. Pursuant to Rule 4 of State Regulation No. 30, and for good cause shown, the time for filing such prices has been extended from May 20, 1969 to May 27, 1969.

The new price filings must be in this office on or before May 27, 1969.

JOSEPH M. KEEGAN
DIRECTOR

Dated: May 21, 1969

3. TAX INCREASE - NOTICE RE WHOLESALE PRICE FILINGS. STATE REGULATION NO. 34 - AMENDMENT OF CURRENTLY EFFECTIVE WHOLESALE PRICE FILINGS AND "POST-OFFS" AND REOPENING OF THIRD QUARTER PRICE FILINGS.

TO ALL FILERS OF WHOLESALE TO RETAIL PRICES ON LIQUORS:

P.L. 1969, Ch. 52, amending R.S. 54:43-1 (the Alcoholic Beverage Tax Law), increasing the tax on liquors from \$1.80 to \$2.30 a gallon, is effective June 1, 1969. Such "liquors" include all alcoholic beverages other than malt alcoholic beverages, wines, sparkling wines and vermouth.

In order to establish a uniform procedure in the application of the increased state tax to wholesale prices to permit the amendment of filed prices of liquors to reflect the increased tax and mark-up thereon, if any, it is hereby ruled, pursuant to Rule 7 of State Regulation No. 34, that, all wholesalers subject to the provisions of State Regulation No. 34 may:

1. On or before May 23, 1969 file with the Division a schedule of changes, if any, in amended prices ("post-offs") of liquors heretofore filed for the month of June.

2. On or before May 27, 1969, file with the Division a schedule if any, of changes of prices of liquors in the current quarter-annual Wholesale Price List which became effective April 1, 1969, said changes to become effective June 1, 1969 for the month of June.

3. On or before May 27, 1969, file with the Division a complete schedule of prices of liquors as an amendment to the price filings already made by wholesalers for publication in the third quarter-annual Wholesale Price List to become effective July 1, 1969.

All such price filings shall be available for inspection and amendment, as provided in Rules 5 and 9(b) of State Regulation No. 34, at the Division offices until 4:00 p.m. of (1) May 26, 1969 with respect to any "post-offs" filings and (2) May 28, 1969 with respect to the other filings.

In addition to the required price filing with the Division, wholesalers are required to notify all of their retailers of any increased regular and "post-offs" prices to become effective June 1, 1969. Such notice shall be given in the same manner as notice of "post-offs" pursuant to Rules 8 and 9 of State Regulation No. 34 and affidavits of mailing thereof shall be filed with the Division on or before June 4, 1969. The new prices will become effective June 1, if filed with the Division on or before May 23, 1969 or May 27, 1969, as the case may be, notwithstanding the fact retailers receive notice thereof subsequent to June 1, 1969.

JOSEPH M. KEEGAN
DIRECTOR

Dated: May 21, 1969

4. APPELLATE DECISIONS - THE PENNINGTON CLUB v. PASSAIC.

THE PENNINGTON CLUB)
(a corporation))

Appellant,)

v.)

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF PASSAIC,)

Respondent)

ON APPEAL
CONCLUSIONS
AND ORDER

Martin Klughaupt, Esq., Attorney for Appellant
Charles E. Miller, Esq., by Milton J. Pashman, Esq., Attorney
for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is addressed to the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which by resolution adopted November 18, 1968, purported to cancel the plenary retail consumption license issued by the Director of the Division of Alcoholic Beverage Control to appellant for the period ending June 30, 1969, for premises 181 Pennington Avenue, Passaic.

In its adoptive resolution respondent, after setting forth certain allegations from which it reasoned that the Director had no authority to issue the said license, concluded as follows:

"NOW THEREFORE, by virtue of the provisions of Sec 33:1-35 [sic] this commission to preserve the integrity of the Statute has found that the license issued to the Pennington Club was erroneous by reason that said license was issued in contravention of the Statute and the Rules and Regulations of the State Director pertaining to the provisions concerned, and is therefore a nullity.

"It is therefore on this 18th day of November, 1968 on motion duly made and seconded

"RESOLVED AND ORDERED that Plenary Retail License No. 1060 now held by the Pennington Club be retrieved for the purpose of cancellation of said license; and we order the City Attorney on our behalf to instruct the Chief of Police to retrieve this license, or in the alternative to effect such other legal procedures as will retrieve the said license from the Pennington Club, and restrain the said Pennington Club from the use of the said invalid license."

The petition of appeal alleges that appellant is a club organized on a non-profit basis under and in conformity with the local zoning ordinance; that on January 23, 1968 it applied for a transfer of a plenary retail consumption license to it; that, because a member of the Passaic City Council (which was then the license issuing authority) was an officer of appellant, the application was made to the State Director; that, since the transfer application was still pending, appellant's application for renewal for the 1968-69 licensing year was similarly made by appellant to the Director; that no timely objections by the City Council or Board were filed to the said applications; and the Director granted the transfer and the renewal and issued the said license.

The petition further alleges that on October 11, 1968 respondent charged appellant in disciplinary proceedings with "usurpation" of respondent's authority by the State Director and that, after a special appearance by appellant, it adopted the above resolution declaring the action of the Director a nullity and ordering cancellation of the said license. Appellant maintains that respondent's action was erroneous because (a) R.S. 33:1-31 expressly reserves to the Director alone the power to revoke a license issued by him, (b) the statute does not reside the power or authority in respondent to review the actions of the Director, which may be reviewed only in proceedings in the Appellate Division, (c) the action against appellant was prejudicial and taken without adequate opportunity for appellant to be heard, and (d) it was contrary to the best interests of the municipality.

The Board's answer generally denies the substantive allegations of the petition and asserts that the purported cancellation was made "in accordance with the law provided in such cases." In separate defenses the Board states that no member of the local issuing authority was a member of appellant at the time of the issuance of the said license; that no certified resolution was filed with the State Director as required by Rule 7 of State Regulation No. 4; that notice of objections to grant of the said renewal was given to the State Director, and that the issuance of the said license was "a usurpation of the Municipal Authority" in contravention of R.S. 33:1-35 (sic).

The hearing on appeal was de novo, pursuant to Rule 6 of State Regulation No. 15.

I

The central and dispositive issue in my opinion is whether the Board, as the local issuing authority, has the statutory authority to review or collaterally attack the action of the Director in the issuance of the said plenary retail consumption license. R.S. 33:1-31.

The attorney for the Board argued that a municipal issuing authority has exclusive jurisdiction in the issuance of such licenses and has jurisdiction to investigate all licenses granted; that the power to grant the license by the Director cannot supersede the authority by an established issuing authority in the community. He advocated that if "erroneous or illegal action is taken by the State Director, the municipality has a right to hear the matter as a duly, legally constituted authority in the community; to consider whether the action taken by the

State Director was based upon misinformation, misrepresentation or upon false information." And, if it finds that the grant of the license had not complied with all of the rules and regulations, the municipal authority has the right to question the authority of the Director "to assume jurisdiction in this matter. We feel that the granting of this license by the State Director was null and void, and it was nugatory" and the Director had no right to grant the said application.

He argued further that R.S. 33:1-23, which deals with the issuance of certain licenses by the Director, refers only to Class A, Class B, Class D and Class E licenses and says nothing about Class C licenses. Therefore, the Director has no authority with respect to such licenses. He points to R.S. 33:1-20 which refers to the issuance of a license by the Director where a member of the issuing authority is also a member of the applicant. R.S. 33:1-20 states:

"No license shall be issued under this chapter by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested directly or indirectly; but in any such case application for such license may be made by such member, corporation, organization or association directly to the commissioner [director] who is hereby authorized to issue such license, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issued or are issuable by the said governing board or body...."

He reasoned that, since no member of the issuing authority was a member of the applicant, the Director had no authority to issue such license, that such license was in fact issued as the result of mistake or error. Accordingly, in his opinion the Board had the right to cancel the subject license.

Appellant's attorney argued, on the other hand, that no such authority to review the action of the Director resides in the local issuing authority. He pointed to R.S. 33:1-31 which states:

"Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the director, or the other issuing authority may suspend or revoke any license issued by it" (Underscoring added)

Therefore, he maintained that, since the said license was not issued by it, the Board neither had the authority to review the action of the Director nor to institute disciplinary proceedings against appellant based upon the asserted impropriety of the Director's action in issuing the license rather than any purported or alleged statutory non-compliance, regulatory impropriety or violation committed by the appellant.

In order to clarify the issue a brief review of the facts as reflected in the record would be helpful. Appellant, operating under a club license, made application on January 23, 1968 for a transfer of a plenary retail consumption license to it for its present premises. The stated reason for a transfer was that the members of appellant found it financially burdensome to pay for the drinks of their guests, which they were required to do under a club license. At that time the City of Passaic did not have a separate license issuing authority and the City Council

was the issuing authority for the granting of all liquor licenses. Since the Mayor of Passaic was a member of appellant club, appellant applied directly to the Director of the Division of Alcoholic Beverage Control for transfer of the said license to it from Bernard M. Kimmel (statutory receiver of Butler, Inc.) and from premises 150 Third Street to 181 Pennington Avenue, Passaic, pursuant to R.S. 33:1-20. Appellant then requested the City Council to adopt a resolution pursuant to State Regulation No. 4. Although a resolution was prepared, it appears that the resolution was never actually adopted.

On April 5, 1968 the present local issuing authority was organized by action of the City Council. Since the transfer application was still pending at that time, the Director granted the transfer and renewed the license for the current licensing period. No objections were filed to the said issuance by the City Council or the Board. The club license for the present licensing period was approved by the Board but was never actually issued or delivered to appellant.

On July 9, 1968 the Board wrote to the Director questioning his action in granting the license. After some correspondence, the Director, by letter dated August 30, 1968, informed the Board that "A municipal issuing authority has no authority or jurisdiction to move against a State-issued license" and that "The Director was and is convinced, under all of the circumstances here present, of the propriety of his action."

Thereafter, on September 9, 1968, the Board passed a resolution, without notice to appellant, requesting the acting chief of police to pick up the license certificate held by appellant. The chief of police refused to do so after receiving an opinion from the City Attorney by letter dated September 11, 1968, as follows:

"The proper procedure to suspend or revoke a license for any cause is on proper notice to the licensee for an opportunity to a hearing thereon which is provided for in N.J.S.A. 33:1-33.

"It is therefore, my considered opinion that you should disregard the request, pending further advice from the Excise Board in this matter."

Thereafter, the City Attorney, by direction of the Board, prepared a notice of charges which was served on appellant alleging that this license "issued to you by the Director of the Division of Alcoholic Beverage Control, was contrary to law and a usurpation of the municipal authority" in contravention of the State statute. At the hearing thereon, held on October 1, 1968, appellant entered a special appearance and objected to the jurisdiction of the Board for the reason that R.S. 33:1-31 did not vest the Board with any authority with respect to the issuance of said license by the Director. The Board, by resolution dated November 18, 1968 as aforesaid, ordered that the said license "be retrieved for the purpose of cancellation."

My evaluation and consideration of the totality of the record persuade me that it was statutorily impermissible for the Board to collaterally review through disciplinary proceedings against appellant the action of the Director in the transfer and renewal of the said license. It is conceded that, at the time of the application for transfer, the then issuing authority (City Council) was disqualified from acting upon the application because

the Mayor was a member of the applicant club. No objections were filed to the issuance by the City Council, nor were timely objections filed by the Board at the time of its issuance.

The Director is given wide latitude in the administration of the Alcoholic Beverage Law. He not only has the authority to issue licenses (original as to some, appellate as to others), but he is burdened with the duty of administering and enforcing the statute and of taking all "acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration" of the statute, and "The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to the [Director]." R.S. 33:1-23. He is also given authority to make both general and special rules and regulations for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages generally and with specific reference to many enumerated subjects, inter alia "unfair competition." R.S. 33:1-39. He is directed to "supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger." R.S. 33:1-3. He is authorized, after the hearing on an appeal, "to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this chapter." R.S. 33:1-38. Finally, we have the legislative mandate that "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." R.S. 33:1-73. Cf. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; Brush v. Hock, 137 N.J.L. 257 (re-printed in Bulletin 808, Item 7).

Nowhere in Title 33 or in the rules and regulations of this Division is a local issuing authority given the authority to review the action of the Director. Such review would be inconsonant with the fundamental principles relating to subordinate administrative bodies. It would be in effect like the tail wagging the dog. R.S. 33:1-31 specifically limits the authority of the other issuing authority to suspend or revoke any license issued by it for certain enumerated causes listed therein. That authority may not be broadened to permit the revocation or suspension or cancellation of a license issued by the Director. It is unnecessary, for the purposes of this appeal, to make a determination with respect to the authority of the Director to issue the said license under the statutory imperative, or such authority as resides in the Director under the broad administrative powers vested in him by the Alcoholic Beverage Law. It is, in my judgment, however, abundantly clear that the only proper method available to the Board to test the alleged usurpation of municipal authority by the State Director is by timely proceedings in lieu of prerogative writ instituted by the Board in the Appellate Division of the Superior Court. Only such tribunal has the authority to review the actions of the Director.

Accordingly, I conclude that the Board did not have the statutory authority to collaterally attack the Director's action, and its actions with respect thereto were erroneous and nugatory.

II

In view of my finding that the Board did not have the statutory authority to review or set aside the Director's action, it follows that the collateral attack on the Director's action herein through disciplinary proceedings instituted by it to cancel the license issued by the Director is similarly invalid. It is

significant to note that the disciplinary proceedings were based not upon the action or impropriety of the licensee itself but upon the action of the Director. How then could the licensee be held accountable for such action? It is abundantly clear that the Board's resolution of September 9, whereby it requested the chief of police to pick up appellant's license certificate without granting a hearing to appellant, was improper and it was so advised by its own attorney. Cf. Mazza v. Cavicchia, 28 N.J. Super. 280, rev. on other grounds, 15 N.J. 498.

The hearing on October 21 which purported to charge appellant with a violation of the Law and regulations because of the action of the Director, is similarly fatally defective.

It is therefore recommended that the action of the Board in purporting to cancel the license issued by the Director herein be and the same is hereby reversed, and that the license issued by the Director shall remain in full force and effect.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

I have carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report. I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 31st day of March, 1969,

ORDERED that the action of the respondent purporting to cancel the license of appellant be and the same is hereby reversed and the charges herein be and the same are hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

5. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALES OF ALCOHOLIC BEVERAGES IN SPEAKEASY - MONEY DEPOSITED UPON STIPULATION ORDERED RETURNED TO INNOCENT OWNER OF EQUIPMENT.

In the Matter of the Seizure on August 3, 1968 of a quantity of alcoholic beverages, various fixtures, furnishings, equipment and foodstuffs in an unlicensed grocery store located at 159 Perry Street in the City of Paterson, County of Passaic and State of New Jersey)	Case No. 12,078
)	ON HEARING
)	CONCLUSIONS
)	AND ORDER

J.A.J. Vending Corporation, by Joseph Fiorito, claimant, Pro Se.
Harry D. Gross, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provision of Title 33, Chapter 1, Revised Statutes of New Jersey and further, pursuant to a stipulation dated December 24, 1968 signed by J.A.J. Vending Corporation to determine whether a pool table, pinball machine and juke box, described in an inventory hereinafter

referred to, attached hereto, make part hereof and marked Schedule "A", seized on August 3, 1968 in an unlicensed grocery store located at 159 Perry Street, Paterson, N.J. constitute unlawful property and should be forfeited; and, further, to determine whether the sum of \$350.00 deposited by the J.A.J. Vending Corporation with the Director, under protest, representing the appraised retail value of the aforementioned property, as set forth in the said stipulation, should be forfeited or returned to it.

The seizure was made by ABC agents because of unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, J.A.J. Vending Corporation appeared and sought the return of the sum of \$350.00, representing the retail value of the said personal property. It should be noted that the balance of personal property seized herein was returned to Enrique Reyes Rivera, the owner of the premises, upon his deposit with this Division of the sum of \$250.00, under protest, by stipulation filed with the Director. Since such stipulation (which does not cover the seized alcoholic beverages and \$45.80 in cash) has not been signed by Rivera up to the date of this hearing, the hearing herein was limited solely to the claim of the aforementioned claimant.

Reports of ABC agents and other documents in the file, admitted into evidence with the consent of the claimant therein, disclose the following: Two ABC agents visited the premises in question on August 3, 1968 at about 8:00 P.M. while another ABC agent remained at a point of observation on the outside of the premises.

Agent M observed about six males in the rear room playing pool and drinking beer and other alcoholic beverages. He ordered a bottle of beer which was served to him by Rivera and paid him thirty-five cents with a "marked" five-dollar bill for which he received change. He also observed Rivera serve alcoholic beverages to patrons and place the money received from these patrons in the cash register. At about 8:55 p.m. Agent D, accompanied by two local police officers, entered the premises, identified themselves and placed Rivera under arrest. Rivera admitted selling alcoholic beverages and commingling the marked five-dollar bill received from the agent, with the other money in the cash register.

On August 7, 1968 a sample of a bottle of beer purchased by Agent M was analyzed by the Division chemist who reports that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content, by volume, of 4.42%.

The records of this Division do not disclose a license or permit having been issued to Rivera or for these premises authorizing the sale of alcoholic beverages. Since Rivera did not have any license authorizing him to sell alcoholic beverages, the alcoholic beverages are illicit and constitute unlawful property subject to forfeiture. Such alcoholic beverages are illicit because they were intended for sale without a license.

The personal property as set forth in Schedule "A" herein constitutes unlawful property because it was used in connection with the unlawful sale of alcoholic beverages and is subject to

forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,431, Bulletin 1644, Item 3.

Joseph Fiorito, Vice-President of the J.A.J. Vending Corporation, testifying in support of its claim for the return of the monies deposited on stipulation filed with the Director, gave the following account: The pool table, pinball machine and juke box were installed at these premises about a year ago; Rivera became the owner of these premises upon purchasing the same about three months ago. When Rivera took over the operation of these premises, this claimant requested a thorough investigation of both Rivera and the premises by the local detective bureau of the Police Department. His credit was also checked by a local credit agency.

It was upon reliance of these investigations that the claimant continued his business dealings with Rivera. This witness also produced evidence of ownership of the said equipment.

Michael Sussko, employed by said claimant as a collector, made two visits during the three months that Rivera was in business, for the purpose of making collections from the said equipment. He did not see any alcoholic beverages being sold or dispensed, nor did he observe any evidence of alcoholic beverages on the premises. From the evidence presented, I conclude that the claimant acted in good faith and did not know, or have any reason to believe that alcoholic beverages were being sold in these premises, or that Rivera was engaged in unlawful liquor activity.

The claim of J.A.J. Vending Corporation will therefore be recognized and the money deposited under the aforesaid stipulation will be ordered returned to this claimant. Seizure Case No. 10,416, Bulletin 1384, Item 4; R.S. 33:1-66(f).

Accordingly, it is, on this 25th day of March, 1969

DETERMINED and ORDERED that the claim of J.A.J. Vending Corporation for the return of the sum of \$350.00 deposited with the Director under the aforementioned stipulation, be and the same is hereby recognized and the said sum of \$350.00 shall be returned to the said claimant.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 1 - pool table
- 1 - pinball machine
- 1 - juke box

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1968 to MARCH 31, 1969 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

CLASSIFICATION OF LICENSES

County	PLENARY Retail Consumption		PLENARY Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Licenses Surren- dered Revoked	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	484	\$ 208,000.00	74	\$ 28,255.00	30	\$ 2,620.00						588	\$ 238,875.00
Bergen	811	352,210.00	301	96,495.00	165	15,032.20	44	\$ 2,106.50	5	\$ 1,398.75		1326	467,242.45
Burlington	198	93,999.00	43	16,515.00	56	7,378.40	1	50.00				298	117,942.40
Camden	453	243,149.92	86	39,863.00	81	8,187.00			1	450.00		621	291,649.92
Cape May	142	78,400.00	13	4,700.00	18	2,250.00						173	85,350.00
Cumberland	82	44,100.00	15	4,450.00	32	4,350.00						129	52,900.00
Essex	1218	783,830.00	338	223,050.00	93	12,750.00	24	1,200.00	2	1,500.00	2**	1673	1,022,330.00
Gloucester	110	41,140.00	15	3,945.00	25	2,294.00						150	47,379.00
Hudson	1402	633,895.00	297	121,900.00	79	9,176.22	58	2,450.00			6	1830	767,421.22
Mercer	399	286,226.00	51	27,154.00	64	9,467.57						514	322,847.57
Middlesex	635	322,615.00	88	30,680.00	138	11,265.47	4	200.00				865	364,760.47
Monmouth	552	294,593.00	127	45,950.00	65	7,116.25	10	492.00	18	11,003.84		772	359,155.00
Morris	361	154,707.91	105	45,470.00	72	7,257.50	13	650.00	5	1,560.00		556	209,645.91
Ocean	175	113,321.66	52	23,632.00	49	5,500.00						296	142,453.66
Passaic	801	346,409.00	169	54,540.00	51	6,000.00	6	300.00			2	1025	407,249.00
Salem	52	21,130.00	8	1,640.00	20	1,775.00						80	24,545.00
Somerset	190	89,870.00	42	13,855.00	41	4,850.00						273	108,575.00
Sussex	165	47,720.00	20	4,350.00	13	740.00	1	50.00	1	225.00		200	53,085.00
Union	547	327,406.00	144	75,218.00	91	9,786.72	25	1,250.00			1	806	413,660.72
Warren	146	45,060.00	22	5,740.00	32	3,500.00			1	225.00		201	54,525.00
Hunterdon	80	33,688.00	16	10,508.00	17	2,090.00						113	46,286.00
Totals	9003	4,561,470.49	2026	877,909.00	1232	133,386.33	186	8,748.50	33	16,362.59	11	12489	5,597,877.00

During period December 31, 1968 to March 31, 1969:

- 2 New "C", 4 "C" issued under hardship
- 9 New "CB"
- 2 "C" Revoked
- 5 "C" Surrendered
- 3 "C" previously operating under appeal granted
- 4 "C" previously operating under appeal vacated

Joseph M. Keegan,
Director

Total licenses Revoked or Surrendered since 7/1/68 10

** 1 "CS" expired, 1 still in effect

7. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL TRANSPORTATION AND SALE OF ALCOHOLIC BEVERAGES - SUM DEPOSITED ON STIPULATION RETURNED TO OWNER WHOSE GOOD FAITH IS ESTABLISHED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure)	Case No. 12,043
on May 6, 1968 of a quantity of)	
alcoholic beverages and a)	ON HEARING
Chevrolet Impala sedan at 77)	CONCLUSIONS
Passaic Street, in the City of)	AND ORDER
Passaic, County of Passaic)	
and State of New Jersey)	

 William J. Bate, Esq., appearing for claimant, Frank Davila.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic
 Beverage Control

BY THE DIRECTOR:

The Hearer filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 and further, pursuant to a stipulation dated July 10, 1968, signed by Frank Davila, to determine whether five gallons of alcoholic beverages and a 1962 Chevrolet Impala sedan, more particularly described in a schedule attached hereto, made part hereof and marked Schedule "A", seized on May 6, 1968 at 77 Passaic Street, Passaic, N. J. constitute unlawful property and should be forfeited; and further, to determine whether the sum of \$500.00, deposited by Frank Davila, under protest under the aforesaid stipulation for the Director, representing the retail value of the aforementioned motor vehicle, should be forfeited or returned to him.

When the matter came on for hearing pursuant to R.S. 33:1-66, Frank Davila, represented by counsel, appeared and sought the return of the motor vehicle and the alcoholic beverages.

The Division's file, which was submitted into evidence with the consent of the claimant herein, established the following facts: On May 6, 1968 Frank Davila transported and had in his possession a certain alcoholic beverage which was transported in his motor vehicle and the sale of the said alcoholic beverages was made on this date. He was arrested by Passaic police officers and charged with the unlawful transportation of alcoholic beverages in violation of R.S. 33:1-50(a), possession with intent to transport and sell in violation of R.S. 33:1-50(b), and possession and sale in violation of R.S. 33:1-50(e). He was released in bail, pending arraignment in the Passaic Municipal Court.

The file of this Division contains the affidavit of mailing, affidavit of publication, chemist's report and the inventory of the alcoholic beverages. The chemist's report, as certified by the Director, establishes that one 16 ounce jar full of alleged alcohol is an alcoholic beverage fit for beverage purposes with alcohol by volume of 2.16%.

The records of this Division disclose that there was no license authorizing Davila to sell alcoholic beverages nor was there a permit or license authorizing the transportation of

alcoholic beverages in the seized motor vehicle. The seized alcoholic beverages are illicit because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit alcoholic beverages, and the motor vehicle in which they were transported constitute unlawful property and are subject to forfeiture. R.S. 33:1-50; R.S. 33:1-66; Seizure Case No. 12,040, Bulletin 1834, Item 2; Seizure Case No. 11,164, Bulletin 1565, Item 5.

Frank Davila, testifying in support of his claim for the return of the \$500.00, deposited under the aforesaid stipulation, gave the following account: He is employed by the Duralight Company and has been so employed for the past 15 years, attaining the position of supervisor about 10 years ago.

He is a Puerto Rican and remembers drinking a "refresher drink" known as "Mabi" in Puerto Rico when he was a boy. The drink was not considered an alcoholic beverage and was sold in candy stores and on wagons throughout that country. He also has seen this drink sold on pushcarts in New York City and in a candy store in Passaic. He decided to make "Mabi" for his own use. "Mabi" consists of the following ingredients: ginger, cinnamon, sugar, tree bark and cola. He had no idea that it contained alcohol.

He made about five gallons and upon the request of his friends, sold several of the gallons for 50¢ or 75¢ a gallon. He made no profit on these sales and sold it merely as an accommodation for his friends.

When he was arrested he was in the process of delivering a gallon of "Mabi" to a friend of his as a gift, and did not receive or intend to receive any payment therefor. The attorney for the claimant explained that while this drink, "Mabi" was found to contain 2.16% of alcohol, it was his belief that after a certain period of time, the drink "unferments", and it then becomes a non-alcoholic drink.

Of course, this was not established by any expert testimony; the stated reason being that the cost of producing such testimony, in claimant's opinion, would have been prohibitive.

I have had an opportunity to evaluate the testimony herein and to observe the demeanor of this claimant as he testified and I am persuaded that although the beverage known as "Mabi" did, in fact, have an alcoholic content, that this claimant was unaware of that fact.

I am further persuaded that he was of the opinion that "Mabi" was a non-alcoholic drink and that, therefore, he did not require any license or permit to sell the same. It is quite apparent from the testimony that this claimant did not engage in, or intend to engage in, a bootleg enterprise. Cf. Seizure Case No. 8376, Bulletin 1007, Item 5.

The Director has the discretionary authority to return property subject to forfeiture, to a person who establishes to his satisfaction that he acted in good faith and did not know or have any reason to believe that he was engaging in unlawful liquor activity. R.S. 33:1-66(e). This is a novel situation and this drink, known as "Mabi", is distinguishable from such common alcoholic beverages as wine, beer and whiskey. I am impressed with the sincerity and forthrightness of the claimant. Although not dispositive of this inquiry, it is significant to note that the Grand Jury, in considering criminal proceedings against this individual, returned a "No Bill" upon being satisfied of these facts.

I, therefore, find that this claimant acted in good faith, and did not knowingly engage in unlawful liquor activity. It is, therefore, recommended, in the interest of substantial justice and fairness, that an Order be entered recognizing his claim for the return of the monies deposited under the stipulation aforementioned. Cf. Seizure Case No. 12,026, Bulletin 1829, Item 5. However, so far as the seized beverages are concerned, it is further recommended that since the seized "Mabi" did, in fact, have an alcoholic content in excess of one-half of one percent by volume it is an alcoholic beverage, illicit because manufactured without license, an Order be entered forfeiting the same.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is on this 26th day of March, 1969

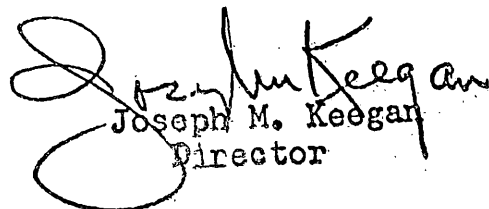
DETERMINED and ORDERED that the sum of \$500.00 deposited by Frank Davila, under protest, under the aforesaid stipulation, for the Director, be and the same shall be returned to Frank Davila; and it is further

DETERMINED and ORDERED that the alcoholic beverages referred to in Schedule "A" attached hereto, constitute unlawful property and the same be and is hereby forfeited in accordance with the provisions of R.S. 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.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 5 - gallons of alcoholic beverages
- 1 - 1962 Chevrolet sedan, Serial No. 21847T274220,
New Jersey Registration GZL482.


Joseph M. Keegan
Director