

STATE OF NEW JERSEY ^{Sent to Regular Mailing List}
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 759

APRIL 23, 1947.

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

BULLETIN 759

APRIL 23, 1947.

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND OTHER EQUIPMENT IN SPEAKEASY LOCATED IN PRIVATE RESIDENCE ORDERED FORFEITED - APPLICANT FOR RETURN OF JUKE BOX FAILED TO ESTABLISH "GOOD FAITH" AND HENCE RETURN THEREOF DENIED.

In the Matter of the Seizure on) Case No. 6982
May 12, 1946 of a quantity of alco-)
holic beverages, a music box and)
other fixtures and furnishings, at) ON HEARING
31 Englewood Avenue, in the City of) CONCLUSIONS AND ORDER
Englewood, County of Bergen and)
State of New Jersey.)

Sidney Dincin, Esq., Attorney for William Henry Kenney, Jr.
Elwood Page, and Howard Page, Pro Se.
Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, a music box, and furnishings and fixtures, described in a schedule attached hereto, seized on May 12, 1946 at 31 Englewood Avenue, Englewood, New Jersey constitute unlawful property and should be forfeited.

ABC agents seized the alcoholic and other beverages in the kitchen, and the music box and the furniture in the living room of William H. Kenney Jr.'s three-room, third floor apartment at the above address, pursuant to a search warrant. The warrant had been obtained after an ABC agent, investigating a complaint that speakeasy activities were being carried on there, purchased alcoholic beverages on May 4 and 5, 1946 from Marie Driver, Kenney's "housekeeper". Neither Marie Driver nor Kenney held any license authorizing either of them to sell or serve alcoholic beverages, and the premises were not licensed for that purpose.

When the matter came on for hearing pursuant to R. S. 33:1-66, the Page brothers appeared and sought return of the music box, and Mr. Kenney appeared with counsel and sought return of all the other property seized.

The alcoholic beverages, if intended for unlawful sale, are illicit and, together with the other seized property, are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

Mr. Kenney claims that he did not intend to sell the alcoholic beverages found in his home, and that any sale of alcoholic beverages there by Marie Driver was without his knowledge or consent. He says that Marie Driver was employed as a "beautician" in Englewood and for over two months prior to the seizure also acted as his cook and housekeeper.

According to the ABC agent, he visited the premises at about 1:50 a.m. on the morning of May 4th and was admitted to the apartment by Marie Driver. He informed her that he wanted something to drink and asked for whiskey. The woman went into the kitchen and from there brought drinks of whiskey to the agent in the living room, who paid her for the drinks. He observed other patrons drinking there and left without disclosing his identity.

The agent returned the following morning at about 3:00 a.m. and Marie Driver again opened the door. The agent went to the living room and there Marie Driver served him with two bottles of beer and two drinks of whiskey for which he paid her. On this occasion there were about twelve persons seated in the living room, some purchasing and drinking whiskey, and others playing cards. The agent again left the premises without disclosing his identity, and thereafter applied for and obtained the search warrant.

The acquittal of Marie Driver in criminal proceedings on the charge of unlawful sale of alcoholic beverages, stressed by counsel for Kenney, is not controlling in these seizure proceedings nor inconsistent with a finding in such proceedings that alcoholic beverages were unlawfully sold by Her. Cf. Re Pinto, Bulletin 639, Item 4. The considerations which led to her acquittal do not necessarily apply to these proceedings. It is not claimed that the ABC agent had any reason to accuse Marie Driver unjustly. I therefore find, in so far as these seizure proceedings are concerned, that Marie Driver unlawfully sold alcoholic beverages on the occasions in question.

I further find from the evidence presented that the sale of alcoholic beverages in Kenney's home was on his behalf, or at least that he knew or should have known of such illegal activities, and permitted his stock of alcoholic beverages to be available for that purpose.

According to Kenney's testimony, he has not had any regular employment or source of income for at least sixteen months. At the time of the seizure he told the agents that he was unemployed, although at the hearing, while admitting this was so, he claimed that he was employed from time to time as a helper on a moving van. He paid \$27.50 rent per month for the apartment, and paid Marie Driver \$10.00 a week as "housekeeper". He had the music machine in his home ostensibly because his radio was out of order, and his share of the income of the machine was between \$6.00 and \$9.00 a week. He says that he served alcoholic beverages without charge to his friends and acquaintances when they visited his home, and that they placed the nickels in the machine. It is a strange hospitality which requires social callers to pay for their musical entertainment. The regularity with which music machines are seized in speakeasies inclines me to the view that the music box was actually in Kenney's home to attract patrons to the speakeasy.

Kenney apparently did not give the full picture of his background inasmuch as the Page brothers, who placed the machine in his apartment, say that Kenney told them that it was a "club"; that although previously unknown to them, he was reputed to be interested in other clubs and of some political prominence in his circle; that when servicing the machine it was their usual practice either to go to Kenney's other "club", or to his "wife's" beauty parlor in Englewood, and obtain the key for the apartment from one or the other.

Kenney's account of what he observed at his home when the ABC agent says that he was there is likewise highly improbable and leads me to conclude that his version of all of the pertinent facts is fictitious and colored to suit his convenience.

Kenney says that he was at his home a little after 1:00 a.m. on May 4th, and was also there at 3:00 a.m. on May 5th; that Marie Driver was present on both occasions; that he did not see the ABC agent there on either day; that on May 5th, at 3:00 a.m., there were two or three persons there drinking coffee, and not ten or twelve persons drinking whiskey, as the agent says.

The ABC agent told what occurred in the course of the regular routine of his duties. There is no apparent reason to doubt his veracity.

For the reasons set forth, I find that the seized alcoholic beverages were intended for unlawful sale and, together with the other seized property, are subject to forfeiture. This compels the denial of Kenney's application for the return of the seized property because he was either implicated in the unlawful sale or aware that Marie Driver was carrying on such activities there. Hence, he cannot obtain the benefit of the provisions of R. S. 33:1-66(e) and (f), which provide for the relief from forfeiture of innocent persons.

The Page brothers claim that they did not know or suspect that their machine was in a speakeasy and hence seek its return. They say that Kenney asked them to place a machine in his home, representing that it was a "club". Although they did not know Kenney nor the source of his income, they placed the machine in his home without further ado, and it was there for about two months before the seizure. All of their machines, with the exception of this machine, are located in commercial establishments.

The music machine was placed in a private residence, on a profit-sharing basis, and was there for over two months. It was in an unusual location. Cf. Seizure Case 6950, Bulletin 719, Item 6. The gross income of the machine was between \$10.00 and \$15.00 a week. A reasonably prudent person would have sought to ascertain what activities were being carried on at the place to account for that income. The Page brothers made no effort to obtain this information. Instead, they accepted Kenney's word that it was a "club", even though the apartment only contained household furniture, and there was nothing to indicate that it was a club. The Page brothers have therefore failed to establish that they exercised reasonable prudence in placing and permitting their machine to remain in Kenney's home. Hence I cannot find that they acted in good faith. In the absence of evidence to that effect, as required by R.S. 33:1-66(f), I am compelled to deny their application for return of the machine. See Seizure Case 6875, Bulletin 716, Item 3; Seizure Case 6981, Bulletin 721, Item 3.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A", attached hereto, 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.

Dated: April 10, 1947.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 8 - bottles of various brands of alcoholic beverages
- 46 - bottles of beer
- 21 - bottles of soda
- 41 - whiskey and wine glasses
- 1 - Wurlitzer Music Box No. 578,762, currency
therein and miscellaneous records
- 1 - General Electric radio
- 1 - table and four chairs

2. APPELLATE DECISIONS - RUSSEKOW v. MOUNT HOLLY.

JOSEPH RUSSEKOW,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF MOUNT HOLLY,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDERWorth and Worth, Esqs., by Herbert L. Worth, Esq., Attorneys for
Appellant.Powell and Parker, Esqs., by Robert W. Criscuolo, Esq., Attorneys
for Respondent.

BY THE COMMISSIONER:

This is an appeal from the respondent's denial of an application for a plenary retail distribution license for premises at 13 Madison Avenue, Mount Holly.

These are the pertinent facts, of record, preceding the appeal:

1. The Township Committee's resolution, adopted in December of 1933, limited the number of plenary retail consumption licenses in the Township to seven (7) and the number of plenary retail distribution licenses to two (2).

2. On October 7, 1946 (when seven plenary retail consumption licenses were outstanding in Mount Holly), one Warren Leary filed with the Township Clerk an application for a plenary retail consumption license.

3. On October 24, 1946, the Township Committee passed on first reading an ordinance to increase the plenary retail consumption license quota from seven (7) to eight (8), and the plenary retail distribution license quota from two (2) to three (3).

4. On October 26, 1946 (when two plenary retail distribution licenses were outstanding in Mount Holly), the appellant filed with the Township Clerk an application for a plenary retail distribution license.

5. On November 5, 1946, the Township Committee adopted on final reading the ordinance increasing the plenary retail consumption license quota to eight (8) and the plenary retail distribution license quota to three (3). The vote for final adoption was 5 to 0.

6. On November 5, 1946, the Township Committee (after final adoption of the amendatory ordinance) granted Warren Leary's plenary retail consumption license application.

7. At its November 5, 1946 meeting the Township Committee took no action regarding the appellant's application, it then appearing that the second Notice of Application had not yet been published.

8. On November 14, 1946, the respondent Committee passed on first reading an ordinance to reduce the plenary retail distribution license quota from three (3) to two (2).

9. On November 29, 1946, the amendatory "reduction" ordinance was finally adopted and, immediately thereafter, the respondent Committee denied the appellant's application. The vote was 3 to 1.

The appellant's pleadings allege that the respondent's refusal to act on his application when the Township's ordinance permitted a third plenary retail distribution license was for an undisclosed reason which was based upon racial or religious prejudice and for the undisclosed reason that one of the respondent's members desired to secure a plenary retail distribution license for himself. The appellant's pleadings allege, further, that (after the respondent had adopted, on November 5, 1946, the ordinance increasing the plenary retail distribution license quota from two (2) to three (3)) on November 29, 1946, the respondent cunningly, connivingly and capriciously adopted the ordinance reducing the plenary retail distribution license quota to two (2) for the purpose of defeating the appellant's application; that the respondent, by its cunningness, subterfuge and connivance is following a scheme to disallow a distribution license to the appellant; and that the respondent's action is unreasonable, capricious, arbitrary and not in good conscience.

The respondent's pleadings allege that when the appellant filed his application on October 26, 1946, the issuance of a third plenary retail distribution license in the Township was barred by the resolution of 1933 which limited such licenses to two; that when the appellant's application was denied on November 29, 1946, the issuance of a plenary retail distribution license to him was barred by the ordinance adopted November 29, 1946, limiting the number of such licenses to two, and such issuance is still barred by the indicated ordinance; that there is no public necessity for the issuance of a plenary retail distribution license to the appellant as the two plenary retail distribution licenses and eight plenary retail consumption licenses issued and outstanding are sufficient to meet the needs of the municipality; and that the licenses issued and outstanding in the vicinity of the premises for which the appellant seeks a license are sufficient to meet the needs of said vicinity.

No testimony was adduced in this appeal tending in any way to support the allegation of racial or religious prejudice.

Evidence was presented that one of the committeemen stated, in the presence of other committee members and before the ordinance to increase the plenary retail distribution license quota from two to three was passed on first reading, that if the quota were increased he might apply for the additional license, or that he would like to have one himself, or words to that effect. There was testimony to indicate that the committeeman's remark appeared to have been made in fun or in jest. If the remark was made in jest it was in bad taste and of dubious humor. But testimony was presented to indicate that the committeeman attempted to find premises suitable for a license and ceased to be interested in obtaining a license when he discovered that an application by a member of a municipal issuing authority would have to be made to the State Commissioner. (R. S. 33:1-20.)

A deliberate scheme to increase the license quota so as to permit issuance of a license to one of the committeemen and without regard to the public need for an additional license would be altogether reprehensible. In point of fact, however, the committeeman never filed an application, and several committeemen testified that even if he had resigned, in order to apply to them for a license, they would not have voted in favor of an additional license. Moreover, committee members testified at the appeal hearing that the ordinance increasing the plenary retail consumption license quota from seven (7)

to eight (8) increased also the plenary retail distribution license quota from two (2) to three (3) not with the Township Committee's intention to issue presently a third plenary retail distribution license but rather to take care of a future public need for an additional plenary retail distribution license in the Township. The general unwisdom of increasing license quotas to care for some possible future need and in the absence of a present public need should be obvious. That course of action naturally invites new license applications.

Despite the fact that only twenty-four days elapsed between the adoption of the ordinance increasing the plenary retail distribution license quota to three (3) and the ordinance reducing the quota to two (2), I must find, from all the evidence before me on this appeal, that the appellant has not proved improper motivation on the part of the respondent in its adoption of the latter ordinance. Furthermore, the fact that the plenary retail distribution license quota of three (in the ordinance adopted November 5, 1946) was not filled did not mean that an application for a third such license had to be granted. (See Bumball v. Burnett, 115 N.J.L. 254.)

The mere fact that his application was filed prior to the adoption of the ordinance reducing the plenary retail distribution license quota to two did not entitle the appellant to a license. The test is whether a license should issue "now" and the ordinance adopted November 29, 1946 prohibited and prohibits the issuance of a new license. Lettiers v. Berlin, Bulletin 754, Item 4. (See Socony-Vacuum Oil Co., Inc. v. Mount Holly, 135 N.J.L. 112; Kitchman v. Mount Laurel, Bulletin 752, Item 10; Price v. East Rutherford, Bulletin 754, Item 8.) As stated by the late Commissioner Burnett in Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1:

"Whether a license should be issued is not a game of legal wits or abstract logic, but, rather, a solemn determination on all the concrete facts, whether presented originally or on appeal, whether or not it is proper to issue that license. It is not a mere umpire's decision whether or not some administrative official previously made a move out of order or erred in technique or did something which by strict rules he had no right to do, but rather a final adjudication whether the license should be issued NOW."

The limitation ordinance now in effect appears to be reasonable under the evidence adduced on this appeal. Mount Holly, according to a stipulation entered into by the parties hereto, has a present population of 7,000. Some testimony was presented to the effect that the neighborhood in which the appellant's premises are located constitutes a small shopping center and that the granting of a plenary retail distribution license in that neighborhood would serve some public convenience. But the testimony appears to be in agreement that the principal business and shopping section of the Township is located elsewhere. One of the appellant's four witnesses on the question of public need stated that in his opinion the Madison Avenue neighborhood "isn't much of a business section", and "it is not a real shopping district"; and another such witness testified: "I don't know of a necessity for it; I know it would be convenient", and "I have always been pretty well taken care of."

The members of the respondent Township Committee testified that in their opinion there is no public need for a third plenary retail distribution license in Mount Holly.

There has been presented no convincing evidence that the ten existing licenses are inadequate to serve the public needs of the Township. I find, aside from the numerical limitation ordinance, that the appellant has not sustained the burden of proof to show that the respondent's action denying the application was arbitrary, unreasonable, improperly motivated, or otherwise in abusive exercise of its discretionary power. The respondent's action, therefore, is affirmed.

Accordingly, it is, on this 14th day of April, 1947,

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

ERWIN B. HOCK
Commissioner.

3. COURT DECISIONS - NEW JERSEY SUPREME COURT - CALDWELL WINE & LIQUOR CO., INC. v. CALDWELL AND HOCK - COMMISSIONER AFFIRMED.

NEW JERSEY SUPREME COURT

CALDWELL WINE & LIQUOR CO., INC.,)
Prosecutor,)

-vs-

MAYOR AND COUNCIL OF THE BOROUGH)
OF CALDWELL, and ERWIN B. HOCK,)
Deputy Commissioner of the New)
Jersey State Department of Alcoholic)
Beverage Control,)
Defendants)

Decided April 12, 1947

(Not officially reported)

George R. Sommer, Esq., Attorney for Caldwell Wine & Liquor Co., Inc.
Julius Y. Krill, Esq., Attorney for defendant Mayor and Council, etc.
Emerson A. Tschupp, Esq., Deputy Attorney General, Attorney for
defendant Erwin B. Hock, Deputy Commissioner, etc.

PARKER, J.:

With reference to the application for certiorari today in the case of Caldwell Wine & Liquor Co. v. Hock, Commissioner et al., I conclude that allocatur should be denied, and it is so ordered.

The case is not one of cancellation of an existing liquor license, but of refusal by the licensing authority, in its discretion, to renew an expired license. That discretion the court will not undertake to control or overrule unless in a clear case of abuse thereof, which does not seem to be the present situation.

Allocatur of a certiorari is denied with costs.

- - - - -

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

SUBURBAN GOLF CLUB OF
ELIZABETH, N. J., a corporation,
Morris Avenue
Union, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-6, issued by the Township
Committee of the Township of Union.

Herrigel, Lindabury & Herrigel, Esqs., Attorneys for
Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that it possessed one 4/5 quart bottle labeled "The Blended Scotch Whisky of the White Horse Cellar" and one 4/5 quart bottle labeled "King William IV V.O.P. Brand Blended Scotch Whisky", the contents of which were not genuine as labeled, in violation of R.S. 33:1-50.

On March 18, 1947, an investigator of the Department of Alcoholic Beverage Control seized the two bottles mentioned in the charge when his preliminary tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottles varied substantially in solids from the contents of a genuine bottle of the same product.

Defendant has no prior adjudicated record. I shall suspend its license for a period of fifteen days (Re Nurse, Bulletin 680, Item 7), less five days for the plea (Re Gelb, Bulletin 741, Item 8), making a net suspension of ten days.

Accordingly, it is, on this 16th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Union to Suburban Golf Club of Elizabeth, N. J., a corporation, for premises located on Morris Avenue, Union, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. April 20, 1947, and terminating at 2:00 a.m. April 30, 1947.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ALAN CAFE, INC.
T/a ALAN CAFE
N/E Cor. North Carolina &
Arctic Aves.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-229 issued by the
Board of Commissioners of the City
of Atlantic City.

Alan Cafe, Inc., Defendant-licensee, by Isadore Sacks, Treasurer.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge that it sold alcoholic beverages below the listed minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On February 28, 1947, a clerk then in charge of the "package goods" section of the defendant's licensed premises sold to an agent of the State Department of Alcoholic Beverage Control one 4/5 quart bottle of "Schenley Reserve Blended Whiskey" for the price of \$3.86. The established minimum resale price of this product is \$3.90. Bulletin 740.

Defendant has no prior adjudicated record. I shall, therefore, impose the minimum suspension of ten days, less five days because of the plea, leaving a net suspension of five days. Re Mack Drug Co., Inc., Bulletin 695, Item 9.

Accordingly, it is, on this 16th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-229, issued by the Board of Commissioners of the City of Atlantic City to Alan Cafe, Inc., t/a Alan Cafe, for premises N/E cor. North Carolina and Arctic Avenues, Atlantic City, be and the same is hereby suspended for a period of five (5) days, commencing at 12:01 a.m. April 21, 1947, and terminating at 12:01 a.m. April 26, 1947.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - SUSPENSION PREVIOUSLY STAYED REIMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary)
Proceedings against)

HARRY R. GOSLIN & EARL S. GOSLIN)
T/a GOSLIN'S TAVERN)
505 - 18th Avenue)
South Belmar, N. J.,)

O R D E R

Holders of Plenary Retail Consump-)
tion License C-1 for the fiscal)
year 1943-44, and now holders of)
Plenary Retail Consumption License)
C-1 for the 1946-47 fiscal year;)
both issued by the Borough Council)
of the Borough of South Belmar.)
- - - - -)

BY THE COMMISSIONER:

It appearing that by Order dated March 7, 1947, the suspension heretofore imposed in Re Goslin, Bulletin 752, Item 7, was stayed pending the entry of a further order because defendants' premises were then closed and would not be reopened prior to April 1, 1947; and

It further appearing that defendants' premises have now been reopened for business;

It is, on this 16th day of April, 1947,

ORDERED that the twenty-day suspension heretofore imposed herein shall commence at 2:00 a.m. April 22, 1947, and terminate at 2:00 a.m. May 12, 1947.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - EFFECTIVE DATES FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary)
Proceedings against)

EDWIN A. DOLAN & MRS. MARY A.)
REININGER)
T/a THE IDLE HOUR)
Lakewood Rd. & Barton Ave.)
Point Pleasant, N. J.,)

O R D E R

Holders of Plenary Retail Consump-)
tion License C-2 issued by the)
Mayor and Council of the Borough)
of Point Pleasant.)
- - - - -)

BY THE COMMISSIONER:

It appearing that by Order dated November 4, 1946, the license held by the above named defendants was suspended for a period of fifteen days, and that the effective date of said suspension was reserved for future determination (Re Dolan & Reininger, Bulletin 736, Item 9), and

It further appearing that defendants' premises have now been reopened for business;

It is, on this 16th day of April, 1947,

ORDERED that the fifteen-day suspension heretofore imposed herein shall commence at 2:00 a.m. April 23, 1947, and terminate at 2:00 a.m. May 8, 1947.

ERWIN B. HOCK
Commissioner.

8. HOURS OF SALE - EFFECT OF C. 97, P.L. 1946, AMENDING R.S. 1:1-2.3 - DAYLIGHT SAVING TIME EFFECTIVE THROUGHOUT THE STATE FROM LAST SUNDAY IN APRIL UNTIL LAST SUNDAY IN SEPTEMBER.

Under New Jersey law (Revised Statutes, 1:1-2.3) the standard of time in the State is Eastern Standard Time except from the last Sunday in April until the last Sunday in September, in each year, when the standard time is Eastern Daylight Saving Time which is one hour in advance of Eastern Standard Time.

The law is State-wide in its application and is binding on all municipalities.

From midnight Saturday, April 26th, and throughout the five-month Daylight Saving period, the time will be one hour in advance of the present Eastern Standard Time. To illustrate: As of midnight Saturday, April 26th, clocks are to be turned ahead one hour. If the regulations of "Municipality X" require closing between the hours of 2:00 a.m. and 7:00 a.m., that municipality's licensees must close when the changed clock-time reaches 2:00 a.m. and remain closed until the changed clock-time reaches 7:00 a.m.

In some other states the change to Daylight Saving Time will take place at 2:00 a.m. on the morning of Sunday, April 27th. Similarly, in some New Jersey municipalities, there are ordinances or resolutions or executive proclamations which indicate that the change to Daylight Saving Time is to take place, in the particular municipality, at 2:00 a.m. on the morning of Sunday, April 27th. But regardless of those municipal ordinances, resolutions or proclamations, the change to Daylight Saving Time will be effective in all New Jersey municipalities not at 2:00 a.m. on the morning of Sunday, April 27th but at midnight Saturday, April 26th.

ERWIN B. HOCK
Commissioner.

Dated: April 21, 1947.

9. FAIR TRADE - NOTICE OF COMPLETE PUBLICATION.

April 18, 1947.

The next official publication of minimum resale prices pursuant to Fair Trade rules (Regulations No. 30) will become effective on June 3, 1947. Price listings must be filed at the offices of this Department not later than Monday, April 28, 1947.

It is the Department's decision that the publication shall combine all of the prices into one complete pamphlet superseding the March 1947 publication.

In submitting price lists to the Department for this complete publication, it is requested that:

(1) A complete schedule of all items offered for sale by manufacturers and wholesalers in this State shall be submitted. Exceptions will be considered only if good cause be shown on or before Monday, April 28, 1947. However, listers are placed on notice that pursuant to the ruling of October 22, 1945, brands of alcoholic beverages not listed in Fair Trade publications may not be price-

advertised (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in New Jersey. Listers will recognize the extreme disadvantage they impose upon retailers who are restricted in the sales promotion of brands not listed in Fair Trade.

(2) The Department earnestly suggests the maintenance of the schedule of former OPA markups (33-1/3% on spirits; 45% on cordials and liqueurs and 50% on wines) for all items listed in the forthcoming publication. Price listings must include all Federal and State taxes, including the new State tax increase. It is of the greatest economic importance to retailers and to all branches of the industry alike that retailers shall be afforded fair markups.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the complete price pamphlet is mailed to all retail licensees.

ERWIN B. HOCK
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

MARTIN CASPER & CHARLES MERLIN)
T/a TRENTON SEAFOOD BAR & GRILLE)
17 So. Virginia Avenue)
Atlantic City, N. J.,)

CONCLUSIONS
AND ORDER

-----)
Holders of Plenary Retail Consump-)
tion License C-122 issued by the)
Board of Commissioners of the)
City of Atlantic City.)
-----)

Martin Casper & Charles Merlin, Defendant-licensees, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging the sale of alcoholic beverages at retail for a price below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On March 24, 1947, an employee of the defendants sold, on the licensed premises, to an investigator of the State Department of Alcoholic Beverage Control a pint bottle of PM Deluxe Blended Whiskey and received in payment therefor the sum of \$2.17. The minimum resale price of the pint bottle of PM Deluxe Blended Whiskey on said day was \$2.18. Bulletin 751.

Defendants have no prior adjudicated record. I shall suspend the license for the minimum period for violations of this nature -- ten days (Re Revallo, Bulletin 303, Item 2), and remit five days thereof because of the plea, leaving a net suspension of five days.

Accordingly, it is, on this 17th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-122, issued by the Board of Commissioners of the City of Atlantic City to Martin Casper & Charles Merlin, t/a Trenton Seafood Bar & Grille, for premises 17 So. Virginia Avenue, Atlantic City, be and the same is hereby suspended for five (5) days, commencing at 7:00 a.m. April 28, 1947, and terminating at 7:00 a.m. May 3, 1947.

ERWIN B. HOCK
Commissioner

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO PERSONS ACTUALLY OR APPARENTLY INTOXICATED IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

IRVING MELTZER & HERMAN GELLER)
t/a EM & GE)
121-123 E. Fourth St.)
Lakewood, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consump-)
tion License C-2 issued by the)
Township Committee of the Township)
of Lakewood.)

Irving Meltzer and Herman Geller, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge alleging that, in violation of Rule 1 of State Regulations No. 20, they sold alcoholic beverages to and permitted the consumption of alcoholic beverages by a person actually or apparently intoxicated.

The file herein discloses that Elijah ---, Cook 3/c, U.S. Navy, entered defendants' premises at about 11:00 p.m. March 14, 1947. There is evidence which indicates that Elijah --- was intoxicated when he entered defendants' premises and that "he was served one beer after another" by bartenders in defendants' premises. Eventually he became so intoxicated that he threw an empty beer bottle through a plate glass window and caused other damage to the premises before he was arrested by police officers who were summoned by one of the bartenders.

Sale or service of alcoholic beverages to a man in the armed services when that person is actually or apparently intoxicated is a serious violation. I shall, therefore, suspend the defendants' license for a period of forty days, less five days for the plea entered herein, making a net suspension of thirty-five days. Pe Sacco, Bulletin 589, Item 4; Re Roskosky, Bulletin 607, Item 11.

Accordingly, it is, on this 17th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Lakewood to Irving Meltzer & Herman Geller, t/a Em & Ge, for premises 121-123 E. Fourth Street, Lakewood, be and the same is hereby suspended for thirty-five days, commencing at 2:00 a.m. April 23, 1947, and terminating at 2:00 a.m. May 28, 1947.

ERWIN B. HOCK,
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

FRED COHEN
T/a CALDWELL TAVERN
365-367 Bloomfield Ave.
Caldwell, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-2, issued by the
Borough Council of the Borough of
Caldwell.

Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

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

On March 12, 1947, an inspector of the State Department of Alco-
holic Beverage Control seized one 4/5 quart bottle labeled "King
William IV V.O.P. Brand Blended Scotch Whisky", one 4/5 quart bottle
labeled "Blended Scotch Whisky Johnnie Walker Black Label", one 4/5
quart bottle labeled "Teacher's Highland Cream Perfection of Blended
Scotch Whisky", one 4/5 quart bottle labeled "Black & White Blended
Blended Scotch Whisky", one 4/5 quart bottle labeled "Cutty Sark
Blended Scots Whisky"; and one 4/5 quart bottle labeled "Blended
Scots Whisky Haig & Haig", when his preliminary field tests dis-
closed that the contents of said six bottles were not genuine as
labeled. Subsequent analyses by the Department's Chemist disclosed
that said bottles had all been refilled or partially refilled with
an alcoholic beverage other than that described on the respective
bottles.

That the licensee, as he claims, had no knowledge of the illegal
acts of refilling is no defense. Cf. Cedar Restaurant & Cafe Co. v.
Hock, 135 N.J.L. 156.

The licensee has no prior adjudicated record. I shall suspend
the license for the minimum period indicated in six-bottle cases,
25 days, Re Downie, Bulletin 702, Item 2, and remit five days
because of the plea, Re Gelb, Bulletin 741, Item 8, leaving a net
suspension of twenty days.

Accordingly, it is, on this 18th day of April, 1947,

ORDERED that Plenary Retail Consumption License C-2, issued by
the Borough Council of the Borough of Caldwell to Fred Cohen,
t/a Caldwell Tavern, for premises 365-367 Bloomfield Avenue, Caldwell,
be and the same is hereby suspended for a period of twenty (20) days,
commencing at 12:01 a.m. April 27, 1947, and terminating at 1:00 a.m.
May 17, 1947.

ERWIN B. HOCK
Commissioner.

13. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES,
JUKE BOX, FURNISHINGS AND EQUIPMENT IN RESTAURANT SPEAKEASY
ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 7093
January 26, 1947, of a quantity of)
alcoholic and other beverages,)
merchandise, two music boxes,)
fixtures and furnishings at)
38 South Smith Avenue, in the)
Borough of Penns Grove, County of)
Salem and State of New Jersey.)
-----)

ON HEARING
CONCLUSIONS AND ORDER

Joseph Narrow, Esq., Attorney for Lilburg Brown.
Victory Music Company, by Irving Firstman, Pro Se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes to determine whether a quantity of alcoholic and other beverages, merchandise, two music boxes, fixtures and furnishings, described in a schedule attached hereto, seized on January 26, 1947 at 38 South Smith Avenue, Penns Grove, New Jersey, constitute unlawful property and should be forfeited.

It appears that on the day in question Etta Robinson sold alcoholic beverages for Pete Dixon at Dixon's dwelling at the above address. Etta Robinson and Pete Dixon did not hold any license authorizing either of them to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

Etta Robinson was arrested on charge of selling alcoholic beverages without a license and possession of alcoholic beverages with intent to sell the same unlawfully and Pete Dixon was arrested on charge of possession of alcoholic beverages with intent to sell the same unlawfully. ABC agents seized the stock of alcoholic beverages, merchandise, furnishings and equipment in the place.

I am satisfied from the evidence in the instant case and the fact that Dixon was arrested and convicted in 1943 for operating a speakeasy in Penns Grove, that the seized alcoholic beverages were intended for sale and hence are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and the other beverages, merchandise and equipment seized therewith in the building, are subject to forfeiture. R.S. 33:1-1(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, an appearance was entered for Victory Music Company seeking return of the two music boxes, and for Lilburg Brown, by counsel, seeking return of some of the articles seized.

At the conclusion of the testimony given by the ABC agents, counsel for Lilburg Brown, in the latter's presence, withdrew his claim.

Mr. Firstman, representing the Victory Music Company, stated that he was not inclined to present any evidence on behalf of his company, that he had been instructed to ascertain whether his company could obtain return of the machines, by purchase or otherwise, upon payment of their value.

The hearing was then adjourned pending appraisal of the machines and decision by the company whether it desired to present any evidence in support of its application for return of the machines. Thereafter the company was advised of the appraised value of the machines and notified this Department that it had decided not to deposit that sum to obtain return of the machines. The company also advised that it did not intend to submit any evidence but would accept whatever decision the Commissioner made on the existing record; that it would endeavor to repurchase the machines if and when they were placed on sale.

In net, therefore, forfeiture of the seized property is not contested and no claim for return of any portion of the property has been presented.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A", attached hereto, 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.

Dated: April 21, 1947.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 2 - 4/5 quart bottles whiskey
- 144 - bottles beer
- 33 - empty beer bottles
- 19 - assorted whiskey glasses
- 1 - Rockola coin music machine, serial #58680 and coins therein
- 1 - Wurlitzer music machine, Model 71, serial #421692 and coins therein; on stand Model 710, serial #130612
- 1 - Sun Flame oil heater
- 1 - Coca Cola ice box
- 4 - wooden and metal tables
- 4 - metal stands
- 16 - metal chairs
- 4 - wooden tables
- 4 - wooden seats
- 2 - wooden sections of seats
- 4 - wooden booth sections
- 4 - booth sections
- 2 - wooden partitions
- 8 - imitation leather cushions
- 650 - bottles soda
- 24 - empty soda bottles
- 16 - packages cigarettes
- 1 - \$1.00 bill

14. STATE LICENSES - NEW APPLICATION FILED.

CVA Corporation
50 West 57th St.
New York, N. Y.

Application for Wine Wholesale License filed April 18, 1947.

Erwin B. Hock
Commissioner.