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

BULLETIN 657 MARCH 19, 1945

1. APPELLATE DECISIONS - MONESSON v. LAKEWOOD TOWNSHIP.

LOUIS MONESSON,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Robert A. Lederer, Esq., Attorney for Appellant.
J. Elmer Matthews, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's refusal to renew appellant's plenary retail consumption license for the present (1944-45) fiscal year.

In view of the disposition hereinafter noted, no useful purpose will be served by a detailed description of the evidence produced by respondent to sustain its denial of appellant's renewal application. It is only necessary to state that, while the evidence raises a grave suspicion concerning the improper manner in which appellant is alleged to have conducted his premises during the preceding licensing year, the proof presented on the appeal lacks the weight required to support respondent's action.

This conclusion is fortified by the evidence given by the local clerk, whose duties also include that of license inspector, and also by the evidence of two local police officers, all of whom testified that, in their opinion, the appellant's license should have been renewed. While several complaints were received by the clerk concerning the operation of the appellant's premises, none of them appear to have been investigated or verified by the respondent.

As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence. Cf. Vasto v. Highlands, Bulletin 622, Item 4; Wright v. Gloucester, Bulletin 622, Item 5.

If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted. See R. S. 33:1-24. In this connection, it is to be observed that during the 1942-43 fiscal year, respondent suspended the appellant's license

for a period of twenty days for sales of alcoholic beverages to intoxicated persons. Instead of then denying appellant's application for renewal for the 1943-44 fiscal year because of this adjudicated record of misconduct during the preceding year, the respondent chose to approve the application. Common fairness to the licensee dictates that a subsequent refusal to renew for the 1944-45 licensing year should be supported by probative proof of misconduct during the fiscal year immediately preceding, and not merely on the disciplinary proceedings consummated several years last past. Cf. Wright v. Gloucester, supra.

While this appeal was pending, the appellant was apprehended in the commission of a violation of Rule 1 of State Regulations No. 20, viz., the sale of alcoholic beverages to intoxicated persons. To a charge alleging such violation the appellant pleaded non vult. For the reasons stated in the conclusions entered in the disciplinary proceedings, decided simultaneously herewith (see Bulletin 657, Item 2), the respondent has been directed to cease operations at the premises in question, effective March 19, 1945, at 12:01 a.m., for the remainder of the present fiscal year, viz., until June 30, 1945.

Although the reversal of respondent's action herein necessitates a direction that it issue a license for the present (1944-45) fiscal year to the appellant, the effect of the order entered in the disciplinary proceedings, supra, requires that, immediately upon the issuance of such license, it shall become suspended and continue under such suspension for the balance of its term, viz., until June 30, 1945. In the event appellant applies for a renewal of such license for the succeeding licensing year commencing July 1, 1945, the respondent may then consider whether, in the light of all the then existing circumstances, the license should be renewed.

The extension order entered herein on June 28, 1944, under which the appellant has been conducting his business ever since July 1, 1944, will be vacated, effective March 19, 1945, at 12:01 a.m.

Accordingly, it is, on this 12th day of March, 1945,

ORDERED, that respondent's action in refusing to renew appellant's plenary retail consumption license for the present (1944-45) fiscal year for premises 428 Clifton Avenue, Lakewood, be and the same is hereby reversed, and respondent is directed to issue to appellant the renewal license for which he has applied; and it is further

ORDERED, that the order entered herein on June 28, 1944, extending the term of appellant's plenary retail consumption license issued to him for the 1943-44 fiscal year, be and the same is hereby vacated, effective March 19, 1945, at 12:01 a.m.

ALFRED E. DRISCOLL
Commissioner.

2. DISCIPLINARY PROCEEDINGS -- SALE OF ALCOHOLIC BEVERAGES TO AN INTOXICATED PERSON, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - AGGRAVATING CIRCUMSTANCES - LICENSE SUSPENDED FOR BALANCE OF TERM.

In the Matter of Disciplinary Proceedings against

LOUIS MONESSON
428 Clifton Avenue
Lakewood, N. J.,

Holder of Plenary Retail Consumption License C-18, issued by the Township Committee of the Township of Lakewood for the 1943-44 fiscal year, and extended for the 1944-45 fiscal year by order of the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Louis Monesson, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that he sold alcoholic beverages to an intoxicated person, in violation of Rule 1 of State Regulations No. 20.

On January 19, 1945 two ABC agents entered the defendant's tavern shortly before 1:00 o'clock in the afternoon. They observed an obviously intoxicated person, while standing at the bar, consume a portion of a glass of beer. After removing this glass from the inebriate's possession, they noticed him attempt to drink from a beer glass which belonged to another patron. The licensee, who was then behind the bar, thereupon forcibly seized this glass from the intoxicated person and deliberately threw its contents in the latter's face, at the same time exclaiming, in an angry tone, "This isn't your glass! Those men (indicating the ABC agents) took your glass."

In a written statement obtained from the defendant's bartender, he relates that, when the intoxicated person arrived at the premises between the hours of 9:00 and 10:00 o'clock that morning, he "refused to serve him for about an hour" because it "appeared as if he had been drinking." After that he "possibly served him four beers" and, when he was relieved for lunch shortly after noon time by the defendant, the inebriate "was showing the effects of having too much to drink and was trying to drink other people's drinks." He adds that, when he left for lunch, this person had already consumed all of his beer and that he (the bartender) "would not have served him another drink."

The circumstances surrounding the commission of the instant violation are sufficiently aggravated to warrant the imposition of a stern penalty. This case must be considered in the light of the

defendant's previous record of having received a twenty-day suspension upon being found guilty of a similar violation in May 1943 by the local issuing authority, and its refusal to renew the defendant's license for the present licensing year commencing July 1, 1944 upon the alleged ground, among others, that the defendant had, during the fiscal year 1943-44, sold alcoholic beverages to intoxicated persons. When appeal therefrom was filed, I entered an order extending the term of the defendant's 1943-44 license pending the determination of the appeal, pursuant to the provisions of R. S. 33:1-22. It is only by virtue of such extension order that the defendant has been permitted to continue operations since July 1, 1944.

While in the appeal case, decided simultaneously herewith (see Bulletin 657, Item 1), it was determined that the probative proof did not meet the standard necessary to sustain the refusal to renew the license, the fact, nevertheless, remains that the defendant, during the pendency of the appeal and while operating under the extension order, committed the same type of violation alleged by the issuing authority in its refusal to renew the license. The circumstances, therefore, warrant that the privileges of the defendant's license be suspended for the remainder of the current licensing year. The local issuing authority will thus be afforded a further opportunity to determine whether, in the event application therefor is made, the license should be renewed for the 1945-46 fiscal year. The instant suspension may be considered by the authority in reaching such determination.

The extension order entered in the appeal case, supra, has been vacated, effective March 19, 1945, at 12:01 a.m. The license directed to be issued to the defendant for the present licensing year in those appeal proceedings will remain under suspension, immediately upon its issuance, for the remainder of the term, viz., until June 30, 1945.

Accordingly, it is, on this 12th day of March, 1945,

ORDERED, that the license directed to be issued to the defendant by the Township Committee of the Township of Lakewood for the 1944-45 fiscal year for premises 428 Clifton Avenue, Lakewood (see Monesson v. Lakewood, supra), be and the same is hereby directed to be suspended, immediately upon its issuance, and to remain under such suspension for the balance of the present fiscal year, viz., until June 30, 1945.

ALFRED E. DRISCOLL
Commissioner.

3. APPELLATE DECISIONS - WEBER v. LAKEWOOD TOWNSHIP.

HARRY WEBER,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDERS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD,)
Respondent)

Robert A. Lederer, Esq., Attorney for Appellant.
J. Elmer Matthews, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's refusal to renew appellant's plenary retail consumption license for the present fiscal year.

No written objections to the renewal were received by respondent and no hearing was held thereon. During the previous licensing year the respondent had not instituted any disciplinary proceedings against appellant for misconduct of his licensed premises. The first intimation received by appellant as to respondent's action was when he was notified by the clerk of the denial of the renewal without any reason being given.

The respondent municipality is primarily a winter resort. During the late fall and extending throughout the winter months, it appears that some of the hotel employees over-indulge in intoxicants and, while under the influence of liquor, congregate near the appellant's premises and make general nuisances of themselves.

If these conditions are attributable to the appellant, there is no question that respondent was justified in refusing to renew his license. Most of the testimony offered by the respondent in an attempt to show misconduct in the operation of the appellant's tavern is circumstantial. All of it is inconclusive.

The testimony of the local clerk, who also acts in the capacity of license inspector, is quite significant. He stated that no written objections concerning the manner in which appellant conducted his tavern had been lodged with him and that he had never observed any violations occurring at the premises. None of the general verbal complaints relative to the conditions at or near the appellant's premises appear to have been investigated and there is nothing in the record to show that they were well founded or occasioned by any misconduct on the part of appellant. The clerk further stated that it was his opinion that the appellant's license should have been renewed.

In addition, evidence presented by two local policemen is favorable to the appellant. They testified that the location of the appellant's tavern is within their patrol and that they had never observed any infractions there for which the appellant was responsible.

The appellant, whose first license was issued to him in October 1935, has suffered only one suspension of his license. In April 1943 the respondent imposed a penalty against his license of twenty days for sales of alcoholic beverages to intoxicated persons. No proceedings of any kind were instituted against him during the 1943-44 fiscal year.

While it is true that the determination of whether a liquor license should be renewed rests within the discretion of the issuing authority, nevertheless the exercise of such discretion must be based on reasonable and valid grounds. In this case, the deplorable situation that exists in the area in question presents a police problem that warrants drastic action on the part of respondent. It may not, however, attempt to remedy the situation by saddling the responsibility on the appellant without offering adequate affirmative proof that the conduct of his premises contributes to the conditions requiring correction. On the record presented, I have no alternative other than to reverse the refusal to renew appellant's license. Cf. Vasto v. Highlands, Bulletin 622, Item 4; Wright v. Gloucester, Bulletin 622, Item 5.

The appellant's premises are immediately adjacent to those of Louis Monesson, whose license also was not renewed upon substantially the same evidence presented in the instant case. In reversing respondent's action in that case (see Bulletin 657, Item 1, decided simultaneously herewith), I used the following language, which is peculiarly apt to the facts of this case:

> "As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence. Cf. Vasto v. Highlands, Bulletin 622, Item 4; Wright v. Gloucester, Bulletin 622, Item 5.
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> "If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted. See R. S. 33:1-24. In this connection, it is to be observed that during the 1942-43 fiscal year, respondent suspended the appellant's license for a period of twenty days for sales of alcoholic beverages to intoxicated persons. Instead of then denying appellant's application for renewal for the 1943-44 fiscal year because of this adjudicated record of misconduct during the preceding year, the respondent chose to approve the application. Common fairness to the licensee dictates that a subsequent refusal to renew for the 1944-45 licensing year should be supported by probative proof of misconduct during the fiscal year immediately preceding, and not merely on the disciplinary proceedings consummated several years last past. Cf. Wright v. Gloucester, supra."

The reversal of respondent's action requires a directive that it issue the license for which application was made. It has come to my attention, however, that, pending these appeal proceedings, the appellant has died, since which time the premises in question have been closed. The directive, therefore, will be that the respondent issue a license certificate in the name of the decedent. Since the privileges under a liquor license automatically lapse upon the death of a licensee, no alcoholic beverage activity whatever may be conducted under such license certificate unless and until an extension thereof is granted to the decedent's personal representative, in accordance with the provisions of R. S. 33:1-26.

Accordingly, it is, on this 12th day of March, 1945,

ORDERED, that the action of respondent in denying appellant's application for renewal of his plenary retail consumption license for the current fiscal year be and the same is hereby reversed; and it is further

ORDERED, that respondent issue a license certificate in the name of the appellant in accordance with the application submitted by him to respondent; and it is further

ORDERED, that no alcoholic beverage activity whatever shall be carried on under the aforesaid license certificate unless and until it shall be extended by respondent in accordance with the provisions of R. S. 33:1-26.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - MILOW v. LAKEWOOD TOWNSHIP.

PAUL MILOW,)
Appellant,) ON APPEAL
-vs-) CONCLUSIONS AND ORDERS
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD,)
Respondent.)

Robert A. Lederer, Esq., Attorney for Appellant.
J. Elmer Matthews, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is one of four appeal cases, each involving the denial of a renewal of a plenary retail consumption license in the Township of Lakewood. See Monesson v. Lakewood, Bulletin 657, Item 1, and Weber v. Lakewood, Bulletin 657, Item 3, both decided yesterday, in which the refusal to renew the licenses therein concerned was reversed because of respondent's failure to support with adequate evidence its allegation of improper conduct in the operation of either licensed establishment. See also Witkowski v. Lakewood, Bulletin 656, Item 3.

As in the cited cases, it is admitted that no written objections were filed with respondent to the renewal of this license and no one appeared to object thereto at the meeting at which respondent considered the renewal. The application was, nevertheless, denied by respondent without any stated reason for its determination.

None of the members of the Township Committee appeared at the appeal hearing in this case. In all, three witnesses were called by respondent. The first of these, the local clerk and license inspector, testified that he had investigated every verbal complaint received by him during the licensing year 1943-44 regarding the operation of appellant's tavern but was unable to uncover any evidence to substantiate them. When asked whether he knew of any reason which would justify the refusal to renew appellant's license, he answered in the negative.

Two other persons, one a merchant whose store is located near the appellant's premises, and the other, who resided nearby until the latter part of April 1944, complained of the number of intoxicated persons who roamed the streets in the neighborhood, some of whom

assembled in front of the tavern and cavorted in a boisterous manner. Neither of these witnesses, however, had ever visited the tavern and had never observed the service of alcoholic beverages to any intoxicated persons by the appellant. The merchant, who testified that two alleys located in the vicinity were "steadily filled with....drunken persons", admitted that "I really cannot say" where they came from. The other witness, who stated that she had observed drunken persons approach her residence from the direction of appellant's tavern, conceded that she could not "say they came from Milow's."

The appellant explained that ever since he became a licensee in June 1934, there has been a steady influx of colored people into that section, with the result that his trade is now predominantly among the negro people. While the appellant admits that many colored persons congregate at or near the corner where his saloon is located, he asserts that very few of these particular persons are patrons of his tavern. He maintains that he is extremely diligent in seeing to it that none of his customers over-indulge in liquor and that he is very strict about permitting any unnecessary noises at his premises.

The appellant's testimony is corroborated by that of two local police officers. Both stated that the appellant operates his saloon in a proper manner and that they had never observed any violations of the law there. One of them stated that he "had occasion to patrol there every night for a month" and only once during that month was it necessary for him to caution the licensee. He added that "the only thing I observed there was loud talking; they were not drunk, but they were the type of people would talk loud, and all I had to do was go to the door and tell them to quiet down and they would."

In the more than a decade that appellant has held his license, he had only once, prior to respondent's denial of his current renewal license, been cited in disciplinary proceedings. In June 1942 respondent charged him with permitting disturbances and unnecessary noises at his premises but, after reviewing the evidence given, absolved him of any guilt of the charges. If there is any truth to the instant allegations against the appellant, it should not be difficult to obtain the requisite proof to substantiate them. Proceedings founded thereon, in which both sides are given an equal opportunity to present evidence, may then be instituted and, if guilty, appellant may be adequately penalized. It is not a reasonable exercise of discretion, however, to base a refusal to renew a license upon the type and quantum of evidence that has been presented in the record before me in this case. Cf. the Weber and Monesson cases, both supra.

Respondent's action will be reversed.

Pending this appeal, the appellant committed a violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20 in that he sold alcoholic beverages to minors. See Re Milow, Bulletin 657, Item 5, just decided, in which I imposed a thirty-day suspension.

The order extending the term of appellant's 1943-44 license, under which he has been conducting his tavern since July 1, 1944, will be vacated, effective March 19, 1945, at 12:01 a.m. The license for the current licensing year, which respondent will be directed to issue herein, will be and remain suspended until the full thirty-day penalty has been served. See Re Milow, supra.

Accordingly, it is, on this 13th day of March, 1945,

ORDERED, that respondent's denial of appellant's application for renewal of his plenary retail consumption license for the current fiscal year be and the same is hereby reversed, and respondent is directed to issue to appellant the license for which he has applied; and it is further

ORDERED, that the order dated June 28, 1944, extending the term of the license issued to appellant for the 1943-44 fiscal year, be and the same is hereby vacated, effective March 19, 1945, at 12:01 a.m.

ALFRED E. DRISCOLL
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against)
)
PAUL MILOW)
121-123 E. 4th Street)
Lakewood, N. J.,) CONCLUSIONS AND ORDER
)
Holder of Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Lakewood for the 1943-44 fiscal year, and extended for the 1944-45 fiscal year by order of the State Commissioner of Alcoholic Beverage Control.)

Paul Milow, Defendant-licensee, Pro se.
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded not guilty to charges alleging that he sold, served and delivered alcoholic beverages to two minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

One of the minors, a nineteen-year-old female, testified that she had been served beer at the defendant's tavern on at least ten or eleven occasions. As to several of these instances, she was corroborated by the other minor, a twenty-year-old sailor, and another witness. On the last occasion, to wit, October 23, 1944, the minors visited the tavern together, accompanied by two other sailors. They ordered and were served four glasses of beer at a table in the reception room by Charles Brown, one of the defendant's bartenders. After consuming these beers, one of the sailors went to the bar and returned with four more glasses of beer, which he had obtained from the same bartender. The minor sailor further testified that, on two prior occasions, he had been served beer and whiskey at the defendant's premises.

Charles Brown remembered the occurrence of October 23, 1944, but denied that he had served either minor with any alcoholic beverages. He testified that he had brought only two glasses of beer to the table and these he placed in front of the two adult sailors. He admitted, however, that he had later delivered four glasses of beer

to one of these sailors at the bar and, when questioned as to whether the minors might have consumed any of this beer, he replied, "That could be."

The defendant produced another of his bartenders, who admitted that the female minor frequented the tavern but stated that she drank only non-alcoholic beverages. In addition, the defendant testified that he had never seen either of the minors at his premises.

After a careful review of the entire record, I am satisfied that the minors, whose evidence was substantiated by the testimony of the third witness, have told a truthful story. Their testimony was clear and convincing and no reason is suggested why they should fabricate a story out of thin air. In addition to the categorical denials of the defendant and one of his bartenders as to the consumption of alcoholic beverages by the minors, the testimony of Charles Brown concerning the incident of October 23rd is entitled to little weight. Even if it be assumed that he first served only two glasses of beer at the table, his perfunctory delivery of the second round of four glasses of beer to one of the sailors in the party is indicative of a careless disregard of the salutary regulations designed to prevent the sale of liquor to persons under the age of twenty-one years.

I find the defendant guilty as charged.

The defendant has an otherwise clear record and, ordinarily, would merit only a ten-day penalty. The repeated occasions upon which the female minor was permitted to imbibe alcoholic beverages, however, is an aggravating circumstance. Moreover, the defendant, whose renewal license for the present licensing year was denied by the local issuing authority, has been operating under an order extending the term of his 1943-44 license pending the determination of the appeal from such denial. See Milow v. Lakewood, Bulletin 657, Item 4, decided today. Any violation occurring after the licensee has been put on notice that the issuing authority has deemed him not worthy to continue the privileges of his license is deserving of stern censure.

A consideration of all of the circumstances leads to the imposition of a thirty-day penalty for the instant violation.

The extension order entered in the appeal case, supra, has been vacated, effective March 19, 1945, at 12:01 a.m. The license directed therein to be issued to the defendant will be and remain suspended until the full thirty-day penalty has been served.

Accordingly, it is, on this 13th day of March, 1945,

ORDERED, that the license directed to be issued to the defendant by the Township Committee of the Township of Lakewood for the 1944-45 fiscal year for premises 121-123 E. 4th Street, Lakewood (see Milow v. Lakewood, supra), be and the same is hereby directed to be suspended, and to remain under suspension, until April 18, 1945, at 12:01 a.m.

ALFRED E. DRISCOLL
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PURCHASED IN NEW JERSEY FOR UNLAWFUL IMPORTATION INTO ANOTHER STATE - TRANSPORTATION OF LIQUOR IN VEHICLES NOT LICENSED FOR THE TRANSPORTATION OF ALCOHOLIC BEVERAGES OR AUTHORIZED BY SPECIAL PERMIT - VEHICLE AND CONTENTS SUBJECT TO SEIZURE AND FORFEITURE - APPLICANT FOR REMISSION OF FORFEITURE MUST ESTABLISH HIS GOOD FAITH AND UNWITTING VIOLATION - SEIZED BEVERAGES DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED - TRUCK AND TRAILER ORDERED RETURNED TO OWNER.

In the Matter of the Seizure on November 19, 1943 of 132 cases each containing twelve 4/5th quarts of Baltimore Club Private Vat Whiskey and 202 cases each containing 24 pint bottles of whiskey of the same brand; and a White Tractor and a Fruehauf Trailer, in a service station located on Route No. 25, in the City of Newark, County of Essex and State of New Jersey.	Case No. 6544 ON HEARING CONCLUSIONS AND ORDER

Benjamin Potoker, Esq., Attorney for Martin F. Herron and Jake R. Smith.
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 1584 - 4/5 quarts and 4848 pints of whiskey bearing Federal strip stamps, and a White Tractor and Fruehauf Trailer, seized in the case, constitute unlawful property and should be forfeited.

On November 19, 1943 Jake R. Smith of North Carolina purchased the above described whiskey from Abe Golub, Inc., holder of a plenary retail distribution license for premises located at 367-369 Springfield Avenue, Newark, N. J. The whiskey was being transported from the latter premises in the motor vehicle in question, carrying North Carolina registration plates, when seized by ABC agents at a service station in Newark, because the vehicle was not licensed to transport alcoholic beverages in New Jersey.

Under R. S. 33:1-2 a vehicle licensed by the Commissioner of Alcoholic Beverage Control must be used to transport, in this State, more than twelve quarts of whiskey intended for personal consumption or any quantity of alcoholic beverages intended for resale. Hence, in the instant case, the whiskey and the unlicensed vehicle in which it was being transported were prima facie subject to seizure and forfeiture in that such whiskey, although apparently tax paid, is none the less illicit because of the unlawful transportation. R. S. 33:1-1(i) and (y), 66. All personal property used in connection with an illicit alcoholic beverage enterprise is subject to seizure and forfeiture. Cf. Patrick v. Driscoll (N. J. Supreme Court, decided February 15, 1945).

When the matter came on for hearing pursuant to R.S. 33:1-66, Martin F. Herron, the owner of the truck and trailer, appeared, claimed that he was entirely innocent of wrongdoing and sought return of the motor vehicle.

Jake R. Smith also appeared and sought return of the whiskey. His claim is (1) that he was bringing the whiskey to his home in North Carolina for his personal use and as gifts, in interstate commerce, and hence, under Rule 2 of State Regulations No. 17, was permitted to use an unlicensed vehicle for that purpose, and (2) that, even if such rule does not apply and he violated the law in purchasing and transporting the whiskey, such violation was unwitting in that he was ignorant of the laws of this state and that he purchased the whiskey for personal use in entire good faith.

The transportation of the alcoholic beverages in question does not come within either the letter or the spirit of Rule 2 of State Regulations No. 17. This rule is applicable only to shipments through this state from a point outside this state to another point outside the state. It does not cover shipments of alcoholic beverages between any place in this state and points outside this state. Cf. Re Daniels and Kennedy, Bulletin 59, Item 4. For example, transporters who do not hold a New Jersey transportation license are required to obtain a special permit from the Department of Alcoholic Beverage Control in order lawfully to transport alcoholic beverages either from New Jersey wholesalers or manufacturers for delivery to a point outside this state or to transport alcoholic beverages between piers of import within New Jersey and points outside the state. Rules 1 and 2 of State Regulations No. 18.

In view of the foregoing, it is not necessary to discuss the requirements of such rule. However, it may be well to call attention to the fact that, contrary to counsel's contention, a claimant must establish that he was engaged in a bona fide lawful enterprise and lawfully permitted to import the alcoholic beverages into the place of its ultimate destination in order to come within the purview of the rule. The reasons for this and other requirements of the rule are set forth in detail in Re Hygrade Baking Co., Bulletin 656, Item 9.

The only issue here to be considered, in so far as Smith is concerned, is whether I should forego forfeiture of the whiskey. I have the discretionary authority to take such action under R. S. 33:1-66(e) if Smith establishes to my satisfaction (1) that he has acted in good faith and (2) that he unknowingly violated the law.

Ignorance of the law of this state governing the sale or transportation of alcoholic beverages is not, in itself, sufficient to warrant remission of forfeiture. It must also appear as an essential element of good faith that the person seeking return of property subject to forfeiture, aside from any unlawful sale, or transportation of alcoholic beverages in this state, was not otherwise engaged in an unlawful enterprise. In meeting these requirements, it is well here to point out that the person seeking remission of the forfeiture must not conceal or obscure what occurred. On the contrary, he must make a full and frank disclosure of the pertinent facts, otherwise his claim will be denied. Cf. Re Seizure Case No. 5242, Bulletin 356, Item 8; Seizure Case No. 5667, Bulletin 399, Item 2.

Smith is prohibited under North Carolina law from importing more than one gallon of whiskey into that state for his personal use. Section 22 of the North Carolina Alcoholic Beverage Control Act (c. 49, Public Laws 1937), which counsel for Smith stipulated I should consider as part of the record in the case, provides that:

"It shall be unlawful for any person, firm, or corporation to purchase in, or to bring in this State, any alcoholic beverage from any source, except from a county store operated in accordance with this Act, except a person may purchase legally outside of this State and bring into the same for his own personal use not more than one gallon of such alcoholic beverages. A violation of this section shall constitute a misdemeanor, punishable by fine or imprisonment, or both, in the discretion of the court."

Under such circumstances, it has been the consistent policy of the Commissioner to enforce confiscation of seized alcoholic beverages. This course is dictated by the consideration that a liquor law enforcement agency of a state should do everything within its power to discourage non-residents from purchasing alcoholic beverages in this state and smuggling their purchases into their home state. Consequently, the whiskey seized in the instant case will not be returned to Smith.

In view of this conclusion, no purpose will be served in these seizure proceedings in discussing at length the voluminous evidence concerning whether Smith purchased the whiskey for his personal use. If, as it appears, he purchased it for resale, it merely would furnish an additional ground for forfeiture of the whiskey because the retailer, under the terms of its license, may sell alcoholic beverages only to consumers for personal consumption. R. S. 33:1-2(3a). Alcoholic beverages sold by a retailer for purpose of resale are classed as illicit and subject to forfeiture. R. S. 33:1-2, R. S. 33:1-1(i) and R. S. 33:1-66.

However, some reference to the evidence is desirable in order to point out that Smith is not a person who purchased alcoholic beverages for his own use and, through ignorance, ran afoul of the laws of New Jersey and the laws of North Carolina. Quite to the contrary, Smith was dealing in alcoholic beverages on a large scale.

Smith admits that he has been convicted of violating North Carolina liquor laws on a number of occasions, the most recent one being in February 1943; that he held a retail beer and wine license in North Carolina, either at the time or shortly before the seizure; and that he was also in the "juke box" business. He is not licensed to deal in whiskey in North Carolina. He says that his income from all sources does not exceed $5,000.00 a year.

His story is that he came East with over $12,000.00 in cash on the chance of buying liquor; that he came to the Golub licensed premises casually and without previous arrangement; that despite the then scarcity of liquor he was there able to pick up 334 cases of whiskey; that he planned to use an indeterminate amount of the whiskey for his own use and to use some for Christmas gifts; that he was able, on short notice, to obtain a truck in New York to transport his purchase and have it at the retailer's premises within about an hour of the purchase. It is significant that the serial numbers by which the whiskey could be traced back to the retailer were on the cartons when delivered at the retailer's premises at about 5:30 p.m. on the day in question, but were defaced or obliterated between that time and the seizure, at about 7:30 p. m. Each of the parties involved denied that he had a hand in such destruction. In view of this background and the inherent improbabilities in Smith's story, it is unworthy of belief. I am not bound to accept his story at face value merely because it was uncontradicted. Where, as here, his testimony has an element of incredibility, I am not necessarily bound by uncontroverted evidence which is readily susceptible of conflicting inference. See Istvan v. Engelhardt, 131 N.J.L. 9.

There is every indication that Smith intended to resell the whiskey. It is clear that Smith planned to purchase whiskey in the Eastern market, where the source of supply, such as it was, was most plentiful, and illegally import the whiskey into his home state. He appears to have been a "black market" operator on a large scale. Activities of this nature will be given short shrift in this state.

I am convinced that Smith did not tell the true story of the transaction, which is an additional reason why his request for return of the whiskey is denied.

Smith's plea that he be permitted, now that he was caught, to return the whiskey to the source from which he purchased it, deserves no consideration. A similar request was made, and denied, in Hygrade Baking Co., supra.

Whether I should return the motor vehicle to Martin F. Herron depends upon whether he knew or should have anticipated that the truck would be used for the purpose of unlawfully importing alcoholic beverages into North Carolina and, in the course thereof, violated the laws of this state.

Herron has been in the trucking business in North Carolina for seven years, engaging principally in interstate transportation. His method of operation is to lease his trucks and the services of his drivers to other concerns. The truck in question, leased in this manner, and driven by Herron's employee, Luther Maing Butts, left North Carolina on the 16th day of November 1943 with a cargo of lumber consigned to various firms in New York City. Butts completed the deliveries on the 18th day of November 1943 and then sought a return load. Herron testified, under oath, that he had specifically instructed Butts not to accept alcoholic beverages for transportation in his trucks. Butts testified to like effect.

It appears that Butts was mainly responsible for obtaining return loads for Herron's trucks in New York City. Butts contacted and obtained the services of a broker or agent who supplied return loads and apparently Butts also personally solicited various shippers from time to time. His previous dealings were with established firms and return loads which he obtained were accompanied by waybills or other documents usual in the bona fide trucking business.

In the instant case Butts departed from this practice in undertaking the transportation of the alcoholic beverages for Smith. Butts says that he was reading in his truck, parked on a lot in New York City, when Smith came up to him and asked him to carry a load of liquor to an unspecified place in Spartansburg, South Carolina; that after a short conversation he agreed to do so and followed Smith's car to the retailer's licensed premises in Newark; that there the whiskey was loaded on the truck; that he did not ask Smith for a waybill or other document and was to follow Smith to whatever destination Smith chose.

I do not believe that arrangement between Butts and Smith for the transportation of the alcoholic beverages came about in this manner. I am satisfied, from Butts' demeanor and testimony at the hearing, that he was fully aware of the illegal nature of the transaction and knowingly aided Smith in his attempt to unlawfully import the alcoholic beverages into North Carolina.

The question is whether Herron should be held accountable for his driver's misconduct. The ready answer would be that the circumstances show that Butts acted entirely on his own, and seemingly it would not be fair to hold Herron responsible.

However, it is equally important that those engaged in the transportation business should not make their vehicles readily available to "black market" operators in alcoholic beverages. It is obvious that without a means of transportation, such operators could not carry on their activities. Hence, I shall hold trucking concerns whose vehicles are used to transport alcoholic beverages for "black market" operators to a high degree of responsibility.

In the instant case it appears that Herron conducted his business in a slipshod and careless manner in so far as Interstate Commerce Commission and Office of Defense Transportation regulations are concerned. It also appears that Herron should have exercised more care in the operation of his truck to prevent its illegal use for improper purposes. There appears to be ample basis for the forfeiture of the truck. However, inasmuch as this is the first case of this character to come before me, I shall give Herron the benefit of the doubt and grant his request for return of the motor vehicle. All trucking concerns using our state highways, however, are warned that if, hereafter, "black market" operators continue to use the methods described herein for the transportation of alcoholic beverages I shall hold the owners strictly accountable for the consequences of their negligence and the misconduct of their agents.

Accordingly, it is DETERMINED and ORDERED that the 1584 - 4/5 quarts and 4848 pints of "Baltimore Club Private Vat" whiskey, seized in the case, constitute unlawful property and that the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that such alcoholic beverages be sold, in whole or in part, at public sale for the use of the state, subject to the rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county or municipal institutions, whichever the Commissioner may hereafter determine to be for the best interest of the state; and it is further

ORDERED, that if, on or before the 19th day of March, 1945, Martin F. Herron pays the costs incurred in the seizure and storage of the White Tractor and Fruehauf Trailer, it will be returned to him.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 9, 1945.

7. MUNICIPAL ORDINANCES - SUNDAY SALES - ORDINANCE EXCEPTION PERMITTING SUNDAY SALES ONLY IN PUBLIC DINING ROOMS OF BONA FIDE HOTELS AND RESTAURANTS WITH MEALS APPEARS REASONABLE AND VALID IF IT CARRIES OUT A PUBLIC PURPOSE.

March 13, 1945

Rollin H. Schaffer, Board Clerk
Municipal Board of Lopatcong Township
Phillipsburg, N. J.

Dear Mr. Schaffer:

I have your letter of March 6th concerning a contemplated closing hour ordinance for Lopatcong Township.

You ask whether or not the Township Committee may, under the laws of our State, enact an ordinance providing that all bars shall be closed on Sunday, and prohibiting the sale of all alcoholic beverages on Sunday, "except when served with meals or food on a prepared table, in a place commonly known as the dining room."

Whether alcoholic beverages are to be permitted to be sold at all on Sundays in Lopatcong is, in the absence of a referendum on the question, a matter to be decided in the discretion of the Township Committee. Generally speaking, whatever hours of sale the municipal governing body fixes must apply uniformly to all licensees in the license class. (See Re Wenzel, Bulletin 19, Item 7, and the cases cited therein).

It is clear, of course, that to permit some plenary retail consumption licensees to sell when others are prohibited from doing so is discriminatory. But exceptions which affect alike all those similarly situated may be valid if reasonable and if they carry out a public purpose. Thus, there may be a valid exception in the case of a municipal ordinance permitting Sunday sales of alcoholic beverages in public dining rooms of bona fide hotels and restaurants with meals. (See the Princeton Borough ordinance provision approved ex parte by the late Commissioner Burnett in Re Warren, Bulletin 207, Item 10). But an exception providing merely for Sunday sales "with meals" or "with full-course meals" is too loose and cannot be approved. (See Re Bowers, Bulletin 170, Item 11).

When the contemplated ordinance shall be prepared, please send me a copy before introduction.

Kindly convey to the Township Committee members my cordial congratulations upon the thought they are giving this important matter of hours of sale, and upon their assumption of the responsibility for control imposed upon them by the Alcoholic Beverage Law.

Very truly yours,

Alfred E. Driscoll
Commissioner.