STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1117 JUNE 19, 1956.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1060 Broad Street Newark 2, N. J.

BULLETIN 1117 JUNE 19, 1956.

1. NEW LEGISLATION - REQUIREMENT OF COURT APPEARANCE BY A PARENT OR GUARDIAN OF A MINOR CHARGED WITH VIOLATION OF R. S. 33:1-81.

Assembly Bill No. 29 was approved by the Governor on May 22, 1956 and thereupon became Chapter 52 of the Laws of 1956. The Act, effective immediately, reads as follows:

"AN ACT to require court appearance by a parent or guardian of a minor charged with certain violations of the alcoholic beverage control laws.

"BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

"1. In any hearing for a violation of section 33:1-81 of the Revised Statutes the court in its discretion may require the attendance at such hearing of a parent or guardian, if there be no parent, of the minor charged with such violation if such parent or guardian is a resident of the State and may, in its discretion, compel such attendance by subpoena.

"2. This act shall take effect immediately."

The law has been assigned section number 33:1-81.1 in the Revised Statutes Cumulative Supplement.

WILLIAM HOWE DAVIS
Dated: June 12, 1956. Director.

2. APPELLATE DECISIONS - MAURONE v. CINNAMINSON TOWNSHIP.

DOMENICK MAURONE, JR.,)
Appellant,)
-vs-) ON APPEAL
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CINNAMINSON,) O R D E R
Respondent.)

Salvatore J. Avena, Esq. and Neil F. Deighan, Jr., Esq., Attorneys for Appellant.
Parker, McCay & Criscuolo, Esqs., by Robert W. Criscuolo, Esq., Attorneys for Respondent.
W. L. Smith, Jr., Esq., Attorney for Objector.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application for a new plenary retail distribution license for premises on the southerly side of State Highway #130, approximately 600 feet easterly from the intersection of the southerly side of said Highway and the easterly line of Cinnaminson Avenue, Township of Cinnaminson.

Prior to hearing herein, the attorney for appellant advised me in writing that, in view of the conclusions in

Maurone v. Cinnaminson and Shea (decided April 17, 1956, and not yet reported), his client consents to a dismissal of the pending appeal. No reason appearing to the contrary,

It is, on this 8th day of May, 1956,

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

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - PECK v. WEST ORANGE.

MORRIS PECK,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE TOWN OF WEST ORANGE,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Leonard Brass, Esq., Attorney for Appellant.
William E. Kennedy, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant herein pleaded guilty in disciplinary proceedings to a charge alleging that on November 2, 1955, he allowed, permitted and suffered the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20. Thereupon respondent suspended his License D-3, issued for premises 37 Harrison Avenue, West Orange, for thirty days (less five days for the plea), commencing at 7:00 a.m. March 12, 1956. Appellant appeals from the action of respondent.

Upon the filing of the appeal, an order dated March 12, 1956 was entered by me staying respondent's order of suspension until entry of a further order herein. R. S. 33:1-31.

The petition of appeal alleges that:

> "***The said decision of the Municipal Board was arbitrary, capricious, excessive and discriminatory in that the period of suspension was contrary to the evidence and facts in the case and excessive in relationship to the said facts."

The answer denies the aforesaid allegation and sets forth the following "Statement of Grounds":

> "***Due to the fact that the sale of alcoholic beverages was made to a minor, 16 years of age, as indicated by the statements in evidence, and the further fact that appellant was previously on June 20, 1950, found guilty of a similar charge of a sale of alcoholic beverages to a minor, and there being no denial of the sale, sub judice, the respondent board found the appellant guilty and suspended his license for thirty days, less five days."

There is no dispute as to the facts of the case. On November 2, 1955, in the absence of appellant, one of his clerks (Audrey Mohr) sold a bottle of gin and a bottle of vodka to a 16-year-old minor. The clerk testified at the hearing herein that at the time of the sale the minor exhibited to her an identification card indicating that the holder thereof was born on May 17, 1934. The card has been introduced as an exhibit in this case. The clerk further testified that appellant had instructed her not to sell to minors, and that she made the sale relying on the card, but she admitted that she had not obtained any written representation from the minor that he was twenty-one years of age or over. Aside from the plea entered below, there is no doubt in my mind that appellant was guilty as charged. See R. S. 33:1-77 and Rule 31 of State Regulations No. 20. The only question in the case is whether or not the penalty was excessive.

It is well established that the quantum of penalty rests within the sound discretion of the local issuing authority and will not be disturbed by the Director on appeal unless the penalty is clearly excessive and manifestly unreasonable. Brigantine Beach Hotel Corp. v. Brigantine, Bulletin 1068, Item 1; Stueber v. Washington, Bulletin 1107, Item 2. The minimum penalty imposed by me for a sale to a 16-year-old minor prior to January 16, 1956 was twenty days. Re Cramer, Bulletin 1066, Item 3. Moreover, it appears from the records of this Division that, effective June 26, 1950, the local issuing authority suspended appellant's license for a period of five days for a sale to a minor. The prior similar violation, although occurring more than five years ago, was properly considered in fixing penalty herein. Re Moscatelli, Bulletin 1054, Item 9. After reviewing the facts of the case and considering the oral argument herein, I conclude that the penalty imposed was not excessive. Hence I shall affirm the respondent's action.

Accordingly, it is, on this 10th day of May, 1956,

ORDERED that the thirty-day (less five days for the plea) suspension by respondent of Plenary Retail Distribution License D-3, held by Morris Peck, for premises 37 Harrison Avenue, West Orange, be and the same is hereby restored and reimposed against said license, commencing at 9:00 a.m. May 21, 1956, and terminating at 9:00 a.m. June 15, 1956.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - NEW TOWN TAVERN, INC. v. PENNSAUKEN TOWNSHIP (ORDER EXTENDING RENEWAL LICENSE UPON CONDITION).

NEW TOWN TAVERN, INC.,)
Appellant,)
-vs-) ON APPEAL
) O R D E R
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN,)
Respondent.)

Malandra & Tomaselli, Esqs., by Angelo D. Malandra, Esq., Attorneys for Appellant.
Thomas F. Salter, Esq., Attorney for Respondent.

BY THE DIRECTOR:

By order dated January 23, 1956, respondent was directed to issue a renewal of appellant's plenary retail consumption license for the current licensing year "upon the express condition that said renewal license is transferred to another and suitable person within 90 days of the date of this order". See Bulletin 1098, Item 2.

By verified petition, appellant has requested an extension of the 90-day period on the ground that it "has used every means available to [it] and counsel to obtain a buyer but to date has been unable to do so". I consented to entertain the petition provided the appellant discontinued all operation under its license until my further order.

After hearing oral argument of counsel for both parties, and considering the contents of the verified petition, I have reached the conclusion to extend the aforesaid time period for the balance of the licensing year, namely, June 30, 1956, provided, however, and upon the express condition, that no alcoholic beverage activity be permitted under the license until my further order.

Accordingly, it is, on this 8th day of May, 1956,

ORDERED that the 90-day time period referred to in the order dated January 23, 1956 be and the same is hereby extended until the termination of the current licensing year, namely, June 30, 1956, upon the condition, which shall be deemed a part of the appellant's Plenary Retail Consumption License C-30 as if expressly incorporated therein, that no alcoholic beverage activity be permitted under said license until my further order.

WILLIAM HOWE DAVIS
Director.

5. APPELLATE DECISIONS - NEW TOWN TAVERN, INC. v. PENNSAUKEN TOWNSHIP (ORDER RESTORING LICENSE TO FULL FORCE AFTER SUFFICIENT COMPLIANCE WITH TERMS OF PREVIOUS ORDER).

NEW TOWN TAVERN, INC.,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF PENNSAUKEN,

Respondent.

ON APPEAL
O R D E R

Malandra & Tomaselli, Esqs., by Angelo D. Malandra, Esq., Attorneys for Appellant.
Thomas F. Salter, Esq., Attorney for Respondent.

BY THE DIRECTOR:

By order dated January 23, 1956, respondent was directed to issue a renewal of appellant's plenary retail consumption license for premises at 7921 River Road, Delair, Pennsauken Township, for the current licensing year "upon the express condition that said renewal license is transferred to another and suitable person within 90 days of the date of said order." Bulletin 1098, Item 2.

By order dated May 8, 1956, I entered an order extending said 90-day period until the termination of the current licensing year upon the express condition "that no alcoholic beverage activity be permitted under said license until my further order."

The Acting Township Clerk of the Township of Pennsauken has sent to me the following letter, dated May 15, 1956:

"Dear Director: In re: New Town Tavern, Inc. v. Pennsauken.

The township committee is advised that the 98 shares of stock in the above corporation owned by Isabelle Bushkoff, the one share owned by Rose Marsillo, and the one share of stock owned by Shirley Rosen, have been transferred to Nicholas J. Petitte, 108 Holly Oak Ave., Somerdale, N. J., 98 shares, Sydney Handler, 118 Merchant St., Audubon, N. J., onsshare, and Benjamin Felton, Highland Road, Woodbury, N. J., one share.

Last evening, Nicholas J. Petitte and his attorneys, Joseph Tomaselli, Esq., and R. Cooper Brown, Esq., appeared before the township committee and discussed with the committee the new ownership of the corporation and the fact that Mr. and Mrs. Bushkoff and the other former stockholders would have no further interest in the corporation or in the plenary retail consumption license presently held by the corporation, and that neither Mr. and Mrs. Bushkoff, nor their representatives, would have anything further to do with the licensed premises or the operation of the alcoholic beverage business conducted at 7921 River Road, Pennsauken Township, Camden County, New Jersey.

After discussion, the township committee agreed, Mr. and Mrs. Bushkoff and their representatives apparently having no further interest in the business, to

consider that your order of January 23, 1956, requiring that the license be transferred to another and suitable person within 90 days of the date of the order (as supplemented by your order of May 8, 1956), had been complied with.

I was directed by the township committee to write you to that effect, in order that you may, if you so desire, authorize the corporate licensee to reopen its premises for business and to sell, serve and deliver alcoholic beverages as authorized under its license.

Yours very truly,
(signed) Gertrude E. Ruddick
Acting Township Clerk."

Under the circumstances, I shall consider the aforesaid change of stockholders of appellant corporation a sufficient compliance with the provisions of my order dated January 23, 1956, and, hence, I shall enter an order permitting alcoholic beverage activity under the license to be resumed and restoring the license to full force and operation.

Accordingly, it is, on this 22nd day of May, 1956,

ORDERED that alcoholic beverage activity under appellant's license be and the same is hereby permitted, and that said license be and the same is hereby restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
Director.

6. APPELLATE DECISIONS - FIORE v. NEWARK.

FRANK FIORE,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Arthur J. Connelly, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.
Frank P. Padalino, Esq., Attorney for Theresa Ferrarelli and Sol Freiman.
Levy, Fenster & McCloskey, Esqs., by John J. McCloskey, Esq., Attorneys for Radel Leather Manufacturing Company and the Hyatt Company, Objectors.
Carl J. Yagoda, Esq., Attorney for M & M Transportation Company, Objector.

BY THE DIRECTOR:

This is an appeal from respondent's denial of an application for transfer of a plenary retail consumption license held by Theresa Ferrarelli and Sol Freiman for premises 926 Franklin Avenue, Newark, to Frank Fiore for premises 457-463 Wilson Avenue, corner of Hyatt Avenue, Newark. The Franklin Avenue premises are near the border of the Town of Belleville and the Wilson Avenue premises are distant about four miles therefrom in another section of the City.

The parties hereto submitted in evidence the transcript of the proceedings before the local issuing authority pursuant to Rule 8 of State Regulations No. 15, and presented additional evidence at the hearing herein.

The Petition of Appeal alleges in substance that the action of the respondent is erroneous in that no valid reason for the denial was advanced; that the decision of respondent that the applicant has not sustained the burden of proving that the transfer would be in the public interest is erroneous in that there are no licensed premises within 1591 feet of this new location and many employees in the vicinity thereof must travel a considerable distance to reach a tavern; that respondent's decision based on the present condition of the building did not take into account that plans had been filed with the respondent for the repair and rehabilitation of such building; and finally, that the objections on behalf of nearby industrial plants that the presence of a tavern in the proposed location would seriously impair the welfare and effectiveness of their employees is a fallacious argument and "an unjust contemplation".

The respondent in its Answer alleges that the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board.

The decision of the respondent, as announced by the Chairman of the Board, after referring to the dilapidated condition of the building, states in substance that it is the duty of the Board to weigh the evidence as presented, and to conclude whether or not there is a public need, whether the transfer of the license will be in the public interest;that after carefully evaluating the same, the Board felt that the applicant had not sustained the burden of proving that such a transfer would be in the public convenience and necessity and that it would not be in the interest of the public and hence, the application was denied.

At the hearing below there was no evidence offered on behalf of applicant; instead, his counsel made the following statements: "It is in a more or less isolated location, an isolated spot. It is away down in 'no man's land' near the river. Anybody that wants to run a place there, I don't know why. However, it is away down there. *** It is 1500 feet or more from the nearest tavern. *** It is industrial, industries down there."

Frank Padalino, counsel for the proposed transferors, merely stated that his clients desired to have the license transferred but did not know anything about the proposed location.

Emil A. Schroth, Jr. testified that he is vice-president of Schroth, Inc., a manufacturing concern located on Hyatt Avenue, a dead-end street at the plant, and that it has about fifty employees. His objection, in substance, to the transfer of the license to the proposed location is that it would impair efficiency of those employees when doing their work if they patronized the proposed tavern during lunch hour or during breaks; further, that it would be very difficult to hire or retain female employees because they would be unwilling to pass by a tavern in an isolated area, as demonstrated by the present complaints of such employees at being compelled to pass the tavern 1500 feet from the plant.

A. Julius Spector, plant manager of the National Chemical Manufacturing Company, located at 411 Wilson Avenue, testified that his concern employs about sixty-five persons, fifteen of whom are women; that such female employees have complained that they have been subjected to indignities when passing the tavern above referred to, which necessitated arrangements by the company whereby it transports such personnel directly to and from its plant. Spector further testified that the proposed tavern would make it possible for its employees, including night watchmen, merely to "step" from the plant to the tavern; that the company seeks to safeguard the welfare of its employees and the location of the proposed tavern would be a temptation for such employees to drink while at work and thus expose themselves to possible injury at their work. The company would also suffer loss by reason of decreased efficiency in the operation of its business. Further, if any persons came to the tavern by car, it would create a traffic hazard because Wilson and Hyatt Avenues are narrow and used extensively by the various companies so that there is no place to park.

Frank Radel of the Radel Leather Manufacturing Company testified that his plant has been located in the isolated area since 1920 because it is difficult to find a place where a tannery is permitted. He stated that conditions existed at his plant similar to those related by the previous witnesses, which were the basis for his reason for considering the location of the proposed tavern highly objectionable.

Michael Herman, terminal manager of M & M Transportation Company, testified that the company has an investment of $350,000.00 in its plant and employs sixty-five persons, some of whom work on platforms with small motor trucks for handling merchandise; that about thirty-five other persons come to the plant daily to drive away trailer trucks, loaded with valuable freight, parked until late at night on its premises; that the absence of temptation should be stressed as much as possible; that the average driver is only human and would be prone to go in for a drink (especially where, as here, the tavern would immediately adjoin the plant) thinking that it would not do any harm; and that it would be difficult to determine whether the driver was sober enough to be entrusted with the equipment. He further states that rest room facilities are provided for the employees where coffee and light refreshments are available at various times of the day. He also mentions the possibility of a traffic hazard in that there is absolutely no room to park any motor vehicles on Wilson Avenue in the vicinity of the proposed tavern because it is a dangerous thoroughfare at that point.

The only evidence presented at the hearing on appeal was that of appellant and an architect. Frank Fiore, the appellant, testified that the nearest school and church were a considerable distance from the proposed location, and that he had completed some and intended to make additional alterations to the building. The architect testified that he prepared the plans for such alterations. It was further developed that there are no sidewalks and no dwellings within the immediate vicinity.

Briefs were submitted by counsel for the interested parties and oral argument was presented before me. I have given careful consideration thereto in the light of the applicable principles involved.

The transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1. It has been consistently held that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority. Mack Liquors v. Newark and Bornstein, Bulletin 1106, Item 2. The decision in Tp. Committee of Lakewood Tp. v. Brandt, 38 N. J. Super 462 (App. Div. 1955), referred to by counsel for appellant, is in accord with this principle in that the language therein that the owner of a license has an interest which is entitled to some measure of protection in connection with a transfer is merely a restatement, in other language, that a transfer cannot be denied arbitrarily. Applying this rule, it seems clear that irrespective of the type of buildings in the area, denial of transfer to an isolated and desolate area -- "a no man's land" -- as pungently expressed by counsel for appellant, appears to be a reasonable exercise of discretion. Cf. Jackel v. Plainsboro, Bulletin 456, Item 5.

The objections of the industries in the area properly deserve consideration and are an essential, but not controlling factor in evaluating whether public need and necessity will be served by the location of a liquor license in such area. Of course such objections have no greater weight than the objections of persons in residential or business areas. In the words of Commissioner Burnett when he decided Albert v. New Brunswick, Bulletin 228, Item 5, "industry is [not] to have a veto power on the issuance of liquor licenses".

The general question of objections by industry to the location of a liquor license in its midst was considered on various occasions during the early days of the Division. In Stemple v. Bridgewater, Bulletin 177, Item 8, where the facts involved are almost exactly similar to the instant case, the action of the issuing authority in denying application for a license was affirmed. Commissioner Burnett there repeated the following language which he had used in an earlier case:

> "The presence of a tavern directly in front of the industrial plant might well furnish a temptation not otherwise present, to employees about to begin their shift to have 'just one drink' before entering the plant. Consequently, in the interests of efficiency and safety, it was open to the Board to decline the issuance of licenses for premises near industrial plants."

More recently, a denial of transfer, influenced in part by an objection by an industrial concern, was affirmed by me. Herbert H. Levine, Inc. v. Harrison, supra.

I have carefully considered the evidence herein and conclude therefrom that appellant has not sustained the burden of establishing that respondent's action was erroneous. Rule 6 of State Regulations No. 15. Herbert H. Levine, Inc. v. Harrison, supra.

Accordingly, it is, on this 21st day of May, 1956,

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

WILLIAM HOWE DAVIS
Director.

7.

ACTIVITY REPORT FOR MAY 1956

ARRESTS:
Total number of persons arrested - 31
Licensees and employees - - - - - - - - - - - - 20
Bootleggers - - - - - - - - - - - - - - - - - - 11

SEIZURES:
Motor vehicles - cars - 3
Distilled alcoholic beverages - gallons - 21.507
Wine - gallons - 6.625
Brewed malt alcoholic beverages - gallons - 29.460

RETAIL LICENSEES:
Premises inspected - 978
Premises where alcoholic beverages were gauged - 922
Bottles gauged - 15,565
Premises where violations were found - 74
Violations found - 85
Type of violations found:
Unqualified employees - - - - - - - - - - 28
Other mercantile business - - - - - - - - 4
Reg. #38 sign not posted - - - - - - - - 2
Disposal permit necessary - - - - - - 2
Other violations - - - - - - - - - - 49

STATE LICENSEES:
Premises inspected - 14
License applications investigated - 14

COMPLAINTS:
Complaints assigned for investigation - 508
Investigations completed - 457
Investigations pending - 196

LABORATORY:
Analyses made - 160
Refills from licensed premises - bottles - 5
Bottles from unlicensed premises - 18

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - 15
Persons fingerprinted for non-criminal purposes - 252
Identification contacts made with other enforcement agencies - 257
Motor vehicle identifications via N. J. State Police teletype - 3

DISCIPLINARY PROCEEDINGS:
Cases transmitted to municipalities - 11
Violations involved:
Sale during prohibited hours - - - - - - 5
Sale to non-members by clubs - - - - - - 3
Sale to minors - - - - - - - - - - - - - - 2
Permitting gambling (wagering) on prem. - 1

Cases instituted at Division - 39*
Violations involved:
Sale to minors - - - - - - - - - - - - - - 17
Sale during prohibited hours - - - - - - 12
Sale below minimum consumer resale price 5
Failure to close prem. dur. pro. hrs. - 3
Unauthorized transportation - - - - - - 2
Hindering investigation - - - - - - - - 2
Possessing illicit liquor - - - - - - - 2
Permitting gambling (cards, darts, "finger game") on premises - - - - - - - - - - 2
Delivery without bona fide invoice - - - 1
Possessing indecent matter - - - - - - - 1
Conducting business as a nuisance - - - 1
Fraud in application - - - - - - - - - - 1
Sale to non-members by club - - - - - - 1
Sale to intoxicated person - - - - - - - 1
Failure to afford view dur. pro. hrs. - 1
Possessing contraceptives on prem. - - - 1
Sale outside scope of license - - - - - 1

*Includes two cancellation proceedings - license improvidently issued to person disqualified by criminal conviction and license improvidently issued as new license in excess of quota.

Cases brought by municipalities on own initiative and reported to Division - - - - - - - - - - - - - 13
Violations involved:
Sale to minors - - - - - - - - - - - - - - 8
Sale during prohibited hours - - - - - - 2
Sale to non-members by club - - - - - - 1
Permitting gambling on premises - - - - 1
Permitting bookmaking on premises - - - 1

HEARINGS HELD AT DIVISION:
Total number of hearings held - 62
Appeals - - - - - - - - - - - - - - - - - 5
Disciplinary proceedings - - - - - - - - 44
Eligibility - - - - - - - - - - - - - - - 3
Seizures - - - - - - - - - - - - - - - - 6
Tax revocations - - - - - - - - - - - 3
Applications for license - - - - - 1

STATE LICENSES AND PERMITS ISSUED:
Total number issued - 14,728
Licenses - - - - - - - - - - - - - - - - - 4
Employment permits - - - - - - - - - - - -288
Solicitors' " - - - - - - - - - - - - - - 98
Disposal " - - - - - - - - - - - - - - -103
Social affair permits - - - - - - - 435
Miscellaneous " - - - - - - - - 361
Transportation insignia - - - - 12,244
Transportation certificates - - 1,195

Dated: June 6, 1956

WILLIAM HOWE DAVIS
DIRECTOR

8. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO OWNER WHO UNKNOWINGLY VIOLATED THE LAW.

In the Matter of the Seizure on December 18, 1955 of a bottle of alcohol and a Cadillac coupe on U. S. Route #40 in Hamilton Township, County of Atlantic and State of New Jersey.	Case No. 9078 ON HEARING CONCLUSIONS AND ORDER

Bennie Woods, Pro se.
Kings County Discount Corporation, by Zachary Fabricant, Assistant Credit Manager.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a bottle of alcohol, and a Cadillac coupe, described in a schedule attached hereto, seized on December 18, 1955 on U. S. Route No. 40, Hamilton Township, Atlantic County, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Bennie Woods, the registered owner of the motor vehicle, appeared, and sought its return. An appearance was also entered on behalf of Kings County Discount Corporation which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the bottle of alcohol was not opposed.

Reports of ABC agents and other documents in the file, admitted into evidence, establish the following facts:

On December 8, 1955 a Cadillac coupe was halted by a New Jersey State Trooper on the above highway after leaving the scene of an accident. The driver of the car was Josephine Woods and her husband, Bennie Woods, and another person were passengers therein. The trooper found in the car a paper bag containing a bottle with alcohol. The bottle bore a Pepsi Cola label and did not, of course, have any tax stamp indicating the payment of tax on alcoholic beverages. Thereupon the trooper took into custody Josephine Woods and the other occupants of the car, the bottle of alcohol and the motor vehicle. Later the motor vehicle and alcohol were turned over to ABC agents.

The contents of the bottle was analyzed by the Division chemist who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 44 percent.

The alcohol is illicit because of the absence of any tax stamp, or proper label on the bottle. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Bennie Woods claims that he was in Ocean City and on Sunday morning, December 18th, he left for a ride to Atlantic City with his wife and a number of other persons. On the way

back to Ocean City they picked up a stranger who, when seated in the back seat of the car, asked the other persons in the car whether they wanted to have a drink stating, "I have a bottle", and displayed the Pepsi Cola bottle of alcohol in the bag. When they arrived in Ocean City the stranger left the car informing Woods that he was leaving the contents of the Pepsi Cola bottle for him.

Later Woods left Ocean City en route to his home in New York. His wife was driving the car and he was seated in the back. His wife says that when they were leaving Ocean City or shortly thereafter she placed the bottle in the glove compartment of the car intending to later discard such bottle.

The fingerprint records of Josephine Woods and Bennie Woods do not disclose any previous record for violation of any liquor laws.

Evidence was presented by the finance company from which it appears that when Bennie Woods applied to it for credit, the finance company received information that he was employed as a chef in a restaurant located in New York City, had been so employed for three years and was receiving a salary of $100.00 per week and resided at an address in Brooklyn, New York. The finance company checked this information and ascertained that such information was accurate.

Forfeiture does not depend upon the quantity of illicit alcoholic beverages seized. However, possession and transportation of an insignificant quantity of alcoholic beverages, as here, may be considered as a factor in determining whether the person involved acted in good faith and unknowingly violated the law or whether it is a mere circumstance that the persons involved were not caught with a larger amount of illicit alcoholic beverages.

If Woods actually purchased bootleg liquor and was transporting it in his car, he could not, at this late date, be considered to have unknowingly violated the law. However, if the transportation came about as he and his wife relate, it would appear to be a casual incident without any overtones of bootlegging or realization by them of the possibility that the car might therefore be forfeited. In view that Woods and his wife appear to have a previous law-abiding background in so far as alcoholic beverages are concerned, I shall give them the benefit of the doubt and accept the explanation of how it came about that the bottle of alcohol was in the car.

I therefore find that Bennie Woods acted in good faith and unknowingly violated the law. Such finding in forfeiture proceedings furnishes me with discretionary authority to return the motor vehicle, although it should be specifically noted that the above considerations may not constitute a defense in criminal proceedings for possessing and transporting illicit alcoholic beverages, since intent to violate the law is not an essential element in such criminal proceedings.

Accordingly, the Cadillac coupe will be returned to Bennie Woods upon payment of the costs of the seizure and storage of such motor vehicle. R. S. 33:1-66(e), Seizure Cases No. 8376 and 8377, Bulletin 1007, Item 5; Seizure Case No. 8669, Bulletin 1042, Item 11; Seizure Case No. 8693, Bulletin 1044, Item 3.

It is therefore unnecessary to make any determination respecting the alleged lien of Kings County Discount Corporation on such Cadillac coupe.

Accordingly, it is DETERMINED and ORDERED that if on or before the 10th day of May, 1956, Bennie Woods pays the costs incurred in the seizure and storage of the Cadillac coupe, described in Schedule "A" attached hereto, such motor vehicle will be returned to him; and it is further

DETERMINED and ORDERED that the bottle of alcoholic beverages listed in the aforesaid Schedule "A" constitutes unlawful property and 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 Director of the Division of Alcoholic Beverage Control.

Dated: May 1, 1956.

WILLIAM HOWE DAVIS
Director.

SCHEDULE "A"

1 - 12 oz. bottle of alcoholic beverage
1 - Cadillac coupe, Serial and Engine No. 4961-32536, New York Registration KC6659.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on February 6, 1956 of 20 one-half gallon glass jars of alcohol and a Chevrolet sedan on the northbound lane of the New Jersey Turnpike, in the City of Elizabeth, County of Union and State of New Jersey.	Case No. 9116 ON HEARING CONCLUSIONS AND ORDER

Chivian & Chivian, Esqs., by Louis Chivian, Esq., Attorneys for General Motors Acceptance Corporation.
Forman & Forman, Esqs., by Louis L. Forman, Esq., Attorneys for Giles Alexander Smith.
Dora P. Rothschild, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 20 one-half gallon jars of alcohol and a Chevrolet sedan, described in a schedule attached hereto, seized on February 6, 1956 on the northbound lane of the New Jersey Turnpike, Elizabeth, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of General Motors Acceptance Corporation, which sought recognition of its alleged lien on the Chevrolet sedan. An appearance was also entered on behalf of Giles Alexander Smith, the registered owner of such motor vehicle, and his counsel stated that if the motor vehicle is returned to the finance company, or its lien recognized, Giles A. Smith would not present any independent claim for return of the motor vehicle.

Reports of ABC agents and other documents in the file disclose the following facts, which counsel for the claimants admit are accurate:

New Jersey State Troopers observed the motor vehicle parked on the turnpike on the above date and location during their routine patrol of traffic on the highway. Their investigation disclosed that Jim Townes and Giles A. Smith were seated in the vehicle. When the troopers discovered the jars of alcohol in the trunk of the car, without any stamps on any of the jars indicating the payment of tax on alcoholic beverages, the troopers took into custody the two men, the alcohol, and the motor vehicle. Smith told the troopers that he picked up a hitchhiker in Delaware, who directed him to a wooded area where the alcohol was picked up, and that the hitchhiker left the vehicle near New Brunswick, leaving the alcohol for Smith, who paid him $10.00 therefor.

Later the alcohol and motor vehicle were turned over to ABC agents. The contents of one of the jars was analyzed by the Division chemist, who reports that it is alcohol and water fit for beverage purposes with an alcoholic content by volume of 50.8 percent.

The alcohol is illicit because of the absence of any tax stamps on any of the jars. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the car in which such illicit alcohol was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R. S. 33:1-66.

General Motors Acceptance Corporation has presented in evidence a conditional sales contract dated June 30, 1955 evidencing the sale of the Chevrolet sedan in question to Giles A. Smith, and securing the payment of $1569.36. The finance company holds the contract by assignment and the present balance due thereon, after rebate for prepayment, is $1215.60.

It appears that previous to purchasing the contract the finance company received information that Giles A. Smith resided at an address in Red Oak, Virginia, owned his home and farm, valued at $6,000.00, was in the farming and lumber business, with earnings estimated at $7400.00 yearly, and the finance company was furnished with trade and business references. In addition, the dealer who sold the car advised the finance company that Smith had an excellent credit rating.

The dealer was located about 100 miles from the office of the finance company, and such company did not make its usual check of the above information, apparently because the dealer vouched for Smith. Giles A. Smith, on behalf of the finance company, testified that at the time he purchased the motor vehicle he resided at Red Oak, was the owner of a farm, was in the farming and lumber business, and had an account in a local bank, and was acquainted with the dealer. So far as appears from the fingerprint record of Giles A. Smith, he has no previous criminal record for violating any laws.

I am satisfied that the finance company acted in good faith and had no knowledge of the unlawful use to which the Chevrolet sedan was put, or of facts which would have led a person of ordinary prudence to discover such use. R.S. 33:1-66 (f). I shall therefore recognize the lien against the Chevrolet

sedan to the extent of $1215.60. Cf. Seizure Case No. 7988, Seizure Case No. 8531, Bulletin 1015, Item 7.

It appears that the appraised retail value of the Chevrolet sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. The motor vehicle will therefore be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 7th day of May, 1956, General Motors Acceptance Corporation pays the costs incurred in the seizure and storage of the Chevrolet sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the alcoholic beverages listed in the aforesaid Schedule "A" constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that they 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.

WILLIAM HOWE DAVIS
Director.

Dated: April 26, 1956.

SCHEDULE "A"

20 - one-half gallon glass jars of alcohol
1 - Chevrolet sedan, Virginia Registration 451-920, Serial No. B-54B139020, Engine No. 0-449-523-T-54Z.

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

In the Matter of Disciplinary Proceedings against

KENILWORTH INN, A CORPORATION
19th Street & Boulevard
Kenilworth, N. J.,

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Kenilworth.

CONCLUSIONS AND ORDER

William Bruder, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on March 5, 1956, ABC agents, while testing and gauging the licensee's open stock of alcoholic beverages, seized for analysis by the Division chemist ten of these bottles of various brands of whiskey

which, from their tests, did not appear to be genuine as labeled. The chemist's report shows that the contents of a quart bottle labeled "Fleischmann's 90 Proof Preferred Blended Whiskey" is 8 proof short and low in solids, and the contents of a quart bottle labeled "Four Roses Blended Whiskey 86.8 Proof" is 3.8 proof short, high in solids, and low in acids when compared with samples of the genuine product of the labeled brands.

Defendant has no prior adjudicated record in disciplinary proceedings. I shall suspend defendant's license for the minimum period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Constantine, Bulletin 1082, Item 9.

Accordingly, it is, on this 7th day of May, 1956,

ORDERED that Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Kenilworth to Kenilworth Inn, A Corporation, 19th Street & Boulevard, Kenilworth, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. May 28, 1956, and terminating at 2:00 a.m. June 7, 1956.

William Howe Davis
Director.