

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

BULLETIN 1674

May 23, 1966

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1. APPELLATE DECISIONS - SUSSEX COUNTY TAVERN OWNERS ASSOCIATION v.  
FRANKLIN AND FRANKLIN FIRE DEPARTMENT, INC.

SUSSEX COUNTY TAVERN OWNERS )  
ASSOCIATION, )

Appellant, )

v. )

MAYOR and COUNCIL OF THE BOROUGH )  
OF FRANKLIN, and FRANKLIN FIRE )  
DEPARTMENT, INC. )

Respondents. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

----- )  
James F. McGovern, Jr., Esq., by Robert W. Wolfe, Esq., Attorney  
for Appellant.

Honig and Kovach, Esqs., by Emanuel A. Honig, Esq., Attorneys  
for Respondent Mayor and Council.

Franklin Fire Department, by Donald Ramage, Chief, Pro se.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the grant of a club license to  
respondent Franklin Fire Department, Inc. for premises 137 Buckwheat  
Road, Borough of Franklin.

Appellant contends in its petition of appeal that no need  
exists for a club license in the area of the club premises; that a  
majority of the members of respondent issuing authority are also  
members of respondent fire department; that the issuance of the said  
license was in violation of the Alcoholic Beverage Law and, moreover,  
respondent issuing authority's action was arbitrary, unreasonable  
and an abuse of its discretion.

Respondents deny the aforesaid allegations and assert that  
the action of respondent issuing authority was legal and proper in  
all respects.

It appears from the record in the matter herein that the  
Franklin Fire Department (hereinafter Fire Department) came into  
being in 1913 when the Borough of Franklin was incorporated, and  
continued as an unincorporated voluntary fire organization until  
May 6, 1963, when, by virtue of R.S. 15:8-1 et seq., it was duly  
incorporated. The Fire Department adopted without change the exist-  
ing by-laws which had been applicable to the unincorporated organi-  
zation. Among other things, the by-laws provided that the officers  
of the department shall consist of a chief and other officers, includ-  
ing a secretary and treasurer. One of the chief's duties was to  
supervise all of the activities of the department and preside at all  
meetings. The by-laws further provided that there shall be forty-five  
members capable of performing the duties of firemen. In addition  
thereto, it was provided that an exempt fireman who had been a member

of the department before being granted his exemption papers could remain in the department as an active exempt fireman with all the privileges of a non-exempt member, including the holding of office and voting in all matters. It further provided that inactive exempt firemen who had been members could continue to be so and retain all privileges with the exception that they can only hold office in and vote on matters relating to the (firemen's) relief association.

A list disclosing ninety-seven members of respondent Fire Department was filed with the application for the club license. Appellant contends that the application was defective because it had been signed by Donald Ramage as chief and not as president and thus did not comply with the rules and regulations relating to the filing of corporate applications for liquor licenses.

The Fire Department elects a person to be chief who is in charge of all activities and who presides at all meetings, thus performing the same functions as one who may be designated as president. Bouvier's Law Dictionary (unabridged) defines a chief as "One who is put above the rest. Principal."

The word "chief" has been defined more specifically as the head of a body of men, of an organization, state, town, party, etc.; the head of any department. 14 C.J.S. 171, p. 1105. Cited therein is Erb v. City of Allentown, 23 A. 2d 485, 343, Pa. 622. Also cited on 14 C.J.S. 171 is Stout v. Stinnett, 197 S.W. 2d 564, 210 Ark. 684, wherein the word "chief" implies an executive or directing head of a department, office, organization, or the like, and also implies superiority in civil rather than military office or rank, as the Chief of Police.

I am satisfied that Donald Ramage possesses the authority to sign the application in question as Chief of the Fire Department.

Appellant contends that the notice in The New Jersey Herald of application filed by respondent Fire Department was defective because the names of officers or directors were omitted. The notice listed Donald Ramage as Chief of the Fire Department, and the premises sought to be licensed on Buckwheat Road. The list of the officers was submitted with the application. Mere inquiry or examination of the said application in the Borough Clerk's office would have disclosed the desired information. This omission is not sufficient to render the notice defective.

The objection that there is no need or necessity for another liquor outlet in the vicinity of the club premises might be considered meritorious if the application were for a plenary retail consumption or distribution license. However, the object of a club license is not to supply the needs of the general public, in that the club must confine the sales of alcoholic beverages for consumption on its licensed premises to bona fide members or bona fide guests of said members. This objection carries no weight so far as a club license is concerned. Po Ambo Democratic Club, Inc. v. Perth Amboy, Bulletin 1158, Item 3, and cases cited therein.

Another objection is that members of respondent issuing authority were also members of the Fire Department and for that reason the application for the license should have been made to the State Director. By notice to clerks of all municipal issuing authorities dated April 21, 1958, former Director Davis ruled that members of a municipal issuing authority who also hold membership or officership in an organization seeking a club license cannot be deemed to

have an indirect interest which would call for the filing of the license application with the State Director. Thus the contention made by appellant with reference thereto is without merit.

Appellant also questioned the propriety of the issuance of a club license to the Fire Department because appellant contends that the Fire Department is under the control of the municipality, which furnishes clothing and fire apparatus and grants a nominal sum of money to the said Fire Department.

In Brower v. Township of Franklin, 119 N.J.L. 417 (1938), Justice Perskie, speaking for the New Jersey Supreme Court, in discussing volunteer fire companies stated that such companies fall into three classifications. Inasmuch as the Fire Department herein comes under the first class designated by the court, because of being incorporated pursuant to R.S. 15:8-1, no reference to the remaining two classifications is necessary. After reciting the statutory provisions to incorporate fire companies, the court stated that municipalities could not exercise any control over such companies. Furthermore, the court considered a payment by the municipality of any money constituted a "mere gratuity" and in no way did said contribution give the township any control over the recipient thereof (Franklin Fire Company No. 1, a volunteer fire company).

R.S. 15:8-2 provides that:

"Every such fire company shall have power to hold, purchase and convey such real and personal estate as the purposes of the company shall require, to make and use a common seal, and be entitled to all the rights, powers, privileges, benefits, advantages and immunities of corporations organized under Title 14, Corporations, General, and any such volunteer fire company doing active duty in any city shall be entitled to all the privileges and immunities of any other company in the department of said city, any law to the contrary notwithstanding."

In view of the above, any argument advanced by appellant that a volunteer fire department cannot properly hold a club liquor license is without merit.

I am satisfied that respondent Fire Department has more than sixty members, as indicated by the list filed with the application, and thus meets the minimal requirement of Rule 1 of State Regulation No. 7.

Now I shall consider the remaining question, whether the Fire Department has been in exclusive possession of a club house or club quarters for at least three years continuously immediately prior to the submission of its application for license, as provided in Rule 4 of State Regulation No. 7. According to the minutes of the meeting of respondent issuing authority on March 8, 1965, Chief Ramage testified that the Fire Department has been located at its present location on Buckwheat Road since November 1963 and that "they formerly occupied quarters in the building on Main Street, which building also housed the municipal offices of the Municipality, under one physical structure."

At the appeal hearing, Chief Ramage testified that the old premises occupied by the Fire Department was owned by the Borough and that the Borough also had the use of said building. However, he further stated that the building on Buckwheat Road is owned by the

Fire Department and that the municipality has no financial interest therein. I note from an examination of the application for the club license that the answer to Question 20, whether the club had been in exclusive, continuous possession of and use of club quarters for at least three years immediately prior to the filing of application, is "No" and the reason given was "Fire house was in different location, moved to new location November 1963."

There appears to have been no request to the Director to obtain a waiver with reference to the three-year provision relating to club quarters. I conclude from the record herein that although the Fire Department for many years had the privilege to use quarters located at the Borough Hall on Main Street, it did not have exclusive possession thereof to include any of the time while there as part of the three years prior to the submission of the application for the license.

In view of this fact, it leaves me no alternative other than to recommend cancellation of the Fire Department's club license for the reason that respondent issuing authority was without jurisdiction to issue the license because of failure of the Fire Department to meet all legal requirements. The case is somewhat similar to Wa Wa Social Club v. Division of Alcoholic Beverage Control, 31 N. J. Super. 134, wherein the action of the Director was sustained in reversing the grant of a club license to the Wa Wa Social Club by the municipality. It may be apropos to quote Judge Stanton who rendered the opinion for the court when he stated:

"The appellant appears to be a bona fide organization of long standing but unfortunately, from its viewpoint, has not had sufficient exclusive and continuous use and possession of a club house or club quarters to qualify it for a license. A good general rule sometimes appears to work a hardship in a particular case. This may be such a case. Even so, there is no way in which it may be excepted from the rule."

Under the circumstances herein, it is recommended that the action of respondent Mayor and Council of the Borough of Franklin be reversed, and that the club license issued to respondent Franklin Fire Department, Inc. be cancelled forthwith.

#### Conclusions and Order

Respondent issuing authority filed exceptions to that portion of the Hearer's report wherein he concluded that the Fire Department did not have exclusive possession of club quarters for the three-year period provided in Rule 4 of State Regulation No. 7. Appellant, although agreeing with the reversal recommendation of the Hearer, excepted to his findings that (1) omission of the names of the Fire Department's officers in the advertisement of the notice of application was not a fatal defect, and (2) a volunteer fire department cannot properly hold a club liquor license. Thereafter oral argument was presented before me.

In disposition of appellant's exceptions I find myself in agreement with the Hearer's conclusions that the above advertisement was not fatally defective under the circumstances and that respondent Fire Department is eligible for club license, i.e., meets the statutory qualifications prescribed by R.S. 33:1-12(5).

Respondent municipality in its exceptions alleges that respondent Fire Department did in fact have exclusive possession of

quarters in compliance with Rule 4 of State Regulation No. 7, and states in most pertinent part:

"The Mayor and Council at the time of passing on this application in question was fully cognizant of their duty to rule upon the sufficiency of the term and possession of a quarters and club house prior to the issuance of the license in question. A good deal of the hearing before the Mayor and Council involved a determination of the use, possession and location of the club house and quarters prior to submission of the application.

"Each member of the council was aware through common knowledge as to the method of the three (3) year term of exclusive possession as submitted by the applicant. In fact, one of the Councilmen provided a dissertation on the history of the Franklin Fire Department building which established the department was housed in the same quarters since 1914 - the date of its inception - until 1963. No other municipal buildings were attached or located to the fire headquarters and the department had exclusive possession and control over the premises. In 1951 the municipality was forced to relocate its municipal building due to a subsidence of land causing the destruction of the previous Borough Hall. At that time an addition was made to the fire department building providing for space adjoining the fire department building for municipal offices. However, the addition although contiguous to the fire department headquarters in no way disturbed the possession of the fire department or its control and use of the fire department headquarters. The applicant's possession of the old headquarters was at all times exclusive."

The resolution of the Mayor and Council granting the application for license, introduced in evidence and part of the record of the within appeal, gives cognizance to appellant's objection that the Fire Department lacked three years' exclusive possession of club quarters, and contains a specific factual determination by the Mayor and Council that respondent Fire Department had possession of a headquarters or a club house for a period of more than three years prior to the date of its application for this license.

It is axiomatic that I should not substitute my judgment to reverse the exercise of judgment in fact-finding of the municipal issuing authority in the absence of a clear showing that the finding of fact was unwarranted. In Abad v. Newark, Bulletin 619, Item 8, it was stated:

"The ultimate question presented by the record on this appeal, therefore, is one of fact. Notwithstanding the 'de novo' character of the appeal, the Commissioner, in his determination of the issues, should affirm where there is competent evidence in the record 'from which the conclusion of the administrative tribunal (the local issuing authority) could be deduced.' Cf. Vajtauer v. Commissioner of Immigration, 273 U.S. 103, 106. Under the Rules Governing Appeals, the burden of proving reversible error rests with the appellant."



Corporation, t/a Chateau A-Go-Go, for premises 29-31 Howe Avenue, Passaic, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1966, commencing at 3:00 a.m. Thursday, April 7, 1966; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 3:00 a.m. Wednesday, July 6, 1966.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

S & H LIQUOR CORP. )  
t/a BUDDY'S BAR & LIQUOR STORE )  
131 N. 11th Street )  
Camden, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-74, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden )  
----- )

Robert Wilinski, Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on March 3, 4, 9 and 10, 1966, it permitted acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for three days effective November 14, 1960, for service to women at the bar in violation of local regulation. Re S & H Liquor Corp., Bulletin 1369, Item 8.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re DiGiuseppe, Bulletin 1659, Item 2.

Accordingly, it is, on this 30th day of March, 1966,

ORDERED that Plenary Retail Consumption License C-74, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to S & H Liquor Corp., t/a Buddy's Bar & Liquor Store, for premises 131 N. 11th Street, Camden, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, April 5, 1966, and terminating at 2:00 a.m. Monday, May 30, 1966.

JOSEPH P. LORDI  
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES WITHOUT REQUISITE INVOICES - SEARCH AND SEIZURE WITHOUT WARRANT VALID WHERE CONSENT OBTAINED - ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure )  
on December 13, 1962 of a ) Case No. 11,601  
quantity of alcoholic beverages )  
at the corner of East Central ) On Hearing  
Boulevard and 4th Street, in the )  
Borough of Palisades Park, County ) CONCLUSIONS and ORDER  
of Bergen and State of New Jersey. )

-----  
Louis R. Cerefice, Esq., appearing for Anton's Wines and Liquors, Inc.  
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether 361 bottles of alcoholic beverages, more particularly described in an inventory hereinafter referred to, attached hereto, made part hereof, and marked Schedule "A", seized on December 13, 1962 at the corner of East Central Boulevard and 4th Street, Palisades Park, New Jersey constitutes unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66 Anton's Wines and Liquors, Inc., a corporation, represented by counsel, entered an appearance and sought the return of the said alcoholic beverages.

The Division's case was presented through the testimony of two ABC agents. While only Agent H testified, it was stipulated that the testimony of Agent T would be corroborative and would be accepted as such, without his being called to testify.

The following picture was reflected in the Division's case: Pursuant to a specific assignment to investigate the alleged unlawful transportation and sale of alcoholic beverages from and at licensed premises operated by Anton's Wines and Liquors, Inc., 257 Broad Avenue, Palisades Park, N.J., ABC agents kept the subject premises under surveillance.

They arrived at the said premises shortly before 7:00 P.M. on December 13, 1962 and observed a red 1957 Chrysler being driven into the parking lot to the rear of the claimant's licensed premises; and the driver went into the rear entrance thereof. At about 7:15 or 7:20 P.M., the agents noticed two men emerge from the licensed premises through the said rear door and carrying large brown paper bags "...which appeared from the way they carried them to be heavy.", and which were placed in the trunk of the said Chrysler automobile. At about 7:30 to 7:45 P.M. the trunk of the said motor vehicle was closed; the two men entered the motor vehicle and drove along Broad Avenue to Central Boulevard in the general direction of th George Washington Bridge. When this vehicle had been driven about one quarter of a mile from the premises, ABC agents intercepted the same, identified themselves to the operator, one Sam Kitchman, who gave a Palisades Park address. His companion, William Brown, informed

the agents that he lived in New York City.

Upon questioning, Kitchman stated that both he and Brown were employed at Anton's Wines and Liquors, Inc. and that they were going "To New York."

At the request of the agents, Kitchman opened the trunk in which were found 16 large brown bags containing the alcoholic beverages referred to in the inventory, marked Schedule "A". Kitchman then produced three invoices, two of which related to the liquor carried in the car. These invoices did not list the bona fide names and addresses of the purchaser or consignee as required by Rule 3 of State Regulation No. 17. One of them was marked in black crayon with the name "Maggie" and the other was marked "Slim". A transit insignia issued by this Division was affixed to the left rear window, on the side of the car, and not in the window across the rear of the car, as required by Rule 2 of State Regulation No. 17.

Brown informed the agents that he was on his way home from work and that Kitchman agreed to drop him off at his home in New York. Kitchman refused to answer any questions and specifically refused to indicate where his destination was at that time. The agents then requested Kitchman to return to the licensed premises and while Agent T remained with Kitchman and Brown and the motor vehicle, containing the liquor, at a point about two blocks away from the liquor store, two agents entered the subject licensed premises. They noted that Matthew Weinstein, the husband of the president, Ruth Weinstein, and Mrs. Weinstein, a major stockholder in Anton's Wines and Liquors, Inc. were then in the store. Also present was Raymond Cieslak, the manager and 10% stockholder, Herman Cohen, Albert Nichols and Melvin Siegel, employees.

Cieslak and Mrs. Weinstein were questioned as to whether there were any employees of Anton's not present at the premises. Both parties denied that there were any others or that any deliveries had been made at any time after 7:00 P.M. from these premises in their authorized vehicle. At this point, one of the agents phoned the agent who remained with the two employees and they returned to the premises; whereupon Cieslak and Mrs. Weinstein refused to answer any further questions. The agents checked the invoices marked "Maggie" and "Slim" with the liquor in the motor vehicle and found that the items listed thereon accurately reflected the liquor found in the said vehicle.

On cross-examination, Agent H acknowledged that he did not have a search warrant, but stated that there was only about one-half hour between the time of his first observation of the illegal transaction and the interception of the motor vehicle in transit. Thus, it would have been impossible for the agents to have obtained a search warrant. He further emphasized that the trunk was opened by Kitchman voluntarily, and Kitchman readily acknowledged that he was carrying alcoholic beverages in the bags.

The invoice which was made out in the name of "Maggie" across the top, contained no last name or address. It listed sizes and quantities of alcoholic beverages, with no itemized prices but with a circled figure at the bottom. The other invoice named as consignee "Slim" but contained no last name, an address on West 122nd Street in New York, a list of specific quantities of alcoholic beverages, without prices and a circled figure at the bottom.

It should be further noted that while the alcoholic bever-

ages were seized by the agents, the motor vehicle was not seized, and is not a subject matter in these proceedings.

The records of this Division disclosed that as a result of the said investigation and action as above described, Anton's Wines and Liquors, Inc. pleaded non vult to three charges, two of which charges relevant to these proceedings being that (a) on December 13, 1962 it transported alcoholic beverages not accompanied by requisite invoice in violation of Rule 3 of State Regulation No. 17 and hindered investigation in violation of R.S. 33:1-35. The license of the said claimant received a net suspension of 45 days. Re Anton's Wines and Liquors, Inc., Bulletin 1571, Item 2.

Ray Cieslak, testifying on behalf of the claimant, Anton's Wines and Liquors, Inc., stated that he had obtained, on behalf of the claimant, a transit insignia for the Chrysler automobile which was registered in the name of the claimant. He stated that although he had nothing to do with the actual packaging with the liquor seized by ABC agents, because he was "out that afternoon", it was his understanding that the invoices were properly prepared. Upon further questioning he admitted that "Slim" was a customer named Slim Clark; Clark's last name and address was not put on the invoice. So far as "Maggie" is concerned, he did not know her last name and knew that she lived in New York. However, her correct address was not put on the said invoice.

My examination of the entire record satisfies me that the subject alcoholic beverages were transported without being accompanied by requisite invoices, in violation of Rule 3 of State Regulation No. 17. R.S. 33:1-1(i) defines illicit property as:

"Any alcoholic beverage....sold,....possessed or transported in violation of this chapter,...and any alcoholic beverage possessed, kept,....owned....with intent to.....sell, distribute....or transport in violation of the provisions of this chapter."  
(Emphasis added.)

R.S. 33:1-66 (c) states as follows:

"All alcoholic beverages manufactured, sold, imported or transported in violation of rules and regulations, together with any vehicle containing the same, are hereby declared unlawful property and shall be seized, forfeited and disposed of in the same manner as other unlawful property seized under this section."

Rule 3 of State Regulation No. 17 provides that:

"No retail licensee shall deliver or transport any alcoholic beverages in any vehicle, unless the driver of the vehicle has in his possession a bona fide, authentic and accurate delivery slip, invoice, manifest, waybill, or similar document stating the bona fide name and address of the purchaser or consignee, and the brand, size of container, and quantity of each item of the alcoholic beverages being delivered or transported."

Counsel for the claimant argues that the legislature in enacting these provisions "...did not attempt to place the burden upon licensees to be perfect in making deliveries". He reasoned that the licensee "...may have been delinquent, may have been a little careless in making sure that every little thing on that invoice or delivery slip should have been included, full name, address, number of bottles, price, and everything else required", and he concludes that the legislature really meant the statute to be applicable only to "...liquor that was really contraband..."

With that I cannot agree. The statute is very clear and explicit, and the entire circumstances surrounding this activity indicate that the claimant was well aware of the nature of this activity. In further support thereof, it should be reiterated that the claimant did, in fact, plead non vult to this very charge in disciplinary proceedings as hereinabove set forth. Such illicit whiskey constitutes unlawful property and is subject to forfeiture. R.S. 33:1-1(i and y).

Counsel for claimant further argues that the search and seizure were illegal because no warrant was obtained, citing One 1958 Plymouth Sedan v. Pennsylvania, 14 L ed. 2d 170.

The particular circumstances in this matter, however, indicate that the agents could not readily obtain a search warrant because they did not have probable cause to believe that a violation was being committed until they observed the alcoholic beverages being loaded on to the motor vehicle. They intercepted this vehicle on a public highway within a half hour of that time.

Further, it is undisputed that the driver of the vehicle voluntarily consented to the search of the vehicle. Such consent obviated the necessity for a search warrant, and is dispositive of this contention.

One 1958 Plymouth Sedan, cited by counsel is inapposite and inapplicable because that case involved a forfeiture proceeding involving a motor vehicle before a State court.

Furthermore, it is questionable whether this agency is the proper forum in which the issue of unlawful search and seizure should be raised. There is no evidence or any suggestion that any proceeding was instituted in the County or Superior Court to determine this question, although R.R. 3:2a-6a of the Rules of Criminal Practice provide that such procedure be employed whenever "...a person claiming to be aggrieved by an unlawful search and seizure, and having reasonable grounds to believe that the evidence obtained may be used against him in a penal proceeding, may apply only to the Superior Court or County Court for the county in which the evidence was obtained for the return of property seized..." (Emphasis added). See State v. Fioravanti, 78 N.J. Super. 253 (App. Div. 1963); Bulletin 1655, Item 1 at p. 13.

It has been long established that alcoholic beverages transported in violation of the Rules and Regulations of this Division are subject to seizure and storage. Seizure Case No. 7245, Bulletin 819, Item 1; Re Betzel, Inc., Bulletin 1350, Item 2; Seizure Case No. 11,155, Bulletin 1576, Item 2; R.S. 33:1-1 (x and y); R.S. 33:1-2; R.S. 33:1-66.

The Director's discretionary authority to return property subject to forfeiture is limited to those cases where it has been established to his satisfaction that the claimant, whose property has been seized pursuant to the provisions of this section, has acted in good faith and has unknowingly violated the provisions thereof. Since the claimant has pleaded non vult to the charges

arising from this very transaction, including Charge No. 3 (hindering investigation in violation of R.S. 33:1-25), there is absent any basis upon which such discretionary authority to return the alcoholic beverages may be properly exercised. Accordingly, the Director is without authority to return the said alcoholic beverages. R.S. 33:1-66(e); Cf Re Betzel, supra; Seizure Case No. 11,155, supra; R.S. 33:1-1(x and y); R.S. 33:1-2; R.S. 33:1-66.

My evaluation of the testimony convinces me that the Division has established its case by a preponderance of the credible evidence, and it is, therefore, recommended that the alcoholic beverages set forth in the inventory be declared to be unlawful property and that an order be entered forfeiting the same.

#### Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and I adopt them as my conclusions herein.

Accordingly, it is on this 1st day of April, 1966,

DETERMINED and ORDERED that the seized alcoholic beverages, more fully described in Schedule "A", attached hereto, constitutes unlawful property, and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and State, county and municipal institutions or destroyed in whole or in part at the discretion of the Director of Alcoholic Beverage Control.

JOSEPH P. LORDI  
DIRECTOR

#### SCHEDULE "A"

147 - bottles of Seagram 7 Crown Whiskey  
 34 - bottles of Seagram VO Whiskey  
 60 - bottles of Calvert Reserve Whiskey  
 60 - bottles of Fleishmann Preferred Whiskey  
 29 - bottles of Gordon's Gin  
 5 - bottles of Teacher's Scotch  
 12 - bottles of Martins VVO Whiskey  
 5 - bottles of Johnny Walker Whiskey  
 3 - bottles of Cutty Sark Scotch  
 6 - bottles of Old Hickory Bourbon

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ISAAC SUSEMAN t/a IKE'S TAVERN 581 Main Street Paterson, New Jersey

CONCLUSIONS

Holder of Plenary Retail Consumption License C-334, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

and

ORDER

Licensee, Pro se Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 19, 1966 he sold a half pint bottle of liqueur for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for (1) ten days effective August 12, 1957, for similar violation, and (2) for twenty days effective February 2, 1960, for possession of alcoholic beverages not truly labeled (Re Sussman, Bulletin 1187, Item 10; Bulletin 1328, Item 7), and by the municipal issuing authority (3) for five days effective November 28, 1960, for hindering investigation, (4) for forty-five days, effective April 30, 1962, for permitting brawls and disturbances on the licensed premises, and (5) for fifteen days effective November 2, 1964, for sale to minors.

The prior record of suspensions of license for dissimilar violations in 1960 disregarded because occurring more than five years ago, the license will be suspended for fifteen days (Re Napoli, Bulletin 1664, Item 8), to which will be added five days by reason of the record of suspension for similar violation occurring in 1957, more than five but less than ten years ago (Re Moore, Bulletin 1659, Item 4) and ten days by reason of the record of suspensions of license in 1962 and 1964 for dissimilar violations occurring within the past five years (Re Bruno Hardcastle, Inc., Bulletin 1663, Item 9), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 4th day of April 1966,

ORDERED that Plenary Retail Consumption License C-334, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Isaac Sussman, t/a Ike's Tavern, for premises 581 Main Street, Paterson, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, April 11, 1966, and terminating at 3 a.m. Friday, May 6, 1966.

JOSEPH P. LORDI DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

NEW WALTER'S INN, A CORPORATION )  
t/a WALTER'S INN )  
595-7 Morris Avenue )  
Springfield, New Jersey, )

CONCLUSIONS

AND

Holder of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Springfield. )

ORDER

-----)  
Licensee, by Samuel Glickman, President, Pro se  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 19, 1966 it sold drinks of beer to five minors, one age 18 and four age 20, in violation of Rule 1 of State Regulation No. 20.

Although the licensee has no previous record of suspension of license, the license then held by Club Warren, Inc. (in which one of the officers of the licensee corporation was an officer) for premises 141 Warren Street, Newark, was suspended by the municipal issuing authority for ten days effective November 5, 1951 for sale in violation of State Regulation No. 38.

The prior record of suspension of license disregarded because occurring more than five years ago, the license will be suspended for twenty-five days, with remission of five days for plea entered, leaving a net suspension of twenty days. Cf. Re The Garden House, Inc., Bulletin 1665, Item 7.

Accordingly, it is, on this 31st day of March 1966,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Springfield to New Walter's Inn, A Corporation, t/a Walter's Inn, for premises 595-7 Morris Avenue, Springfield, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Tuesday, April 5, 1966, and terminating at 2 a.m. Monday, April 25, 1966.

JOSEPH P. LORDI  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 BLUE NOTE, INC. )  
 t/a BLUE NOTE )  
 707 Bangs Avenue )  
 Asbury Park, N.J. )  
 Holder of Plenary Retail Consumption License C-16, issued by the City Council of the City of Asbury Park )  
 )

CONCLUSIONS  
 AND  
 ORDER

-----  
 Clancy & Hayden, Esqs., by Joseph A. Hayden, Esq., Attorneys for Licensee.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 5, 11 and 18-19, 1966, it conducted the licensed place of business as a nuisance, viz., permitting apparent male homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by large numbers of apparent male homosexuals, i.e., on March 5 by seventy out of a total patronage of seventy-five, on March 11 by fifty-five out of a total patronage of fifty-eight and on March 18-19 by fifty-five out of a total patronage of sixty-five.

Absent prior record, on the basis of the facts appearing (simple congregation of a relatively large number of homosexuals) the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Charmac, Inc., Bulletin 1630, Item 2.

Accordingly, it is, on this 12th day of April, 1966,

ORDERED that Plenary Retail Consumption License C-16, issued by the City Council of the City of Asbury Park to Blue Note, Inc., t/a Blue Note, for premises 707 Bangs Avenue, Asbury Park, be and the same is hereby suspended for fifty-five (55) days, commencing at 3:00 a.m. Tuesday, April 19, 1966, and terminating at 3:00 a.m. Monday, June 13, 1966.

JOSEPH P. LORDI  
 DIRECTOR

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

In the Matter of Disciplinary Proceedings against )

AUGUST RONCSKEVITZ )  
t/a OUTERBRIDGE INN )  
345-347 Grove Street )  
Perth Amboy, N.J., )

CONCLUSIONS

Holder of Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the City of Perth Amboy. )

AND

ORDER

-----)  
Licensee, Pro se  
Morton B. Zemel, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 10, 1966, he possessed an alcoholic beverage in one bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re LaGreca, Bulletin 1663, Item 11.

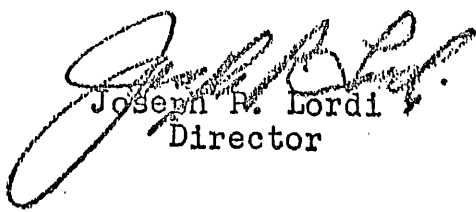
Accordingly, it is, on this 11th day of April 1966,

ORDERED that Plenary Retail Consumption License C-24, issued by the Board of Commissioners of the City of Perth Amboy to August Roncskevitz, t/a Outerbridge Inn, for premises 345-347 Grove Street, Perth Amboy, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, April 18, 1966, and terminating at 2 a.m. Saturday, April 23, 1966.

JOSEPH P. LORDI  
DIRECTOR

9. STATE LICENSES - NEW APPLICATION FILED.

Jersey National Liquor Co., Inc.  
4576 Crescent Boulevard  
Camden, New Jersey  
Application filed May 19, 1966 for Plenary Wholesale License, for 1966-67.

  
Joseph P. Lordi  
Director