

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

BULLETIN 822

NOVEMBER 24, 1948.

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

NOVEMBER 24, 1948

BULLETIN 822

1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FURNITURE AND FIXTURES IN SPEAKEASY IN PRIVATE RESIDENCE ORDERED FORFEITED - CLAIM BY CLOSE RELATIVE OF SPEAKEASY OPERATOR FOR RETURN OF VARIOUS ITEMS OF FURNITURE DENIED - CLAIM AGAINST TELEVISION SET BY INNOCENT LIENOR RECOGNIZED.

In the Matter of the Seizure) Case No. 7302
on August 8, 1948, of a quantity)
of alcoholic beverages, fixtures,)
furniture and equipment at)
15 Brunswick Avenue, Vaux Hall,) ON HEARING
in the Township of Union, County) CONCLUSIONS AND ORDER
of Union and State of New Jersey.)

Nathan Ravin, Esq., appearing for the Charm Company.

Alice Terrell, Pro Se.

Harry Castelbaum, Esq., appearing for the State Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, and fixtures, furniture and equipment, described in a schedule attached hereto, seized on August 8, 1948 at 15 Brunswick Avenue, Vaux Hall, Union Township, New Jersey, constitute unlawful property and should be forfeited.

It appears that an ABC agent, checking a complaint that alcoholic beverages were being sold without a license in a dwelling at the above address, purchased bottles of beer there on August 8, 1948 and observed other persons likewise purchasing drinks of beer and whiskey.

These sales of alcoholic beverages were made in the basement, in a room where there was a bar, tables, chairs, a television set and other furniture. Herbert Curvington and Erma Lewis, who were tending bar, sold the alcoholic beverages to the agent and the other patrons.

Shortly after the ABC agent purchased the beer, other ABC agents and local police officers entered the place and disclosed their identity. The ABC agents obtained signed statements from Curvington and Erma Lewis admitting the aforesaid sales of alcoholic beverages. Curvington states that the sales were made on his own behalf, with the knowledge of his aunt, Fanny Terrell, who owned and resided at the place; that the equipment and bar are owned by Dennis Terrell, her son, who also sold alcoholic beverages there. On the other hand, Erma Lewis states that she rents a room from Fanny Terrell and went behind the bar that day to help out, and that she gave the money which she received from the sales of the alcoholic beverages to Mrs. Terrell.

Accordingly, Herbert Curvington, Erma Lewis and Fanny Terrell were arrested on charges of violating the Alcoholic Beverage Law and the ABC agents seized all of the whiskey and beer that was there as well as the bar, chairs, television set, and other furniture and equipment in the barroom.

The seized alcoholic beverages were admittedly intended for sale in violation of the Alcoholic Beverage Law and are therefore illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and the other articles seized therewith on the premises constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered for the Charm Company which sought recognition of a lien claim on the television set. Alice Terrell also appeared and sought return of a studio couch and a combination radio and phonograph.

Morris Stein, who trades as the Charm Company, testified that in November 1947 he sold the television set, by conditional sales contract, to Dennis Terrell, who was employed at a nearby drug store, and to whom he had previously sold small items; and that he did not know or suspect that Terrell was selling liquor. The sale was financed for Stein by a local bank, whose investigation disclosed that Terrell's credit standing was weak, but did not reveal any liquor law or other criminal offenses. It is an ordinary table model set, today found in many homes.

I am satisfied from the evidence that Stein acted in good faith and is an innocent lienor, and hence, will recognize his lien claim for the balance of \$155.43 due on the purchase price of the television set.

The value of the television set appears to exceed the amount of the lien and the Director of Purchase and Property of the Department of Taxation and Finance advises that it is interested in retaining such television set for the use of the State in one of its institutions. Hence, an Order will be entered retaining the television set for the use of the State, conditioned upon the payment of the lien claim thereon of \$155.43.

Alice Terrell is the daughter of Fanny Terrell and the sister of Dennis Terrell. She claims that she purchased a living room set in 1942 and the radio in 1943, and had these articles placed in the family home; that because she was then a minor the installment contracts were in the name of her father. At the time of these purchases, three of her brothers and three of her sisters were living at home.

Miss Terrell now works in New York but is home weekends. She says that she knew there was a bar in the cellar and that the studio couch and radio were there for about three months before the seizure. Curvington is her cousin and resides on the premises.

Miss Terrell's claim of ownership of the two items rests entirely upon her own testimony, although some of her brothers and sisters were available as witnesses. The documents which she has presented as evidence of the purchases bear her father's name. Hence, there is some doubt as to whether she is actually the owner of the studio couch and radio.

In addition, it is difficult to believe that she did not know or suspect that illegal liquor activities were being carried on in the place. A claim by a member of the family of a speakeasy operator, who resides at, or is frequently at, the place where the speakeasy is operated will be recognized only when it is clearly and firmly established that such claimant did not know or have any reason to suspect the illegal activities there. The evidence presented by Miss Terrell is not of that caliber. Hence, I shall deny her application for return of the studio couch and radio.

Accordingly, it is DETERMINED and ORDERED that the television set described in Schedule "A" attached hereto constitutes unlawful property and the same be retained for the use of the State of New Jersey, conditioned upon payment to Morris Stein, trading as the Charm Company, of his lien claim in the amount of \$155.43; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described 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 State Commissioner of Alcoholic Beverage Control.

Dated: November 16, 1948.

ERWIN B. HOCK
Commissioner.

SCHEDULE "A"

- 3 - bottles of whiskey
- 40 - bottles of beer
- drinking glasses, trays, coaster, bottle tops, etc.
- 1 - wicker settee
- 1 - studio couch
- 1 - wicker reading chair
- 1 - small stand
- 1 - home-made bar
- 1 - cola cooler
- 1 - stool
- 4 - chairs
- 1 - table
- 1 - electric table lamp and shade
- 1 - television set
- 1 - television stand
- 1 - combination radio and phonograph
- 3 - electric light fixtures

2. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary
Proceedings against)

FRANK WM. MCKENNEY)
T/a MCKENNEY'S INN)
E/S Lakehurst Road)
Pemberton Township)
Browns Mills, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-17, issued by the)
Township Committee of the Township)
of Pemberton.)

-----)
Frank Wm. McKenney, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded guilty to a charge alleging that, on October 21, 1948, he possessed a container of "Valley Forge" beer which was drawn through a tap labeled "Schaefer", in violation of Rule 1 of State Regulations No. 22.

Since the defendant has no previous record, I shall impose the usual three-day penalty, less one day for the plea, leaving a net suspension of two days. Cf. Rova Farms, Inc., Bulletin 817, Item 16.

Accordingly, it is, on this 17th day of November, 1948,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Committee of the Township of Pemberton to Frank Wm. McKenney, t/a McKenney's Inn, for premises on e/s Lakehurst Road, Pemberton Township, be and the same is hereby suspended for a period

of two (2) days, commencing at 2:00 a.m. November 22, 1948, and terminating at 2:00 a.m. November 24, 1948.

ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary)
Proceedings against)

FRANK S. KOLSKI & MAE GRABLAU)
T/a POLO WINE & LIQUOR STORE)
873 Stuyvesant Avenue)
Irvington 11, N. J.,)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distri-)
bution License D-17, issued by)
the Board of Commissioners of the)
Town of Irvington.)

-----)
Frank S. Kolski & Mae Grablau, Defendant-licensees, Pro Ses.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded non vult to a charge alleging that, on October 22, 1948, they sold six 4/5 quart bottles of Southern Comfort liqueur below the established minimum consumer price, in violation of Rule 6 of State Regulations No. 20.

It appears that the defendants sold a substantial quantity of assorted brands of alcoholic beverages to a patron on the day in question. Included in this sale were six 4/5 quart bottles of Southern Comfort liqueur, or half of a full case. Despite the fact that no discount is permitted on this brand, even when sold in full case lots, the defendants gave the purchaser a 5% discount on the total amount of the purchase price involved in the transaction.

This is defendants' first offense. The usual ten-day penalty, less five days for the plea, leaving a net suspension of five days, will be imposed. Cf. Markowitz, Bulletin 792, Item 9.

Accordingly, it is, on this 17th day of November, 1948,

ORDERED that Plenary Retail Distribution License D-17, issued by the Board of Commissioners of the Town of Irvington to Frank S. Kolski and Mae Grablau, t/a Polo Wine & Liquor Store, 873 Stuyvesant Avenue, Irvington, be and the same is hereby suspended for a period of five (5) days, commencing at 9:00 a.m. November 29, 1948, and terminating at 9:00 a.m. December 4, 1948.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - CHARGES OF DELIVERING TO RETAILER ON DEFAULT LIST AND ACCEPTING ORDINARY CHECK IN PAYMENT DISMISSED UNDER THE CIRCUMSTANCES - CHARGES OF DELIVERY TO RETAILER WITHOUT ACCOMPANYING INVOICE; TRANSPORTATION IN VEHICLE NOT BEARING REQUISITE INSIGNIA; FAILURE TO AFFIX TRANSPORTATION INSIGNIA; DELIVERY WITHOUT REQUISITE ORDERS; FAILURE TO NOTIFY STATE COMMISSIONER OF DEFAULT BY RETAILER - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary)
Proceedings against)

GALSWORTHY, INC.)
414 Elizabeth Avenue)
Newark 8, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Wholesale)
License W-1, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)
-----)

Edward R. McGlynn, Esq. and Herman C. Silverstein, Esq., Attorneys)
for Defendant-licensee.)

Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic)
Beverage Control.)

BY THE COMMISSIONER:

The defendant, holder of a plenary wholesale license, has pleaded non vult to eight charges which, for convenience, may be summarized as follows:

1. That it delivered alcoholic beverages to a retailer without accompanying invoice of sale, in violation of Rule 6 of State Regulations No. 39.
2. That it transported alcoholic beverages in an automobile having no transportation insignia affixed thereto, in violation of Rule 2 of State Regulations No. 17.
3. That it failed to affix to the exterior of a vehicle the transportation insignia which had been issued therefor, in violation of Rule 11 of State Regulations No. 17.
- 4, 6, 7. That it delivered to several retailers alcoholic beverages without their itemization on orders signed by said retailers, in violation of Rule 4 of State Regulations No. 34.
5. That it delivered alcoholic beverages to a retailer then listed in default and accepted in payment therefor ordinary checks of third persons, in violation of Rule 4(a) of State Regulations No. 39.
8. That it failed to notify the State Commissioner of Alcoholic Beverage Control of a default by a retail licensee, in violation of Rule 5(b) of State Regulations No. 39.

As to charges 1, 2 and 3, it appears that on July 22, 1948 an automobile, which had been leased to defendant and which was then being operated on a public highway by one of its employees, was stopped by agents of this Department and found to contain two cases of whiskey. Although claim was made that the whiskey was to be delivered to a retail licensee, there was no accompanying invoice of sale as required by Rule 6 of State Regulations No. 39. Furthermore, although a transportation insignia had been issued for said vehicle, it had not been affixed thereto as required by Rule 11 of State Regulations No. 17.

As to charges 4, 6 and 7, it appears that various shipments of alcoholic beverages, ordered other than by telephone, were delivered

to three different retail licensees without signed orders therefor first having been obtained as required by Rule 4(a) of State Regulations No. 34.

As to charge 8, it appears that defendant failed to file the requisite notice of default with the State Commissioner of Alcoholic Beverage Control within three days after a retail licensee became in default to it, the default occurring because defendant failed promptly to deposit for collection a check received from said retail licensee. Rule 2(b) of State Regulations No. 39 specifically provides, among other things, "A check not promptly deposited for collection...shall not be deemed payment." Defendant's failure to file the necessary notice with the State Commissioner constituted a violation of Rule 5(b) of State Regulations No. 39.

The remaining charge (No. 5) involved the acceptance by the defendant, from a retail licensee, of ordinary checks drawn by various third parties, in payment for a delivery of alcoholic beverages to said retail licensee who was then listed on the current Default List of this Department. Under Rule 4(a) of State Regulations No. 39, no manufacturer or wholesaler shall sell or deliver any alcoholic beverages except for payment in cash on delivery to any retail licensee who is at the time of delivery listed on the Default List. Rule 2(c) of the same regulation defines "payment in cash" to mean the full, legal discharge of a debt by delivery of cash, money order, certified check, bank check, cashier's check or treasurer's check. The Rule also contains the sentence, "Ordinary checks may not be accepted as payment of a defaulted account."

Although it was the intendment of Rules 4(a) and 2(c) to prohibit acceptance of ordinary checks in payment for items delivered to a retailer then listed in default, experience has demonstrated that many manufacturers and wholesalers may have been misled by the sentence "Ordinary checks may not be accepted as payment of a defaulted account" into belief that ordinary checks might be accepted as the equivalent of cash in payment for a C.O.D. delivery to a retailer listed in default. In view of this confusion, common fairness dictates the dismissal of the instant charge. However, there is being publicized contemporaneously herewith an explanatory notice to all manufacturers and wholesalers reiterating the original intention of the rules here in question, which is that ordinary checks may not be accepted either in payment of a defaulted account or in payment for any alcoholic beverages delivered to a retail licensee who is, at the time of delivery, listed on the Default List.

The various matters involved in these charges, taken together, go to the very heart of liquor control. Violations of this character may well form the foundation of far more serious infractions of the law since violations such as these could conceivably be part of a scheme to offer and distribute "free goods" to retailers in violation of state regulations. However, the instant case must be decided upon the charges preferred and admitted by defendant's plea.

After a full and comprehensive review of all of the facts and circumstances, I am forced to the conclusion that defendant has shown a widespread disregard for the Rules and Regulations of this Department. Whether it was purposeful or inadvertent is immaterial. Under all of the circumstances, I shall suspend defendant's license for a period of twenty days. Since this case is among the earliest to be adjudicated involving matters of this kind, the penalty imposed in this and contemporaneous cases need not necessarily be taken as establishing a precedent for future penalties should experience demonstrate that similar and related violations are widespread and continued. If need be, much more severe penalties will be imposed.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Plenary Wholesale License W-1, issued by the State Commissioner of Alcoholic Beverage Control to Galsworthy, Inc., 414 Elizabeth Avenue, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 12:01 a.m. Wednesday, November 24, 1948, and terminating at 12:01 a.m. Tuesday, December 14, 1948.

ERWIN B. HOCK
Commissioner.

5. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - TRANSPORTATION IN VEHICLE NOT BEARING REQUISITE INSIGNIA - PERMIT SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary
Proceedings against

DANIEL FLAX
284 Prospect St.
East Orange, N. J.,

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit No. 817,
issued by the State Commissioner of
Alcoholic Beverage Control.

Herman C. Silverstein, Esq., Attorney for Defendant-permittee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

This defendant pleaded non vult to the following charge:

"On or about July 22, 1948, you transported alcoholic beverages not intended, in good faith, to be used solely for your personal consumption and not pursuant to and within the terms of a license or as otherwise expressly authorized under the Alcoholic Beverage Law, in a vehicle within the State of New Jersey, in that you transported in and about Newark and Irvington, N. J., two cases of pints of Seagram's Seven Crown Blended Whiskey in your automobile without having affixed to the exterior thereof a transportation insignia issued with respect thereto as required by Rule 11 of State Regulations No. 17, said alcoholic beverages not being samples within the intentment of Rule 8 of State Regulations No. 34; in violation of R. S. 33:1-2."

The facts constituting the basis for the charge filed herein are sufficiently set forth in the charge to obviate the necessity of further repetition.

As to penalty, I shall, keeping in mind the non vult plea, suspend the permit of defendant for a period of ten days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Solicitor's Permit No. 817, issued by the State Commissioner of Alcoholic Beverage Control to Daniel Flax, 284 Prospect Street, East Orange, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. Tuesday, December 14, 1948, and terminating at 12:01 a.m. Friday, December 24, 1948.

ERWIN B. HOCK
Commissioner.

6. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - SALE BELOW LISTED WHOLESALE PRICE; DELIVERY WITHOUT REQUISITE ORDER; DELIVERY WITHOUT PROPER ACCOMPANYING INVOICE - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary
Proceedings against

FLAGSTAFF FOODS
536 Fayette Street
Perth Amboy, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Wholesale License
No. W-22 issued by the State
Commissioner of Alcoholic Beverage
Control.

David T. Wilentz, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded non vult to the following charges:

"1. Between March 22 and March 30, 1948, you sold alcoholic beverages to divers licensed New Jersey retailers at less than the wholesale prices established therefor in accordance with Rules 1 and 2 of State Regulations No. 34, viz., Golden Wedding Anniversary Blended Whiskey at \$33.86 per case of 4/5 quarts and \$42.60 per case of pints instead of the established price of \$37.90 per case of 4/5 quarts and \$47.76 per case of pints; in violation of Rule 4 of State Regulations No. 34.

"2. Between the dates aforesaid, you delivered and caused to be delivered to divers licensed New Jersey retailers alcoholic beverages other than those itemized on a bona fide order first signed by the retail licensee or his agent, in that you delivered Golden Wedding Anniversary Blended Whiskey on orders calling for Golden Wedding Blended Whiskey; in violation of Rule 4(a) of State Regulations No. 34.

"3. Between the dates aforesaid, you failed to accompany deliveries of alcoholic beverages to divers New Jersey retail licensees with invoices of sale bearing the name of the retail licensee, the names, types and quantities of products to be delivered, the price and terms of sale, and the place and date of actual delivery, in that you accompanied deliveries of Golden Wedding Anniversary Blended Whiskey to said retailers with invoices of sale bearing the name and price of Golden Wedding Blended Whiskey; in violation of Rule 6 of State Regulations No. 39."

The foregoing charges were based on defendant's sale of a large quantity of Golden Wedding Anniversary Blended Whiskey to numerous retailers at a reduction of \$4.04 per case of 4/5 quarts, and \$5.16 per case of pints under the listed price. In conjunction with these sales, numerous orders allegedly for Golden Wedding Blended Whiskey were accepted and filled by delivery of Golden Wedding Anniversary Blended Whiskey, the retailer being invoiced as for Golden Wedding Blended Whiskey.

Defendant contends that the various transactions constituting the violations as alleged were the result of inadvertence. However, the facts considered, it appears obvious that the defendant's conduct resulted from a deliberate attempt to "unload" a large quantity of Golden Wedding Anniversary Blended Whiskey by selling at less than the listed price and then seeking to conceal the price reduction by falsified orders and invoices.

In net effect, defendant offered retailers a non-permissible discount, contrary to State Regulations No. 34 and No. 39 [REDACTED].

The circumstances and the plea considered, I shall suspend defendant's license for ten days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Plenary Wholesale License No. W-22, issued by the State Commissioner of Alcoholic Beverage Control to Flagstaff Foods, for premises 536 Fayette Street, Perth Amboy, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. Wednesday, November 24, 1948, and terminating at 12:01 a.m. Saturday, December 4, 1948.

ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - WHOLESALE LICENSEE - GIVING "FREE GOODS" TO RETAILER; TRANSPORTATION IN UNLICENSED VEHICLE; DELIVERY WITHOUT REQUISITE ORDER; DELIVERY WITHOUT ACCOMPANYING INVOICE - LICENSE SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary
Proceedings against

THREE FEATHERS DISTRIBUTORS, INC.
26 Journal Square
Jersey City 6, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Wholesale License
W-2, issued by the State Commissioner
of Alcoholic Beverage Control.

Three Feathers Distributors, Inc., by M. J. Halpern, Vice-President,
Defendant-licensee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant, holder of a plenary wholesale license, has pleaded non vult to five charges which may be summarized as follows:

- 1 & 2. That on May 19, 1948 and again on May 26, 1948, it gave free goods to a licensed retailer, thereby violating Rule 4 of State Regulations No. 34 and Rule 3 of State Regulations No. 35.
3. That it transported the free goods to the retailer in an unlicensed vehicle, thereby violating Rule 2 of State Regulations No. 17.
4. That it delivered the free goods without their itemization on an order signed by the retailer, in violation of Rule 4(a) of State Regulations No. 34.
5. That it delivered the free goods to the retailer without accompanying invoice of sale, in violation of Rule 6 of State Regulations No. 33.

It appears that on May 19 and again on May 26, 1948, Howard Kempler, one of defendant's solicitors, with the knowledge and consent of his supervisor Mack Geller, also one of defendant's solicitors, delivered six 4/5 quarts of Three Feathers Reserve Blended Whiskey without charge therefor to a retailer in connection with the sale to that retailer of fifteen cases of the same whiskey. The whiskey was

delivered to the retailer in Howard Kempler's automobile which bore no transportation insignia and was not the subject of any written order signed by the retailers or any invoice accompanying the delivery.

It further appears that the free whiskey was dispensed by the licensee during the course of a so-called "Three Feathers Party" at the licensed premises, apparently as part of a sales promotion scheme initiated by the defendant through its solicitors, who are missionary men. However, notwithstanding that the whiskey was allegedly dispensed without charge to consumers, the fact remains that free goods were furnished to a retailer under circumstances which involved not only violation of the principal regulation (Regulations No. 34) prohibiting the furnishing of such free goods, but also other collateral applicable regulations as previously indicated.

The circumstances and the plea considered, I shall suspend defendant's license for ten days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Plenary Wholesale License W-2, issued by the State Commissioner of Alcoholic Beverage Control to Three Feathers Distributors, Inc., 26 Journal Square, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. Wednesday, November 24, 1948, and terminating at 12:01 a.m. Saturday, December 4, 1948.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - GIVING "FREE GOODS" TO RETAILER; TRANSPORTATION IN UNLICENSED VEHICLE - PERMIT SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary
Proceedings against

HOWARD HAROLD KEMPLER
582 Pfeiffer Street
Camden, N. J.,

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit
No. 1572, issued by the State
Commissioner of Alcoholic
Beverage Control.

Howard Harold Kempler, Defendant-permittee, Pro Se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to the following charges:

1. On or about May 19, 1948, and again on or about May 26, 1948, you gave, directly and indirectly, to New Jersey licensed retailers Dominic Consiglio and Charles Frollani, t/a Palace Cafe, Beverly, New Jersey, a gift, allowance and similar inducement in connection with the sale of alcoholic beverages to said retailers, in that you delivered to said retailers on each of the aforementioned dates six 4/5 quart bottles of Three Feathers Reserve Blended Whiskey in connection with the sale of fifteen (15) cases of Three Feathers Reserve Blended Whiskey to said retailers; in violation of Rule 3 of State Regulations No. 35.

2. On or about the dates aforesaid, you transported alcoholic beverages not intended, in good faith, to be used solely for your personal consumption and not pursuant to and within the terms of a license or as otherwise expressly authorized under the Alcoholic Beverage Law, in a vehicle within the State of New Jersey, in that you transported on each of the aforementioned dates six 4/5 quart bottles of Three Feathers Reserve Blended Whiskey in your automobile in and about Beverly, N. J., said alcoholic beverages not being samples within the intendment of Rule 8 of State Regulations No. 34; in violation of R. S. 33:1-2.

This case is inter-related with proceedings being decided concurrently herewith against Three Feathers Distributors, Inc. The full facts appear in that decision and need not be repeated here.

The circumstances and the plea considered, I shall suspend defendant's permit for ten days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Solicitor's Permit No. 1572, issued by the State Commissioner of Alcoholic Beverage Control to Howard Harold Kempler, 582 Pfeiffer Street, Camden, N. J., be and the same is hereby suspended for ten (10) days, commencing 12:01 a.m. Saturday, December 4, 1948, and ending 12:01 a.m. Tuesday, December 14, 1948.

ERWIN B. HOCK
Commissioner.

9. DISCIPLINARY PROCEEDINGS - SOLICITOR'S PERMIT - GIVING "FREE GOODS" TO RETAILER; TRANSPORTATION IN UNLICENSED VEHICLE - PERMIT SUSPENDED FOR 10 DAYS.

In the Matter of Disciplinary)
Proceedings against)

MACK GELLER)

441 Brooklyn Avenue)
Brooklyn, New York,)

CONCLUSIONS
AND ORDER

Holder of Solicitor's Permit)
No. 1574, issued by the State)
Commissioner of Alcoholic)
Beverage Control.)

-----)
Mack Geller, Defendant-permittee, Pro Se.

Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to the following charges:

1. On or about May 19, 1948, and again on or about May 26, 1948, you gave, directly and indirectly, to New Jersey licensed retailers Dominic Consiglio and Charles Frollani, t/a Palace Cafe, Beverly, New Jersey, a gift, allowance and similar inducement in connection with the sale of alcoholic beverages to said retailers, in that you delivered to said retailers on each of the aforementioned dates six 4/5 quart bottles of Three Feathers Reserve Blended Whiskey in connection with the sale of fifteen (15) cases of Three Feathers Reserve Blended Whiskey to said retailers; in violation of Rule 3 of State Regulations No. 35.

2. On or about the dates aforesaid, you knowingly aided and abetted Howard Harold Kempler to transport alcoholic beverages not intended, in good faith, to be used solely for his personal consumption and not pursuant to and within the terms of a license or as otherwise expressly authorized under the Alcoholic Beverage Law, in a vehicle within the State of New Jersey, in that you participated in the transportation on each of the aforementioned dates of six 4/5 quart bottles of Three Feathers Reserve Blended Whiskey by Howard Harold Kempler in his automobile in and about Beverly, N. J., said alcoholic beverages not being samples within the intendment of Rule 8 of State Regulations No. 34, contrary to R. S. 33:1-2; in violation of R. S. 33:1-52.

This case is inter-related with proceedings being decided concurrently herewith against Three Feathers Distributors, Inc. The full facts appear in that decision and need not be repeated here.

The circumstances and the plea considered, I shall suspend defendant's permit for ten days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Solicitor's Permit No. 1574, issued by the State Commissioner of Alcoholic Beverage Control to Mack Geller, 441 Brooklyn Avenue, Brooklyn, N. Y., be and the same is hereby suspended for ten (10) days, commencing at 12:01 a.m. Saturday, December 4, 1948, and ending 12:01 a.m. Tuesday, December 14, 1948.

ERWIN B. HOCK
Commissioner.

10. STATE REGULATIONS NO. 39 - HEREIN OF INTERPRETATION OF RULES 2(c) AND 4(a) - ORDINARY CHECKS MAY NOT BE ACCEPTED IN PAYMENT OF DEFAULTED RETAIL ACCOUNT OR IN PAYMENT OF C. O. D. DELIVERY TO RETAILER ON DEFAULT LIST.

TO ALL NEW JERSEY LICENSED MANUFACTURERS AND WHOLESALERS:

Regulations No. 39 - Interpretation of Rules 2(c) and 4(a)

Rule 4(a) of State Regulations No. 39 provides that no manufacturer or wholesaler shall sell or deliver any alcoholic beverage except for payment in cash on delivery to any retail licensee who is at the time of delivery listed on the Default List of this Department. Rule 2(c) of the same regulations provides that "payment in cash" means full legal discharge of a debt by delivery of cash, money order, certified check, bank check, cashier's check or treasurer's check. The same rule further states, "Ordinary checks may not be accepted as payment of a defaulted account."

Although it was the intendment of Rules 4(a) and 2(c) to prohibit acceptance of ordinary checks in payment of items delivered to a retailer then listed in default, experience has demonstrated that many manufacturers and wholesalers may have been misled by the sentence "Ordinary checks may not be accepted as payment of a defaulted account" into belief that ordinary checks might be accepted as the equivalent of cash in payment for a C.O.D. delivery to a retailer listed in default.

However, all manufacturers and wholesalers are hereby notified that the proper interpretation of Rules 4(a) and 2(c) is that ordinary checks may not be accepted either in payment of a defaulted account or in payment for any alcoholic beverages delivered to a retailer who is at the time of delivery listed on the Default List of this Department.

Future violation of Rule 4(a) of State Regulations No. 39 by acceptance of ordinary checks in payment for alcoholic beverages delivered to a retailer on the Default List will be deemed to be contrary to Rule 2(c) subjecting the license to disciplinary proceedings directed to its suspension or revocation.

ERWIN B. HOCK
Commissioner.

Dated: November 19, 1948.

11. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - AGGRAVATED
CIRCUMSTANCES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

THE ROMA GARDEN CORP.)
T/a ROMA GARDEN CORP.)
444 Cedar Lane)
Teaneck, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-19, issued by the)
Township Committee of the)
Township of Teaneck.)

John Meli, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to two charges alleging that it sold, served and delivered alcoholic beverages to minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On October 9, 1948, two waitresses employed by the defendant served four minors with alcoholic beverages. Two of the minors were 17 years of age and the other two were 20 years of age.

The defendant has no previous adjudicated record. Under all of the attendant circumstances, including the number of minors involved, and the ages of the two younger minors, I shall suspend the license for a period of twenty days. Five days will be remitted for the plea, leaving a net suspension of fifteen days. Cf. Re Haley, Bulletin 803, Item 7; Re Drucker, Bulletin 801, Item 5.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Plenary Retail Consumption License C-19, issued by the Township Committee of the Township of Teaneck to The Roma Garden Corp., t/a Roma Garden Corp., 444 Cedar Lane, Teaneck, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. November 29, 1948, and terminating at 2:00 a.m. December 14, 1948.

ERWIN B. HOCK
Commissioner.

12. DISCIPLINARY PROCEEDINGS (Pemberton Township) - PIN BALL MACHINE -
 LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
 Proceedings against

CARL H. ERICKSON
 T/a BUS TERMINAL
 E/S Lakehurst Road
 Pemberton Township
 Browns Mills, N. J.,

CONCLUSIONS
 AND ORDER

Holder of Limited Retail Distri-
 bution License DL-1, issued by the
 Township Committee of the Township
 of Pemberton.

 Daniel Lichtenthal, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to the following charge:

"On October 21, 1948, you allowed, permitted and suffered
 on and about your licensed premises, a machine or device
 commonly known as a bagatelle or pin ball machine; in
 violation of Rule 7 of State Regulations No. 20."

On October 21, 1948, an investigator of the State Department of
 Alcoholic Beverage Control observed a bagatelle or pin ball machine on
 the defendant's licensed premises. In mitigation the licensee claimed
 that the owner of the machine had advised him that such a machine was
 legal. Licensees would do well to read the regulations and, if not
 sure of the meaning thereof, seek information from the Department.

The defendant has no previous adjudicated record. I shall suspend
 his license for the minimum period in cases of this kind, ten days.
Re Carteret Club of Trenton, Bulletin 672, Item 12. Remitting five
 days of the suspension because of the plea will leave a net suspension
 of five days.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Limited Retail Distribution License DL-1, issued by
 the Township Committee of the Township of Pemberton to Carl H.
 Erickson, t/a Bus Terminal, E/S Lakehurst Road, Pemberton Township, be
 and the same is hereby suspended for a period of five (5) days, com-
 mencing at 9:00 a.m. November 29, 1948, and terminating at 9:00 a.m.
 December 4, 1948.

ERWIN B. HOCK
 Commissioner.

13. APPELLATE DECISIONS - KEMO v. TRENTON.

JOHN L. KEMO, trading as
T & J Liquor Store,

Appellant,

--vs--

BOARD OF COMMISSIONERS OF THE
CITY OF TRENTON,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

David Melsey, Esq., Attorney for Appellant.

John A. Brieger, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

The appellant appeals from the respondent Board's denial of transfer of his plenary retail distribution license from 634 North Clinton Avenue to 395 Stuyvesant Avenue.

A given reason for the denial is that it is to the best interest of the surrounding community and the city in general that said application be denied.

The location to which transfer is sought is in "West Trenton", a portion of the city to the west of Calhoun Street and Pennington Avenue. In April 1935, the city's governing body adopted a policy not to issue any new license or transfer any license to premises in "West Trenton". See Oransky v. Trenton, Bulletin 220, Item 5. It appears that the indicated policy has been consistently followed to date.

Transfer of a license is not a privilege inherent in the license. The municipal issuing authority may grant or deny a transfer in the exercise of a reasonable discretion. Van Schoick v. Howell, Bulletin 120, Item 6.

The evidence shows that the section to which the transfer is sought is of a mixed residential and business character. Denial of a transfer to such a section does not constitute an abuse of discretion. Drucker v. Trenton, Bulletin 474, Item 9; Morrovitz v. Bellmawr, Bulletin 329, Item 9; Borkowski v. Clifton, Bulletin 139, Item 5; Welstead v. Matawan, Bulletin 133, Item 2.

Five plenary retail consumption licenses and one plenary retail distribution license are outstanding for premises within a radius of one mile from the appellant's proposed location. The evidence for the appellant falls far short of proving a public need for the placing of an additional licensed establishment at the indicated location.

The appellant has failed to sustain the burden of proof necessary to show an abuse of the respondent's discretion. The respondent's action is, therefore, affirmed.

Accordingly, it is, on this 19th day of November, 1948,

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

ERWIN B. HOCK
Commissioner.

14. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS.

In the Matter of Disciplinary
Proceedings against

CLIFFORD MADSEN & MICHAEL MUTZ
1813 Atlantic Ave.
Atlantic City, N. J.,

CONCLUSIONS
AND ORDER

Holder of Planary Retail Consump-
tion License C-163, issued by the
Board of Commissioners of the
City of Atlantic City.

Clifford Madsen & Michael Mutz, Defendant-licensees, by Clifford
Madsen.

Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

BY THE COMMISSIONER:

The defendants pleaded not guilty to the charge that, on August 23, 1948, there was an unlabeled beer tap in their licensed premises, in violation of Rule 1 of State Regulations No. 22.

An ABC agent testified that during a routine inspection of defendants' licensed premises, he observed that beer was being drawn from a barrel marked "Rheingold" through a tap bearing no label.

Defendants claim that the label had fallen from the tap and had been swept up by an employee and placed in the trash can. Nevertheless, defendants are responsible for the violation in question.

I find defendants guilty as charged.

Defendants have no previous adjudicated record. The license, therefore, will be suspended for a period of three days. Re Badyna, Bulletin 797, Item 5.

Accordingly, it is, on this 19th day of November, 1948,

ORDERED that Planary Retail Consumption License C-163, issued by the Board of Commissioners of the City of Atlantic City to Clifford Madsen and Michael Mutz, for premises 1813 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of three (3) days, commencing at 7:00 a.m. November 29, 1948, and terminating at 7:00 a.m. December 2, 1948.

ERWIN B. HOCK
Commissioner.

15. STATE LICENSES - NEW APPLICATION FILED.

Sea-Cal-Frank Corporation
405 Lexington Ave.
New York, N. Y.

Application for Planary Wholesale License filed November 18, 1948.

New Jersey State Library Commissioner.