

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

BULLETIN 656

MARCH 13, 1945.

1. ADVERTISING - CONTEST SPONSORED BY MANUFACTURER, WITH WINNERS TO RECEIVE A CASE OF WHISKEY, DISAPPROVED.

March 5, 1945

Calvert Distillers Corporation,
New York, N. Y.

Gentlemen:

My attention was recently directed to a booklet titled, "Match Your Skill Against the Experts! Win A Case of Lord Calvert", sponsored by your company and placed upon the counters of retail licensees in this State by your missionary men for distribution to the consumer public. Upon discovery of the booklet, a member of this Department immediately telephoned your company and instructed it to have every booklet picked up from retail premises and to stop further distribution of the booklets in this State. I assume that your company promptly complied with this request.

It is apparent that those in your company chargeable with the responsibility for the creation of the booklet and the contest which it publicizes are not familiar with Alcoholic Beverage Control Law and regulations in this State. For your information, the booklet violates the following policies and rulings of the Department:

Contests for the promotion of the sale of alcoholic beverages are prohibited. (Bulletin 156, Item 5; Bulletin 161, Item 1 and Bulletin 199, Item 11).

An award of an alcoholic beverage by a manufacturer to a consumer is in effect a sale. A manufacturer or wholesaler is not privileged to sell alcoholic beverages to a consumer. (Bulletin 176, Item 13).

In inviting submission of entries in the contest, you made no provision for barring minors from participating and receiving the award of an alcoholic beverage. The sale and delivery of alcoholic beverages to persons under the age of 21 years is prohibited.

For many months wholesalers, retailers and consumers alike have been harassed by shortages in alcoholic beverages, with popular and standard brands obtainable only in limited quantities and at isolated intervals. The spectacle of a standard brand of alcoholic beverage being offered by its manufacturer as a prize in a promotional contest, during this period, will further annoy an already irritated public.

Your objectionable booklet, "Match Your Skill", etc. is reason for reaffirming my oft-repeated advisory suggestion that advertising and promotional schemes should be submitted to the Department for my express approval before being projected in this State.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

2. STATE LICENSES - APPLICATION FOR STATE BEVERAGE DISTRIBUTOR'S LICENSE DENIED.

In the Matter of an Application)
by)

JOSEPH BRAUNSTEIN)
T/a FRANKLIN BOTTLING CO.)

for a State Beverage Distributor's)
License for premises at)

90 Cohansey Street)
Bridgeton, N. J.)

ON HEARING
CONCLUSIONS

Robert G. Howell, Esq., Attorney for Applicant.

BY THE COMMISSIONER:

On February 6, 1945 the applicant was notified that his application for a State Beverage Distributor's license for premises at 90 Cohansey Street, Bridgeton, New Jersey, would be denied because there did not appear to be any public convenience or necessity to be served by the issuance of a new license. It further appeared that the granting of the application for an additional license in the City of Bridgeton would not be in the best interest of the public or the industry. Thereafter the applicant requested a hearing for the purpose of showing (1) that he was merely applying for a license heretofore held by his brother and his brother's estate, and (2) that necessity for the license exists. The request was granted and the applicant and five persons who had filed written objections to the issuance of the license were notified of a hearing to be held on February 28, 1945.

At the hearing, no objectors appeared. The applicant testified that a "soft drink and beer business" was established in Bridgeton, in 1885, by his father and conducted at first by his father and later by his brother, Elmer Braunstein, until the latter died on September 16, 1942. Elmer Braunstein held a State Beverage Distributor's license used in connection with that business from 1934 until the date of his death. Thereafter, the license then in effect was extended for the balance of its term to the Executrix of the Estate of Elmer Braunstein. The license was not renewed for the fiscal year beginning July 1, 1943.

Applicant herein had been employed by Elmer Braunstein but, shortly after his brother's death, he established his present business, which is confined to the bottling and sale of "soft drinks." Applicant has been operating his business without a liquor license for approximately two years. Under the circumstances, I can see no merit to the contention that the applicant herein is applying for a license heretofore held by his brother and his brother's estate.

As to necessity: Applicant testified that he intends to sell beer to some retailers and that he also intends to sell beer to consumers and make deliveries to homes in Bridgeton and the surrounding municipalities. Perhaps the issuance of the license might be of benefit to the applicant, but the question to be decided herein is whether or not the issuance of the license would be to the best interest of the industry and of the public. No retailer has testified that he is inadequately serviced at present. No consumer has so testified. There is a very substantial "dry" sentiment in Bridgeton and the surrounding communities. Taking this fact into consideration,

I conclude that the existing retail licensees in Bridgeton are amply able to take care of the alcoholic beverage needs of consumers residing in and near the City of Bridgeton.

Exercising the discretionary power conferred upon the Commissioner by the provisions of the Alcoholic Beverage Law, I hereby deny the application of Joseph Braunstein, t/a Franklin Bottling Co., for a State Beverage Distributor's license for premises at 90 Cohansey Street, Bridgeton, New Jersey.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 6, 1945.

3. APPELLATE DECISIONS - WITKOWSKI v. LAKEWOOD TOWNSHIP.

JOHN WITKOWSKI,)
Appellant,)
-vs-)
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF LAKEWOOD,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

Respondent denied appellant's application for renewal of his plenary retail consumption license for the present fiscal year. Hence this appeal.

At the hearing, the attorney for respondent represented on the record that he had no proof to offer because it "is not sufficient to sustain the action of the Township Committee."

The local clerk and license inspector testified that the renewal should have been granted. Evidence that the appellant has conducted his premises in accordance with the law was given by two local police officers.

Under the circumstances, the refusal to renew the appellant's license will be reversed.

Accordingly, it is, on this 6th day of March, 1945,

ORDERED, that respondent's action in denying appellant's plenary retail consumption license for the present fiscal year be and the same is hereby reversed, and respondent is directed to issue to appellant the license for which he has applied.

ALFRED E. DRISCOLL
Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20 - SALE OF ALCOHOLIC BEVERAGES TO AN INTOXICATED PERSON, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR A PERIOD OF 60 DAYS.

In the Matter of Disciplinary Proceedings against)

PATRICK J. WALSH)
218 Paterson Plank Road)
Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-173 issued by the Board of Commissioners of the City of Union City.)
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Patrick J. Walsh, Defendant-Licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to charges alleging the sale, service and delivery of alcoholic beverages to three minors and an intoxicated person.

Approximately eighty persons frequented the defendant's premises on the night of Saturday, February 10, 1945, when several ABC agents visited there. A substantial number of the patrons wore the uniform of the United States Navy.

The agents observed an intoxicated sailor at the bar. This sailor was served at least four glasses of beer by the bartender after the outward manifestations of the sailor's condition made it clearly evident that he was in an extreme state of intoxication.

During their visit, the agents also detected the service of beer to three other sailors, two of whom were nineteen and one eighteen years of age.

The lack of proper precautions adequate to prevent the sale of alcoholic beverages to intoxicated persons ordinarily warrants stern censure. Where, however, members of our armed forces are concerned, a greater duty to abide by the law must necessarily be assumed by the licensee, with a correspondingly greater responsibility for any infractions. Cf. Re Traverso, Bulletin 519, Item 12. Apart from its unpatriotic aspect, it is unseemly, to say the least, for a drunken sailor, as in this case, to use the vilest of language and to display disrespect to female patrons.

Perhaps a sixty-day penalty will bring home to the defendant an awareness of the value of the privileges of his license and the degree of care required of him if he is to retain those privileges. Any further violation may indicate that the defendant is not capable of conducting a licensed establishment with due regard for the salutary provisions of the statute and regulations, in which event his license privileges will be permanently terminated.

Accordingly, it is, on this 6th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-173, issued to Patrick J. Walsh by the Board of Commissioners of the City of Union City for premises 218 Paterson Plank Road, Union City, be and the same is hereby suspended for a period of sixty (60) days, commencing at 12:01 a.m. on March 12, 1945 and terminating at 12:01 a.m. on May 11, 1945.

ALFRED E. DRISCOLL
Commissioner.

5. ADVERTISING - LICENSEE MAY NOT ADVERTISE SCOTCH TYPE WHISKEY AS SCOTCH WHISKY.

March 6, 1945

Mr. Philip Schlenger
Paterson, N. J.

Dear Sir:

My attention has been directed to an advertisement sponsored by you in the Paterson Evening News of March 1st, in which you advertise for sale "SCOTCH, King's-Treasure Type, Import of Scotland, 86 Pf., 5th \$4.26."

The typographical make-up and content of the advertisement, whether by deliberate design or otherwise, would lead an unsuspecting consumer to believe that you are offering a genuine imported Scotch whisky. King's Treasure is a domestic whiskey (Scotch type), as is clearly stated on the label. There is no evidence in the formula of the product or on the label authorizing you to designate the product as an "Import of Scotland." Further, in order to clearly establish that King's Treasure whiskey is a Scotch type and not a genuine imported Scotch whisky, the wholesale distributor controlling the product submitted a price listing for the item in the Fair Trade publication effective January 1st and designated it as a domestic Scotch type. It was so placed under a proper heading in the pamphlet.

There is no excuse for misleading liquor advertisements. This statement is particularly true during a period when, due to shortages, the public is more gullible than normally.

You are herewith specially ordered to desist from further deceptive advertising practices in the future and to incorporate your pledge of strict compliance with my order in a letter to me without delay.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

6. HOURS OF SALE - STATE REGULATIONS NO. 40, RULE 2 - BONA FIDE RESTAURANTS ARE NOT REQUIRED TO CLOSE BY STATE REGULATION BUT ARE REQUIRED TO CLOSE BY WMC DIRECTIVE, EXCEPT AS NOTED HEREIN.

March 7, 1945

Samuel Chiaravalli, Borough Attorney,
Bound Brook, N. J.

Dear Mr. Chiaravalli:

Rule 1 of State Regulations No. 40 prohibits the sale, service, delivery or consumption of alcoholic beverages on licensed premises, including licensed restaurants, between 12:00 o'clock midnight and 7:00 a.m. of the following morning.

Rule 2 of State Regulations No. 40 excepts bona fide restaurants from the requirement that the entire licensed premises shall be closed between midnight and 7:00 a.m. Accordingly, there is no violation of Rule 2 of State Regulations No. 40 if a bona fide restaurant remains open for the service of food only between midnight and the usual closing hour for licensed premises as previously fixed by the local municipal regulations.

I am informed, however, that the War Manpower Commission has ruled that, in general, only those restaurants which customarily stayed open all night prior to February 19, 1945 "for the purpose of serving food" are exempted from the midnight curfew. There may be other exceptions made by the War Manpower Commission in favor of restaurants which are adjacent to war plants or railroad stations.

You will thus see that there may be cases in which bona fide restaurants may not be violating Rule 2 of State Regulations No. 40 but may be violating Director Byrnes' request. Even if no violation of Rule 2 of State Regulations No. 40 is involved, all restaurants, except those exempted under the rulings of the War Manpower Commission, must be closed from midnight to 7:00 a.m. on the following morning.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

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

In the Matter of Disciplinary Proceedings against)

FIDELIS CALLAHAN, Administratrix of the Estate of John P. Callahan) 506 Summit Avenue Union City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Union City.)

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Defendant-licensee, Pro se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant, administratrix of the Estate of John P. Callahan, pleads non vult to charges alleging sale and service of alcoholic beverages to a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On February 23, 1945 three ABC agents observed an employee of defendant serve alcoholic beverages to a merchant seaman in the licensed premises. The young man was 18 years and 11 months of age. A licensee is accountable for violations of employees on the licensed premises. Re Kneller, Bulletin 49, Item 4. The normal suspension of the license for a violation of this kind where there is no prior record is ten days. However, in a previous disciplinary proceeding, John Callahan, now deceased, entered a plea of non vult to charges alleging sale to minors, employing a minor and also employing a person disqualified because of a criminal conviction. As a result thereof, his license was suspended by the local issuing authority for a period of thirty days, effective August 7, 1944.

Under all the circumstances, I shall suspend defendant's license for a period of twenty days, with remission of five days for the non vult plea, or a net suspension of fifteen days.

Accordingly, it is, on this 8th day of March, 1945,

ORDERED, that Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Union City to Fidelis Callahan, Administratrix of the Estate of John P. Callahan, for premises 506 Summit Avenue, Union City, be and the same is hereby suspended for a period of fifteen (15) days, commencing March 14, 1945, at 12:01 a.m. and terminating March 29, 1945, at 12:01 a.m.

ALFRED E. DRISCOLL Commissioner.

8. DISCIPLINARY PROCEEDINGS - CHARGE OF SELLING ALCOHOLIC BEVERAGES TO A MINOR, IN VIOLATION OF R. S. 33:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN THE BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against DENVILLE SHACK, INC. T/a DENVILLE SHACK Route 6 Denville, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-5, issued by the Township Committee of the Township of Denville.

Frank C. Scerbo, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded not guilty to charges alleging that on Friday night, July 21, 1944, and on divers dates prior thereto, it sold alcoholic beverages to Robert ----, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The minor in this case is the same minor referred to in Re Chiappa, Bulletin 636, Item 6, and Re Levine, Bulletin 653, Item 5.

After leaving a carnival and stopping at Levine's premises, the party proceeded by automobile to defendant's premises. Robert and a young man who was over the age of twenty-one years entered defendant's premises. The two young ladies remained in the automobile. Joseph Greenberg, an officer of defendant corporation, was then tending bar.

At the hearing held herein, Robert and his companion testified that the latter ordered from the bartender three or four rounds of beer, which were consumed by them. Robert also testified that, on several previous occasions, he had purchased beer from the same bartender in defendant's premises. (The latter alleged sales are not covered by the charges herein).

On behalf of defendant, Joseph Greenberg testified that, on the evening in question, he sold two two-quart containers of beer to the young man who was of full age; that these containers were taken from the premises by the young man and that neither of them consumed any beer on the licensed premises. Assuming that Mr. Greenberg's version of the transaction is correct, it would appear that the sale was made to a person of full age for consumption off the licensed premises, and no violation was committed on defendant's premises. Joseph Greenberg also testified that the minor, Robert, had frequently visited defendant's premises and had purchased items of food, but denied that any alcoholic beverages had ever been sold or served to the minor or that he had ever been permitted to consume any alcoholic beverages on the premises.

The Denville Shack has been operated by Joseph Greenberg for the past twenty-three years. Either he or defendant has held a liquor license for said premises since Repeal. Neither he nor defendant has ever been adjudicated guilty of any violation.

This case presents a clear conflict between the uncorroborated testimony given by the young men and the testimony given by the officer of defendant corporation. Both of the Department's witnesses had consumed a large quantity of beer earlier on the same evening and, as one of them testified at the hearing, they were then "pretty well drunk." Weighing their testimony against the positive denial by the officer of defendant corporation, I conclude that the Department has not sustained the burden of proof in establishing the defendant's guilt.

Accordingly, it is, on this 8th day of March, 1945,

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF LIQUOR THROUGH NEW JERSEY IN VEHICLE NOT LICENSED FOR THE TRANSPORTATION OF ALCOHOLIC BEVERAGES OR AUTHORIZED BY SPECIAL PERMIT - VEHICLE AND CONTENTS SUBJECT TO SEIZURE AND FORFEITURE WHERE TRANSPORTATION IS NOT PART OF A BONA FIDE TRANSACTION AND LIQUOR IS INTENDED FOR DELIVERY IN VIOLATION OF THE LAW OF THE STATE OF DESTINATION - SEIZED BEVERAGES DECLARED UNLAWFUL PROPERTY AND ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 6534
November 3, 1943, of 352 bottles)	
of alcoholic beverages on Route 25,)	ON HEARING
in the City of Jersey City, County)	CONCLUSIONS AND ORDER
of Hudson and State of New Jersey.)	

Jay H. Eisman, Esq. (Ralph A. Villani, Esq., of Counsel),
Attorneys for Daniel McKay.
Harry Castelbaum, Esq., appearing for 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 322 quarts and 30 - 4/5th quarts of various brands of seized whiskey constitute unlawful property and should be forfeited.

On November 3, 1943 Jersey City police officers stopped a truck owned by the Hygrade Bakery Company of Philadelphia on Highway 25 in Jersey City and discovered that the above described whiskey was being transported therein. The truck was not licensed to transport alcoholic beverages in New Jersey.

John Chupka, a Hygrade employee, was driving the truck. He was accompanied by Daniel McKay, a licensed tavern owner of Pennsylvania. McKay informed the police officers that he had purchased the whiskey in New York City and was taking it to Pennsylvania for resale in his tavern. No evidence to the contrary has been presented. McKay was prohibited by Pennsylvania law from importing whiskey for resale at his tavern.

The truck and whiskey were turned over to the Department of Alcoholic Beverage Control by the Jersey City police authorities. On application of the bakery company prior to the seizure hearing, the truck was returned when it was established that Chupka undertook the transportation of the whiskey in question without his employer's knowledge; that he was not acting within the scope of his employment; and that the bakery company was entirely innocent of wrongdoing.

When the matter came on for hearing pursuant to R.S. 33:1-66, Daniel McKay appeared and sought the return of the whiskey on the ground that he was transporting the same in interstate commerce; hence, under Rule 2, State Regulations No. 17, promulgated by the Commissioner of Alcoholic Beverage Control, was permitted to use an unlicensed vehicle for that purpose. He contends that, under the aforesaid Rule, if he established that the transportation is interstate in character, he and his whiskey may pass through this State without hindrance even though it appears that the whiskey is intended for importation and delivery in a neighboring state in violation of the laws of that state.

The Alcoholic Beverage Law, R. S. 33:1-2, requires that all transportation of alcoholic beverages must be in a vehicle licensed by the Commissioner of Alcoholic Beverage Control except in the case of limited quantities intended for personal consumption.

The pertinent language of Section 2 reads:

"It shall be unlawful to transport *** alcoholic beverages in this State, except pursuant to and within the terms of a license, or as otherwise expressly authorized, under this chapter."

It is conceded there is no other section of the Alcoholic Beverage Law authorizing the transportation of the whiskey in question.

Section 2 applies with equal force to interstate as well as intrastate shipments of alcoholic beverages.

The United States Supreme Court has recognized that the several states may require regulatory license for through shipments of liquor in order to guard against violations of their own laws. Duckworth v. Arkansas, 314 U. S. 390, 86 L. ed. 294.

Thus the Supreme Court has extended to this very field its recognition that the regulation of interstate commerce by the states, in the absence of Congressional action, is permissible to protect the states from injury arising from that commerce. Carter v. Commonwealth of Virginia, U. S. , 88 L. ed. 387, 389.

In the last cited case the Supreme Court sustained the right of the State of Virginia, by legislation, to restrict the transportation of alcoholic beverages through that state. Virginia required, among other things, that the vehicle engaged in the transportation of alcoholic beverages carry a bill of lading showing the route to be traveled through the State, the name of the true consignee, and that the consignee must have a legal right to receive the beverages at the stated destination. Virginia also required the carrier to post a bond in the penal sum of \$1,000.00, conditioned on lawful transportation.

On June 8, 1934 Commissioner Burnett, in support of the legislative policy stated in R. S. 33:1-2, ruled:

"All vehicles transporting alcoholic beverages without a transportation permit of the Department of Alcoholic Beverage Control affixed thereto and all alcoholic beverages transported therein are subject to seizure and confiscation." (Bulletin 34, Item 12).

The only exception permitted by the former Commissioner related to transportation of a limited quantity for personal consumption and the transportation of alcoholic beverages pursuant to a special permit from this Department.

It is conceded McKay did not have a special permit authorizing the transportation of the seized whiskey in New Jersey.

Shortly after his ruling of June 9, 1934, Commissioner Burnett, in discussing the applicability of the statute to the transportation of alcoholic beverages through New Jersey, as a matter of comity determined to permit such transportation within carefully defined limits.

On July 7, 1934 the former Commissioner promulgated a rule (subsequently Rule 2, State Regulations No. 17) codifying his previous rulings. In doing so, he offered the following explanatory statement:

"***all enforcement agencies have been instructed to stop all vehicles *** carrying alcoholic beverages for the purpose of determining *** whether the shipment was actually and in good faith made in interstate commerce."

Rule 2 of State Regulations No. 17 at the time of the seizure read as follows:

"Alcoholic beverages not intended for sale or use in New Jersey may be transported through this State in any vehicle, provided no delivery is made in New Jersey."

When Rule 2 is read in the light of the Commissioner's explanatory statement and R. S. 33:1-2, it is perfectly clear that implicit in the Rule is the requirement that the transportation must be in interstate commerce "in good faith", otherwise the Rule affords no protection and Section 2 applies with full force.

An essential ingredient of this "good faith" is that the liquor be intended for lawful delivery at the place of destination. Cf. Carter v. Virginia, supra.

The driver of any vehicle not licensed to transport alcoholic beverages in this State engaged in transporting liquor may be stopped and required to account for his activities. It is incumbent upon the driver or owner to demonstrate (1) that the liquor is not intended for delivery in New Jersey, and (2) that the interstate transportation is a part of a bona fide lawful enterprise.

In Carter v. Commonwealth of Virginia, supra, the Court held:

"It is enough that Virginia could conclude, in the absence of contrary legislation, that she could not safely permit the transportation of liquor through her territory by those who concededly mean to break Federal laws and the laws of a neighboring state." (Emphasis is ours).

New Jersey, by its statute, has imposed no substantial restraint on transportation or the rights of her sister states to receive alcoholic beverages in lawful interstate commerce if they so desire. Provision is made for the issuance of transportation licenses for a nominal fee (R. S. 33:1-13). In addition, the Commissioner is authorized to issue special permits to cover isolated cases.

Mr. Justice Frankfurter, in a concurring opinion in the Carter case, succinctly observes that the Virginia legislation

"is sustainable under the Twenty-first Amendment on one of two considerations. It is a notorious fact that State prohibition laws were to no small measure evaded by illicit diversion of liquor claimed to be transported through a State. Since we are dealing with a constitutional amendment that should be broadly and colloquially interpreted, liquor that enters a State in the manner in which the liquor here came into Virginia may, without undue liberty with the English language, be deemed to be for 'delivery' there even though it is consigned for another state. The Twenty-first Amendment prohibits the 'transportation or importation into any State *** of intoxicating liquors, in violation of the laws thereof', not when the liquor is for delivery and use but for 'delivery or use therein.' In other words, liquor need not be intended for consumption in a State to be deemed to be imported into the State and therefore subject to control by that State." (88 L. ed. 392).

Mr. Justice Frankfurter concludes:

"In the alternative, since Virginia has power to prohibit the importation of liquor within that Commonwealth, it may effectuate that purpose by measures deemed by it necessary to prevent evasion of its policy by pretended through-shipments. In a word, having the power to prohibit liquor from coming into a State, a State may take measures against frustration of that power by resort to the claim that liquor passing through a State enjoys the protection of the Commerce Clause. If a State may take these protective measures, as surely it may, who is to decide what measures are necessary for its protection? If a State may ask for the posting of a \$1,000.00 bond, may she not require a \$10,000.00 bond? If a State should urge that its experience shows that any regulatory system is ineffective because illicit diversion is too resourceful for control by mere regulation and requires prohibition, who is to say, in view of the history embedded in the Twenty-first Amendment, that a State may not fairly act on such a judgment?"

A person who intends to import alcoholic beverages into a neighboring state in violation of its laws is a potential violator of the liquor laws of every state through which he transports his alcoholic beverages.

In Duckworth v. Arkansas, supra, Justice Jackson expressed the opinion the law is not so "tricky" as to permit a person under guise of constitutional rights to claim safe conduct in one state when his goal is to violate laws of another state.

McKay offered no proof as to the Pennsylvania law, but counsel for McKay agreed that the Commissioner should consider as part of the record Section 601(3) of the Pennsylvania Control Act, which prohibits licensed tavern owners from purchasing alcoholic beverages for resale at their taverns from other than Pennsylvania State Liquor Stores.

Hence McKay could not legally import the seized whiskey into Pennsylvania. Accordingly, he has failed to meet the requirements of "good faith."

The transportation of the whiskey through this State was, therefore, in violation of R. S. 33:1-2 because the vehicle in question was not licensed to transport alcoholic beverages. The seized whiskey is illicit, subject to seizure and forfeiture. R.S.33:1-1(i); R. S. 33:1-2 and R. S. 33:1-66.

Under R. S. 33:1-66(e) I am authorized to return the property subject to forfeiture to a person who establishes to my satisfaction (1) that he had acted in good faith, and (2) unknowingly violated the law.

McKay's attempt to smuggle the whiskey into Pennsylvania permeates the entire transaction, including the transportation through this State.

Accordingly, I find that McKay, the holder of a Pennsylvania liquor license, did not act in good faith. His representation that, after the whiskey is returned to him, he will withdraw from his illegal enterprise and sell the same to such person as he may be able to obtain, is not entitled to consideration.

His request for the return of the whiskey is denied.

Accordingly, it is DETERMINED and ORDERED that the seized whiskey, more fully described in Schedule "A" hereinafter set forth, constitutes unlawful property, and that the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that such alcoholic beverages be sold, in whole or in part, at public sale for the use of the State, subject to the rules and regulations governing such sale, or be destroyed or retained for the use of hospitals and State, county or municipal institutions, whichever the Commissioner may hereafter determine to be for the best interest of the State.

ALFRED E. DRISCOLL
Commissioner.

Dated: March 9, 1945.

SCHEDULE "A"

- 154 - 1 quart bottles of "Wilson" whiskey
- 48 - 1 quart bottles of "Three Feathers Reserve" whiskey
- 25 - 1 quart bottles of "Calvert Reserve" whiskey
- 12 - 4/5 quart bottles of "Hiram Walker Canadian Club" whiskey
- 84 - 1 quart bottles of "Schenley Red Label" whiskey
- 12 - 4/5 quart bottles of "Schenley Straight Rye" whiskey
- 11 - 1 quart bottles of "Three Feathers Reserve" whiskey
- 3 - 4/5 quart bottles of "King George Blended Scotch" whisky
- 3 - 4/5 quart bottles of "Highland Queen Scotch" whisky

10. DISCIPLINARY PROCEEDINGS - CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO MINORS, IN VIOLATION OF R. S. 53:1-77 AND RULE 1 OF STATE REGULATIONS NO. 20, DISMISSED - DEPARTMENT FAILED TO SUSTAIN BURDEN OF PROOF.

In the Matter of Disciplinary Proceedings against CATHERINE F. REYNOLDS 24 West Water Street Dover Township, Ocean County P. O. Toms River, N. J., Holder of Plenary Retail Consumption License C-7, issued by the Township Committee of Dover Township.

CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Defendant-licensee. Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads not guilty to charges that, on August 8, 1944, she sold and served to and permitted the consumption of alcoholic beverages by Donald ---- and William ----, minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The only direct evidence produced as to the alleged violation was given by the minors, Donald --- and William ---, both approximately eighteen years of age, who testified that on the evening of August 8, 1944 five or six glasses of beer were sold and served to each of them by an employee of the defendant. At about 1:00 a.m. the following morning, August 9, 1944, the two youths were apprehended, in the community wherein they reside, by a State police officer when one of the minors appeared to the State Trooper, according to his testimony, to be under the influence of intoxicating liquor. Two investigators of the Department of Alcoholic Beverage Control testified that the minors later said that they had obtained beer from a licensee in the community where they were picked up and also that previous thereto they had obtained several glasses of beer at the defendant's licensed premises. Both minors, by their testimony at the instant hearing, substantiated the story which they had given to the investigators.

On August 22, 1944, in the company of two ABC investigators, the minors identified Richard Heine, a bartender of the defendant-licensee, as the person who had served the beer to them. This bartender then denied that he had ever seen the boys previous to being confronted by them when they visited the licensed premises in the company of the two investigators.

At the hearing Richard Heine denied, under oath, that he had ever served beer to either of the minors.

Thomas Morston, a bartender employed by the defendant, testified that he remembered William ---- ordering a glass of beer on an occasion prior to the night in question but that he refused to serve him. Moreover, Morston testified that he brought out a card and asked William ---- to sign the card certifying that he was twenty-one years of age or older. William did not sign. Another witness, one Arthur Taylor, testified that he was present on an evening in July or the first part of August, when William ---- requested the bartender to sell him a glass of beer. When asked to sign a card as to his age, another patron present warned William that he had

better not do so because he would be fined if he stated that he was twenty-one years of age when, in fact, he was not. William stated that he remembered this incident and that it occurred prior to August 8, 1944. Ann Aberle, an employee of defendant, testified that William ---- came into the kitchen on a day some time previous to August 8, 1944 and asked her to intercede for him with the bartender so that he would be able to obtain a glass of beer. She stated that she refused to do so. William ---- testified he was in the defendant's licensed premises on one occasion, accompanied by his mother, and that he ordered and was served with a glass of birch beer. The mother, however, testified that on this occasion her son William --- left the table and went to the bar, where he obtained a glass of beer from the bartender. Several witnesses, including the State Trooper who had taken one of the boys home on August 9, 1944 after he found him in an apparently intoxicated condition, testified that the defendant is a person of good character and operates her premises in a careful and prudent manner.

The testimony of the youths is not too convincing because their memories appear somewhat hazy relative to certain incidents and observations on the night in question. On the other hand, the bartender who was alleged to have made the sale of beer to the minors emphatically denied doing so both at the time when the investigation was in process and also when he appeared as a witness during the instant hearing. Other witnesses who stated that they were at the licensed premises on the night of August 8, 1944 did not recall seeing the youths there that evening.

The evidence adduced herein indicates that William ---, one of the minors, attempted, on previous occasions, to obtain alcoholic beverages at the defendant's establishment. On those occasions, with the exception of the testimony given by the youth's mother, as aforementioned, which is not corroborated by her son, all the evidence indicates that William was refused service on the licensed premises.

In view of the previous attitude of the defendant and her employees in refusing to serve alcoholic beverages to William ---, I am satisfied that the policy was not relaxed on this occasion in so far as William --- and his companion were concerned.

Defendant, a licensee for more than seven years, has no prior adjudicated record. This case involves inconsistent stories told by the alleged minors and the licensee and her witnesses, who appear to be credible witnesses. The burden of proof to establish the guilt of the defendant rests with the Department. After considering all the evidence, I conclude that the Department has not sustained the burden of proof as to the alleged sales of alcoholic beverages to William -- and Donald --- and, hence, I shall dismiss the charges.

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

ORDERED, that the charges herein be and the same are hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

11. DISCIPLINARY PROCEEDINGS - ORDER MODIFYING PREVIOUS SUSPENSION ORDER.

In the Matter of Disciplinary Proceedings against)

FIDELIS CALLAHAN, Administratrix of the Estate of John P. Callahan) 506 Summit Avenue Union City, N. J.,)

AMENDED ORDER

Holder of Plenary Retail Consumption License C-108 issued by the Board of Commissioners of the City of Union City.)
-----)

Defendant-licensee, Pro se.

BY THE COMMISSIONER:

Defendant-licensee has appeared personally before me and requested a reduction of the period of suspension on the ground that the penalty is excessive.

On reconsideration, I now note that the Merchant Seaman to whom the alcoholic beverages were sold was almost nineteen years of age and that no aggravating circumstances appear in the case. Giving due weight to the prior adjudicated record against John Callahan and the fact that defendant does not appear to have been associated with the licensed premises prior to the death of her husband, I conclude that the suspension in the present case should be reduced from twenty to fifteen days, with a remission of five days for the non vult plea, or a net suspension of ten days.

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

ORDERED, that the Order heretofore entered herein on March 8, 1945 be amended to read as follows:

"ORDERED, that Plenary Retail Consumption License C-108, issued by the Board of Commissioners of the City of Union City to Fidelis Callahan, Administratrix of the Estate of John P. Callahan, for premises 506 Summit Avenue, Union City, be and the same is hereby suspended for a period of ten (10) days, commencing at 12:01 a.m. March 14, 1945, and terminating at 12:01 a.m. March 24, 1945."

Alfred E. Griswold
Commissioner.