

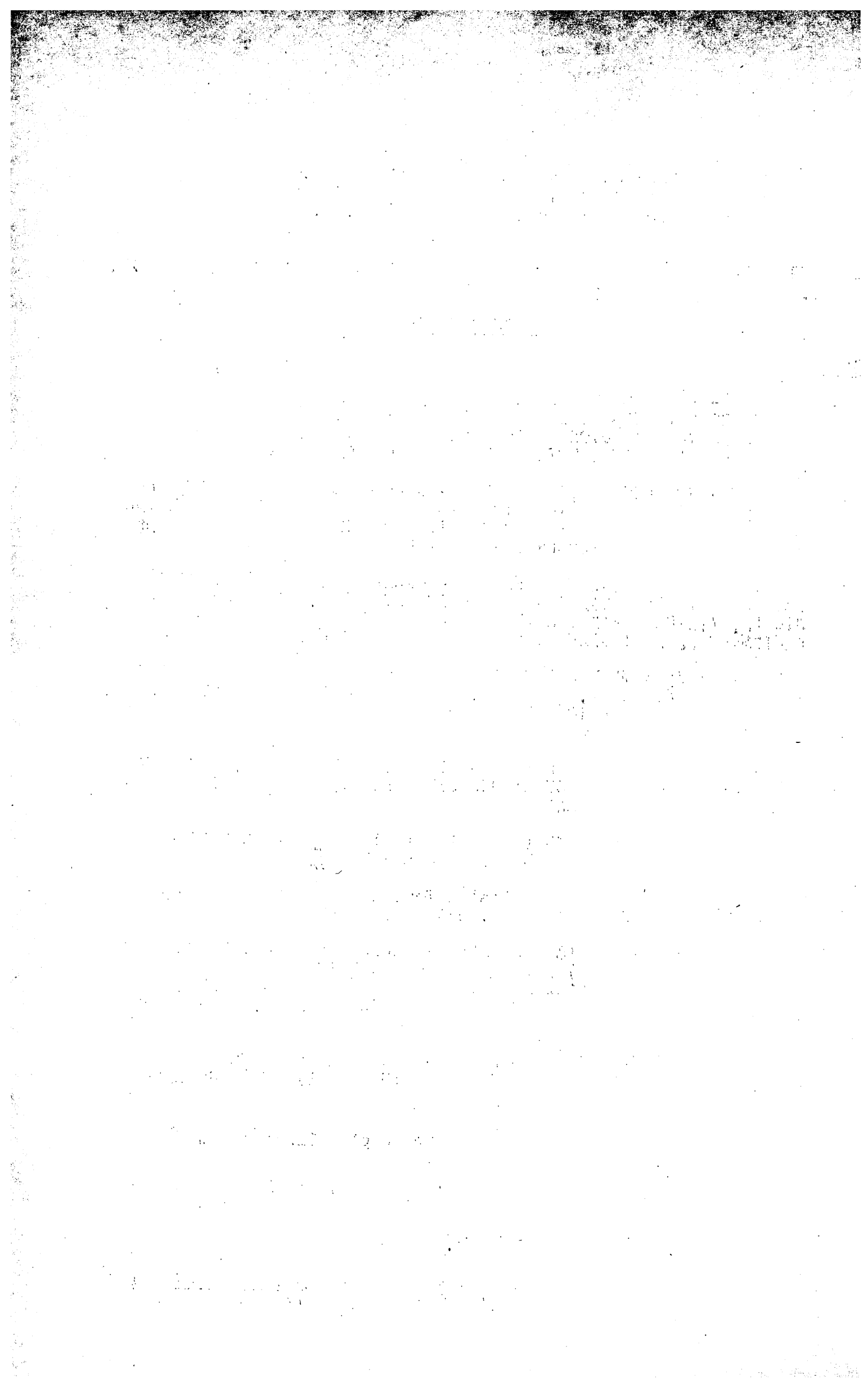
BULLETIN 857

NOVEMBER 2, 1949.

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

BULLETIN 857

NOVEMBER 2, 1949.

1. SEIZURE - FORFEITURE PROCEEDINGS - STOLEN ALCOHOLIC BEVERAGES TRANSPORTED IN AND SOLD FROM MOTOR VEHICLE ORDERED FORFEITED - ALLEGED OWNER OF MOTOR VEHICLE HAVING FAILED TO ESTABLISH THAT HE ACTED IN GOOD FAITH, MOTOR VEHICLE ALSO FORFEITED.

In the Matter of the Seizure on) Case No. 7467
June 18, 1949, of a quantity of)
alcoholic beverages and a La Salle)
sedan, on Spruce Street near)
Charlton Street, in the City of) ON HEARING
Newark, County of Essex and State) CONCLUSIONS AND ORDER
of New Jersey.)

Myron P. Maurer, Esq., Attorney for Harold O. Hill.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether eight 4/5 quart bottles of whiskey and a La Salle sedan seized on June 18, 1949, on Spruce Street, near Charlton Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

It appears that the car and whiskey were seized by two police officers of the City of Newark who were alerted to look for this car on complaint that alcoholic beverages were being sold therefrom. Charles Hill was in the car at the time while his nephew, Raymond Hill, apparently fled on the approach of the officers.

The police officers obtained a signed statement from Charles Hill which establishes that in the early morning hours of June 18, 1949, he and Raymond Hill, in the La Salle car, drove to a tavern in Troy Hills, New Jersey. There, Raymond Hill broke into the tavern, stole about 50 bottles of alcoholic beverages, and then both transported this stolen liquor to Newark in the car, and there peddled it along the streets until all but the eight bottles found in the car were sold. The car and whiskey were later turned over to the Division of Alcoholic Beverage Control.

When the matter came on for hearing pursuant to R. S. 33:1-66, Harold O. Hill, brother of Charles Hill, appeared with counsel and sought return of the car. He did not challenge the accuracy of the facts above stated.

The stolen alcoholic beverages are illicit in that they were acquired and sold illegally. Such illicit alcoholic beverages and the motor vehicle in which they were transported are subject to forfeiture. R.S. 33:1-1(i) and (y), R.S. 33:1-2, R.S. 33:1-66. Also see Seizure Case No. 7273, Bulletin 834, Item 4.

Harold O. Hill seeks to establish that he is the actual owner of the car, has acted in good faith, did not personally participate in the unlawful liquor activities, and did not know or have any reason to suspect such activities. A claim of this nature by a close relative is scrutinized with extreme care. Seizure Case No. 7211, Bulletin 798, Item 3. Nevertheless, if Harold Hill presents convincing evidence to establish his claim, I have the discretionary authority to grant his request for return of the car. R.S. 33:1-66(f).

Mr. Hill says that he is employed as a laborer. He presented a motor vehicle bill of sale for the car from a used car concern to Harold O. Hill dated May 29, 1948. At this time Hill was also the owner of a Ford car, which he traded a few months later for a Plymouth. He used the Ford and then the Plymouth. The La Salle was, for most of the time, in the possession of and used by his brother, Charles Hill. Harold Hill admits that he knew that this brother was arrested as a juvenile offender. Charles Hill gave Harold Hill's address as his residence, although Harold says that Charles slept there only occasionally.

Harold Hill's economic circumstances and the absence of a satisfactory explanation by him, raises considerable doubt as to his need for two cars, and as to whether the La Salle car was purchased with his funds. In any event, even if he is the actual owner of such car, his practically outright surrender of possession of the car to Charles, without retaining any substantial supervision or control thereof, is evidence of at least a careless indifference to the purpose of its use. It is inconsistent with a claim of good faith. A person who permits another to use his car over a period of months, without displaying any real concern regarding the purpose for which it is used, cannot successfully maintain that he is entirely without fault when such car is used in illegal liquor activities and obtain return of his car. Harold Hill's request for return of the car is therefore denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: October 10, 1949.

SCHEDULE "A"

- 8 - 4/5 qt. bottles of whiskey
- 1 - La Salle sedan, 1949 N.J. Reg. FV93A,
Serial No. 2283301

2. SEIZURE - FORFEITURE PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES WITHOUT A LICENSE ON EXCURSION STEAMER AT A NEW JERSEY DOCK AND ON WATERS SUBJECT TO THE JURISDICTION OF THIS STATE - STOCK OF ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on August 14, 1949 of a quantity of beer on the steamer "Manhattan" at a dock on the Passaic River, in the City of Newark, County of Essex and State of New Jersey.

Case No. 7494

ON HEARING CONCLUSIONS AND ORDER

Jeremiah Driscoll, Pro Se. Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 2591 cans of beer seized on August 14, 1949 aboard the excursion steamer "Manhattan" while at a dock on the Passaic River, in the City of Newark, New Jersey constitute unlawful property and should be forfeited.

It appears that the beer, stored on the boat, was seized while the boat was moored at the dock in Newark, because of alleged unlicensed sales of beer aboard the vessel while in New Jersey waters.

Alcoholic beverages may not be sold on any boat while docked at a New Jersey pier or while in waters which are subject to the jurisdiction of this State except pursuant to proper license or permit. Bulletin 33, Item 12; Bulletin 182, Item 9; Bulletin 341, Item 4. Also see R.S. 33:1-2, R.S. 33:1-12(4). No such license or permit had been issued authorizing the sale of alcoholic beverages on the steamer "Manhattan".

Alcoholic beverages intended for unlawful sale in New Jersey are illicit, and subject to seizure and forfeiture. R.S. 33:1-1(i) and (y), R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Jeremiah Driscoll, captain and owner of the vessel, appeared and sought return of the beer. His claim, in effect, is (1) that there was no sale of alcoholic beverages in Jersey waters; (2) that his Federal maritime license gave him immunity from seizure proceedings for a violation of a law of this state; and (3) that, in any event, he acted in good faith and unknowingly violated the state law.

According to ABC agents, on August 14th they purchased beer almost immediately upon boarding the boat, which was moored at the dock, and observed other passengers making similar purchases; later, when a few hundred yards from the dock, on the Passaic River, they again purchased cans of beer and observed other passengers doing likewise. Throughout their trip the agents observed other passengers repeatedly purchasing beer, both within and without New Jersey waters.

The two crew members from whom the agents purchased the beer, who were behind the counter where the beer was served and sold, each insisted that they did not sell beer to anyone while moored at the Newark dock, but agreed that they sold beer as soon as they left the dock, under the impression that it was legal to do so. Captain Driscoll says that such were his instructions to the crew. Such sales are in themselves unlawful. In addition, I am inclined to accept the statement of the agents as to the place where the sales were made, rather than the recollection of the crew members, who, in view of the large

number of passengers aboard who were purchasing soda, sandwiches and beer, necessarily cannot be expected to remember any specific sales. I therefore find as a fact that alcoholic beverages were sold aboard the vessel in waterways subject to the jurisdiction of this state.

The vessel, when moored at the dock in the City of Newark, was within its police jurisdiction. Ross v. Mayor, &c., Edgewater, 115 N.J.L. 477.

A vessel enrolled and licensed by the United States is not thereby immune from the operation of valid laws of a state. Smith v. Maryland, 59 U.S. 71, 15 L. Ed. 269, C. J. Hendry Co. v. Moore, 318 U. S. 133, 87 L. Ed. 663. See also State v. Cooper, 93 N.J.L. 13. It is therefore clear that Driscoll's Federal maritime license does not give him immunity from these seizure proceedings. Even vessels so licensed may be forfeited for a violation of a law of this state. Haney & Scattergood v. Compton, 36 N.J.L. 507, Day v. Compton, 37 N.J.L. 514, Johnson v. Loper, 46 N.J.L. 321.

Everyone is expected, at this late date, to be familiar with the law covering sales of alcoholic beverages in New Jersey, and forfeiture of the stock of alcoholic beverages intended for unlawful sale will not be waived on claim of good faith based on ignorance of such law. Seizure Case No. 7383, Bulletin 845, Item 2.

Driscoll obtained various licenses from the Federal and New York State licensing authorities permitting him to deal in alcoholic beverages, but made no effort to ascertain from competent authorities of this state what was required by the laws of this state. Even if he were misled by information given him by persons outside this state, it cannot serve to relieve him from forfeiture of the beer.

Accordingly, it is DETERMINED and ORDERED that the 2591 cans of beer, listed in Schedule "A" attached hereto, 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: October 18, 1949.

SCHEDULE "A"

100 - cases of beer
191 - 12 oz. cans of beer

3. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN RESTAURANT - ALCOHOLIC BEVERAGES, STOCK OF FOODSTUFFS, FIXTURES AND FURNITURE ORDERED FORFEITED - NONE OF THE EQUIPMENT OF RESTAURANT EXEMPT FROM FORFEITURE.

In the Matter of the Seizure on July 22, 1949, of a quantity of alcoholic beverages and various items of restaurant furniture, fixtures, equipment and foodstuffs in the restaurant located at 57 South Broadway, in the City of Long Branch, County of Monmouth and State of New Jersey.) Case No. 7480
)
) ON HEARING
) CONCLUSIONS AND ORDER

 Thomas J. Baldino, Jr., Esq., Attorney for Margaret A. Meadows.
 Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation dated July 26, 1949 made by Margaret A. Meadows, to determine whether a quantity of alcoholic beverages and various restaurant furniture, fixtures, equipment and foodstuffs, referred to in a schedule attached hereto, seized on July 22, 1949 in a restaurant operated by Margaret A. Meadows, located at 57 South Broadway, Long Branch, New Jersey, constitute unlawful property and should be forfeited.

It appears that ABC agents made the seizure because of alleged unlicensed sales of alcoholic beverages in the restaurant.

Pending the seizure hearing in the case, the restaurant equipment and foodstuffs were returned to Margaret A. Meadows upon payment by her to the State Director of Alcoholic Beverage Control of their appraised retail value of \$1200.00, under protest, pursuant to R.S. 33:1-66. Mrs. Meadows has stipulated that said Director should determine in this proceeding whether this money shall be forfeited or returned to her.

When the matter came on for hearing pursuant to R.S. 33:1-66, and the stipulation, Mrs. Meadows appeared with counsel and sought return of the aforesaid sum of \$1200.00.

An ABC agent testified at the hearing that he was at the restaurant on July 21, 1949, and was served by Margaret Meadows with food and two bottles of beer, for which he paid her; that on the next day, he and two other agents were in the restaurant; that he and another agent were served with food and three bottles of beer and a 4/5 quart bottle of wine, by Jennie Talamo, mother of Mrs. Meadows, and the third agent was served with food and three glasses of wine. The three agents paid Mrs. Meadows for the food and drinks.

The agent further testified that other ABC agents and local police officers entered the restaurant on July 22nd, while the three ABC agents were there, arrested Mrs. Meadows and Mrs. Talamo, and seized 96 - 4/5 quart bottles of wine, 26 one-gallon jugs of wine, 120 bottles of beer, and the restaurant equipment and foodstuffs in the establishment. The ABC agents obtained a signed statement from Margaret A. Meadows admitting the sale of beer by her to the ABC agent on July 21st and the sale of wine by her on July 22nd to one of the ABC agents, and that she had been selling beer and wine at the restaurant for about a week.

Mrs. Meadows, at such hearing, admitted that such sales were made. She did not hold any license authorizing her to sell or serve alcoholic beverages and the restaurant was not licensed for the sale of alcoholic beverages.

Her excuse for such unlawful sales is that she did not know that it was necessary for her to have a liquor license, and that she was compelled to serve and sell alcoholic beverages because otherwise it would seriously impair business. In her words, "Business had been bad and people said you could serve a little Italian food and wine -- It was just to encourage the business a little". She says that people walked out of the restaurant when they could not obtain wine or beer, because it was a custom among Italian people to drink wine with their meals and she was losing business when she did not sell alcoholic beverages.

The mere recital of the facts demonstrates the fundamental lack of any defense to forfeiture. It is but another of the many cases of restaurants, other commercial establishments, and clubs, where alcoholic beverages were sold without a license, with various reasons advanced, in attempted justification, by those responsible for violation of the law. The common denominator is that they took a chance and were caught. The Legislature, when considering proper penalty for such offense, provided not only for criminal prosecution (R. S. 33:1-2, 50) but also that the fixtures and personal property in the establishment, as well as the stock of alcoholic beverages intended for unlawful sale, should be forfeited in addition. R.S. 33:1-1(i) and (y), R.S. 33:1-66. This Division has followed the mandate of the Legislature and uniformly imposed such penalty upon the operator of the unlicensed establishment.

I have carefully considered the various contentions advanced by counsel in his brief, and find all of them without merit, viz.,

(1) Counsel asserts that there can be no forfeiture because the property was not seized by virtue of a search warrant. However, the seizure was made during the course of the arrest of Mrs. Meadows and her mother for the violation then and there committed. It has been uniformly ruled, in seizure proceedings instituted by this Division, that forfeiture does not depend upon seizure of the property pursuant to a search warrant. Re Tricoli, Bulletin 164, Item 9, citing cases from the Federal jurisdiction; Seizure Case No. 5450, Bulletin 364, Item 14; Seizure Case No. 5644, Bulletin 378, Item 5, and Re Amato, Bulletin 726, Item 8.

(2) Counsel next urges that the restaurant equipment should not be forfeited because it had no connection with the sale of wine and beer, which was purely incidental to the service of meals to encourage business. Similar contentions were advanced and rejected in Seizure Case No. 7263, Bulletin 812, Item 2 (a confectionery store), and Seizure Case No. 7398, Bulletin 845, Item 4 (a restaurant). In the first mentioned case, speaking of the forfeiture of the confectionery store fixtures pursuant to R.S. 33:1-1(y), I said:

"This clear statutory language has from the very outset of the State Department of Alcoholic Beverage Control been construed to mean just what it says. Under its provisions Commissioner Burnett ordered forfeited the entire equipment of a restaurant speakeasy. Seizure Case No. 4919, Bulletin 363, Item 2. Thereafter forfeiture has followed as of course in each of many cases involving seizure of furniture, fixtures and equipment and stock of merchandise in commercial establishments where speakeasy activities were carried on."

The principle involved, as stated by former Commissioner Driscoll in Seizure Case No. 6898, Bulletin 687, Item 1, was that such equipment is part and parcel of an illegal enterprise which is not only contrary to law, but places in jeopardy the State's law enforcement program.

(3) Counsel also urges that Mrs. Meadows acted in ignorance of the law, that the \$1200.00 deposited by her represents her entire savings, forfeiture of which will put her out of business; that it is a cruel and unusual punishment for her to suffer the loss of the money, as well as criminal prosecution for the offense. However, it has been stated repeatedly in cases of this nature, that at this late date the law governing the sale of alcoholic beverages in this state should be familiar to everyone, and that mere claimed ignorance of the law will not be accepted as tantamount to good faith. In the instant case, Mrs. Meadows seemingly had actual, as well as implied, knowledge of the law. She admits that she knew that the owner of an Italian restaurant where alcoholic beverages were sold, located across the street from her establishment, held a liquor license. In her statement, she says that a licensed dealer in wines told her he could not sell wine to her because she did not have a license. Nevertheless, she says that she did not think that she needed a liquor license to sell alcoholic beverages in her restaurant and did not inquire of anyone as to whether she needed such a license. Under the circumstances, her claim of ignorance of the law seems absurd. Restaurants catering to Brazilian, Spanish, or Italian clientele are not ipso facto absolved from complying with our liquor laws because of the nationality of their clientele. See Seizure Case No. 7327, Bulletin 839, Item 8.

(4) Counsel urges that the sum of \$1200.00, the amount fixed by this Division as acceptable for the return of the equipment and foodstuffs, exceeds their retail value. I have carefully considered the record and find that such sum of \$1200.00 was arrived at after a careful appraisal of the retail value of the property returned to Mrs. Meadows. No evidence to the contrary has been presented. Cf. Seizure Case No. 7327, supra.

My authority to relieve a person from forfeiture is limited by R. S. 33:1-66(e) to those cases where I am satisfied that such person acted in good faith and unknowingly violated the law. In the absence of these elements I have no authority to waive forfeiture, even if there are other sympathetic factors in the case, such as the claimant's economic circumstances. Seizure Case No. 7114, Bulletin 813, Item 2. The Legislature has determined that loss of the stock of liquors and the fixtures of a place where alcoholic beverages are sold unlawfully, as well as criminal prosecution, is punishment which fits the crime. It may be noted in passing that the dual penalties do not constitute double jeopardy or cruel and unusual punishment. Helvering v. Mitchell, 303 U. S. 391, 82 L. Ed. 917; House and Lot v. State of Alabama, 10 A.L.R. 1589; Commonwealth v. McMenam, Superior Court of Pennsylvania (1936), 184 Atl. 679, 122 Pa. Super. 91. It is my duty to enforce the law.

The evidence presented establishes that the alcoholic beverages seized in Mrs. Meadows' restaurant were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and the restaurant equipment and foodstuffs seized therewith in the restaurant constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

For the reasons above expressed, forfeiture of the seized property, including the money deposited in place of that part of the property which was returned, must follow as of course. Hence, Mrs. Meadows' request for return of the \$1200.00 which she deposited with me is denied.

Accordingly, it is DETERMINED and ORDERED that the alcoholic and other beverages, itemized in Schedule "A" attached hereto, 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 Director of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the various fixtures, equipment and foodstuffs seized at the premises, as itemized in an inventory made thereof, which inventory is referred to as if incorporated herein at length, constitute unlawful property, and the sum of \$1200.00 representing the retail value thereof, paid under protest to the State Director of Alcoholic Beverage Control by Margaret A. Meadows, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK
Director.

Dated: October 19, 1949.

SCHEDULE "A"

- 120 - bottles of beer
 - 36 - bottles of Maltcrest Brew
 - 96 - bottles of Burgundy Wine
 - 15 - 1-gal. jugs of Barberone Wine
 - 8 - 1-gal. jugs of Vermouth
 - 3 - 1-gal. jugs of Burgundy Wine
 - 1 - pint of alcohol
- Restaurant furniture, fixtures, equipment and foodstuffs, as itemized in an inventory in the case file.

4. LIMITATION OF NUMBER OF RETAIL LICENSES - PETITION FOR DETERMINATION UNDER SECTION 6, CHAP. 94, P. L. 1947, THAT FAILURE TO APPLY FOR RENEWAL WAS DUE TO CIRCUMSTANCES BEYOND CONTROL OF LICENSEE - PETITION GRANTED.

In the Matter of an Application by)

JOHN J. HOPKINS
211 Summer Avenue
Newark, N. J.,)

ON PETITION
DETERMINATION

For Relief under the Provisions of
Section 6 of Chapter 94 of the)
Laws of 1947:)

-----)
Anthony Giuliano, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

The petition herein recites that John J. Hopkins was the holder of Plenary Retail Consumption License No. C-396 for the 1948-49 licensing year, issued to him by the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 113 Broadway, and subsequently transferred to premises 597 Broadway, Newark, N. J.

The records of the Division of Alcoholic Beverage Control disclose that on April 18, 1949, the transfer from premises 113 Broadway to 597 Broadway was, upon an appeal duly filed, set aside and declared null and void without prejudice to the right of respondent John J. Hopkins to apply for a further transfer of his current license. Ted's Bar and Grill, Inc. v. Newark and Hopkins, Bulletin 841, Item 8. The records further show that the petitioner thereupon

appealed to the Superior Court of New Jersey, Appellate Division, and obtained an order from said Court staying the effect of the order entered in the aforesaid appeal case pending determination of his appeal to the Appellate Division. The records further show that petitioner obtained a renewal of his license for the present licensing year for 597 Broadway, Newark, pending the outcome of his appeal to the Court and that on August 9, 1949, the Appellate Division affirmed the order of the Director of the Division of Alcoholic Beverage Control in setting aside the transfer of the license from 113 Broadway to 597 Broadway. Thereupon petitioner ceased operation under the renewal of his license.

The petition further recites that on September 14, 1949, petitioner filed an application for a new plenary retail consumption license with the Municipal Board of Alcoholic Beverage Control of the City of Newark for premises 781 North 6th Street, Newark. At the time this application was filed, the issuance of a new plenary retail consumption license in the City of Newark was barred not only by the provisions of Section 2 of Chapter 94 of the Laws of 1947 but also by Ordinance No. 2419, as amended, of the City of Newark, which provided that no plenary retail consumption license should be granted thereafter unless and until such licenses issued and outstanding should be less than 900 and that no plenary retail consumption licenses, excepting renewals for the same premises, should be granted or transferred to another premises within 750 feet from an existing licensed premises covered by a plenary retail consumption license, with certain exceptions not here material.

The petition herein further recites that on October 5, 1949, the Board of Commissioners of the City of Newark adopted an ordinance to supplement Ordinance No. 2419, as amended. The ordinance to supplement Ordinance No. 2419 provides as follows:

"Nothing in the ordinance as amended, to which this ordinance is a supplement, shall be deemed to prevent issuance of a new license to a person who files application therefor within sixty days following expiration of the license renewal period if the Municipal Board of Alcoholic Beverage Control of the City of Newark shall determine by resolution that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control."

Under all the facts and circumstances of this case, I hereby DETERMINE that the applicant's failure to apply for an effective renewal of the 1948-49 license was due to circumstances beyond his control. The application for a license at 781 North 6th Street, Newark, was filed within sixty days following the expiration of the license renewal period.

In view of my determination under Section 6 of P.L. 1947, c. 94, and in the light of the city's supplementary ordinance, the Municipal Board of Alcoholic Beverage Control will have authority (pursuant to R. S. 33:1-19), when the supplementary ordinance shall have become effective, to grant the petitioner's application for a new license despite the limitation set forth in Section 2 of P.L. 1947, c. 94.

The determination herein does not mean that the application must be granted. Even where a new license is not prohibited by the State Limitation Law or municipal ordinance, the determination to grant or deny a retail license application rests in the first instance with the municipal issuing authority (R. S. 33:1-19), and a municipal authority's action granting or denying an application is appealable to the State Director pursuant to R. S. 33:1-22.

ERWIN B. HOCK
Director.

Dated: October 17, 1949.

5. AUTOMATIC SUSPENSION - SELLING ALCOHOLIC BEVERAGES TO MINORS - LICENSE PREVIOUSLY SUSPENDED FOR 15 DAYS BY DIRECTOR - APPLICATION TO LIFT GRANTED.

Case No. 73)
In the Matter of a Petition by)
HARRY ROSENTHAL and MARVIN W.)
GELLER)
T/a THE POST)
404-406 Main Street)
Orange, N. J.,)
To Lift the Automatic Suspension of)
a License, Pursuant to R. S.)
33:1-31.1.)

ON PETITION
O R D E R

Sidney Simandl, Esq., Attorney for Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein that on October 7, 1949, Harry Rosenthal, one of the petitioners herein, pleaded non vult in the County Court of Essex County to a charge of selling alcoholic beverages to a minor and that on October 19, 1949 he was sentenced to pay a fine of \$250.00, which fine has been paid. Petitioners immediately thereafter delivered their license certificate to me, and no business has been conducted under the license since that time.

It appears from the records of the Division of Alcoholic Beverage Control that on April 29, 1949, I suspended the license then held by petitioners for a period of fifteen days after finding petitioners guilty in disciplinary proceedings of charges alleging that they had sold alcoholic beverages to minors, and allowed, permitted and suffered the consumption of alcoholic beverages on their licensed premises by said minors. As a result of said suspension, petitioners' licensed premises were closed from May 9, 1949 to May 24, 1949. See Bulletin 843, Item 4.

The indictment in the criminal proceedings and the charges in the disciplinary proceedings were based upon the same facts in so far as one of the two minors mentioned in the charges was concerned. The conviction of Harry Rosenthal in the criminal proceedings has resulted in the automatic suspension of the license now held by petitioners for the balance of its term. R.S. 33:1-31.1. The petition herein prays that the automatic suspension of the license may be lifted.

Under the circumstances, the suspension heretofore imposed by me appears to be adequate. Hence, the relief sought herein will be granted.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that the automatic suspension of License C-64, now held by Harry Rosenthal and Marvin W. Geller, t/a The Post, for premises 404-406 Main Street, Orange, be and the same is hereby lifted, and said license is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

THE 1025 CAFE, INC.)
1023-1025 Atlantic Avenue)
Atlantic City, N. J.,)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Atlantic City.)

Altman & Sandler, Esqs., by Chaim H. Sandler, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed on its licensed premises alcoholic beverages in bottles bearing labels which did not truly describe their contents, in violation of Rule 28 of State Regulations No. 20.

On August 9, 1949, an agent of the State Division of Alcoholic Beverage Control seized on defendant's licensed premises two 4/5 quart bottles labeled "Schenley Reserve Blended Whiskey" and two 4/5 quart bottles labeled "Seagram's Seven Crown Blended Whiskey" when his field tests indicated a great variation in proof of the contents of said bottles from that indicated on the labels thereon. The result of an analysis of the contents of said bottles by the Division chemist confirmed the field tests that the labels on the respective bottles did not describe their contents. Cf. Rule 28, State Regulations No. 20.

The defendant by its president denies knowledge of any tampering with said whiskey, and states that he discharged the two bartenders who were on duty during the period when the above four bottles were open and in use. However, such lack of knowledge is no defense. Cedar Restaurant & Cafe Co. v. Hock, 135 N.J.L. 156.

Defendant has no prior adjudicated record. I shall impose the minimum suspension of twenty days. Remitting five days because of the plea will leave a net suspension of fifteen days. Re Sweet, Bulletin 799, Item 7.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-224, issued by the Board of Commissioners of the City of Atlantic City to The 1025 Cafe, Inc., for premises 1023-1025 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 7:00 a.m. October 26, 1949, and terminating at 7:00 a.m. November 10, 1949.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary Proceedings against

JOSEPH J. & CLARA A. MEEHAN
T/a JOE MEEHAN'S TAVERN
White Horse Pike & Spring Rd., Elm
Winslow Township
P.O. Hammonton, N. J.,

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Winslow.

John R. DiMona, Esq., Attorney for Defendant-licensees.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed on their licensed premises alcoholic beverages in a bottle bearing a label which did not describe its contents, in violation of Rule 28 of State Regulations No. 20.

On July 1, 1949, an agent of the State Division of Alcoholic Beverage Control seized on defendants' licensed premises one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when his field tests indicated a variance in the contents thereof from the whiskey as described on the label. An analysis by the Division chemist confirmed this finding and established that said bottle contained an alcoholic beverage not truly described on its label. See Rule 28, State Regulations No. 20.

Defendants have no previous adjudicated record.

I shall suspend the license for fifteen days, the minimum suspension in such cases. Re Rudolph, Bulletin 680, Item 1. Remitting five days for the plea will leave a net suspension of ten days.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-21, issued by the Township Committee of the Township of Winslow to Joseph J. & Clara A. Meehan, t/a Joe Meehan's Tavern, for premises White Horse Pike & Spring Rd., Elm, Winslow Township, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 31, 1949, and terminating at 2:00 a.m. November 10, 1949.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER FROM OTHER THAN NEW JERSEY MANUFACTURER OR WHOLESALER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MOHAWK INN, INC. Boardwalk, Lake Mohawk Sparta, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Sparta.

Mohawk Inn, Inc., Defendant-licensee, by George Young, Treasurer. William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) it possessed illicit alcoholic beverages at its licensed premises, in violation of Rule 28 of State Regulations No. 20; and (2) it purchased or obtained alcoholic beverages from a person who was not the holder of a New Jersey manufacturer's or wholesaler's license, in violation of Rule 15 of State Regulations No. 20.

On August 23, 1949, an agent of the State Division of Alcoholic Beverage Control, during an inspection of the defendant's licensed premises, seized two 4/5 quart bottles labeled "Canadian Club Whisky" when he observed that said two bottles did not bear any indicia of payment of the Federal tax as required by law. R.S. 33:1-88.

Apparently the whiskey, which is a product of Canada ordinarily not distributed in this country, was purchased in Bermuda and brought into this country by the purchaser (not the licensee). Since the bottles bore no indicia of payment of Federal tax, their possession on licensed premises was in violation of Rule 28 of State Regulations No. 20.

The defendant claims, through one of its principal officers, that it accepted the liquor merely for storage. However, both bottles were found on the back bar with seals broken. Retail licensees may not obtain liquor from anyone but a State licensed manufacturer or wholesaler. Rule 15, State Regulations No. 20.

Defendant has no prior adjudicated record. Under all of the circumstances, I shall suspend the license for thirty days. Remitting five days for the plea will leave a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Sparta to Mohawk Inn, Inc., for premises on Boardwalk, Lake Mohawk, Sparta, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 2:00 a.m. October 31, 1949, and terminating at 2:00 a.m. November 25, 1949.

ERWIN B. HOCK Director.

9. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT DANCE BY ENTERTAINER) - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary)
Proceedings against)

LLOYD'S MANOR)
42-48 Beacon Street)
Newark 3, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-966, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Newark.)

Furst & Kessler, Esqs., by William Furst, Esq., Attorneys for)
Defendant-licensee.)
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage)
Control.)

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge as follows:

"On Friday night, July 8, and early Saturday morning July 9, 1949, you allowed, permitted and suffered lewdness and immoral activities in and upon your licensed premises, in that entertainers performed in a lewd, indecent and immoral manner, in violation of Rule 5 of State Regulations No. 20."

The performance complained of (a dance or, rather, two dances) performed on the licensed premises by a male and a female dancer, separately, consisted in a large measure of the burlesque routine known as "bumps" and "grinds". The female performer at the climax of the "dance" sank to the floor and, resting on her shoulders and with her feet drawn up under her thighs, performed a series of "bumps" and "grinds" in which she moved her body up and down and from side to side. The male dancer performed similarly, except his climax was executed on hands and knees, with suggestive motions.

The male dancer, called as a witness by the defendant, said the dance was "sensual". I agree with him. He called it interpretative, but what it interpreted he could not say. I believe that at least the latter part of both dances was intended to "interpret" sexual intercourse.

As I said in Re Ferdinand, Bulletin 850, Item 2, a case incidentally involving the same performers and wherein the dance, as testified to herein by the male performer, was substantially the same:

"These performances were executed in such a manner as to appeal to, arouse and inflame the passions of both male and female spectators and, as such, are lewd and immoral within the meaning and intendment of Rule 5 of State Regulations No. 20."

I find the defendant guilty as charged.

Defendant has no previous adjudicated record. I shall suspend the license for thirty days. Re Ferdinand, supra.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that Plenary Retail Consumption License C-966, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Lloyd's Manor, for premises 42-48 Beacon Street, Newark, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. October 31, 1949, and terminating at 2:00 a.m. November 30, 1949.

ERWIN B. HOCK
Director.

10. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR. - CHARGE DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against)
 LOUIS PERSIC)
 T/a CASTLE)
 River Road or St. Mihel Drive)
 1/4 mi. S.W. Norman Ave., Cambridge)
 Delran Township)
 P.O. R.D. Riverside, N. J.,)

CONCLUSIONS AND ORDER

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

-----)
 Parker, McCay and Criscuolo, Esqs., Attorneys for Defendant-licensee.)
 William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.)

BY THE DIRECTOR:

Charge was served upon defendant-licensee alleging that he possessed on his licensed premises, in violation of Rule 28 of State Regulations No. 20, an alcoholic beverage in a bottle which bore a label which did not truly describe its contents.

The bottle in question (a quart bottle labeled "Seagram's Seven Crown Blended Whiskey") was picked up at the licensed premises by an agent of the Federal Alcohol Tax Unit when his preliminary field test indicated that the liquor in the bottle did not conform to label requirements. The bottle was subsequently transmitted to the Federal Laboratory at Philadelphia for analysis. According to copy of the Federal chemist's report furnished this Division by the Alcohol Tax Unit, this liquor differed considerably in acids, solids and color from a genuine sample of the same brand used by the chemist for comparison purposes. On the basis of such differences, the chemist concluded that the questionable bottle had been refilled. Hence the charge herein was preferred.

However, before the case came on for hearing, and notwithstanding previous request of this Division that the sample be preserved, the Federal Alcohol Tax Unit advised by letter that the remainder of the questionable liquor had been inadvertently destroyed. The destruction occurred before defendant had had an opportunity, in seeking evidence which might tend to refute the charge, to cause the liquor to be retested by a chemist employed by him.

While there is nothing to cast doubt upon the accuracy of the Federal chemist's findings and conclusions, common fairness dictates that a licensee shall not have his license suspended or revoked without being afforded adequate opportunity to seek evidence to meet the charge against him, as, in this case, by analysis of the suspected liquor by his own chemist.

Accordingly, it is, on this 19th day of October, 1949,

ORDERED that the charge in the above cause be and the same is hereby nolle prossed.

ERWIN B. HOCK
 Director.

11. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATES OF SUSPENSION.

In the Matter of Disciplinary Proceedings against JOSEPH ALBERTI & JOHN C. ALBERTI T/a ALBERTI'S BAR & GRILL 570 Main Avenue Passaic, N. J.,

ON PETITION ORDER

Holder of Plenary Retail Consumption License C-152 for the 1948-49 and 1949-50 licensing years, issued by the Board of Commissioners of the City of Passaic.

Peter P. Zangara, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On October 11, 1949, the license herein was suspended for a period of sixty days, commencing at 3:00 a.m. October 17, 1949 and terminating at 3:00 a.m. December 16, 1949.

It appears from a petition filed herein that, prior to October 11, 1949, defendants had entered into an engagement to permit the holding of an annual dinner on the licensed premises on Tuesday evening, November 1, 1949, and that said annual dinner was to be attended by upwards of 200 people under the sponsorship of a duly organized and existing political club. Tickets for the dinner have been in the hands of the expected guests for some time. The dinner has been greatly publicized and the sponsors appear to be unable, at least without great inconvenience to their guests, to find other accommodations, and many members of the general public without fault in the matter will suffer hardship because of the suspension of the defendants' license on said date, and no cause appearing to the contrary,

It is, on this 21st day of October, 1949,

ORDERED that the suspension of sixty days heretofore imposed in these proceedings shall commence at 3:00 a.m. October 17, 1949 and continue in effect until 3:00 a.m. November 1, 1949; that thereafter said suspension shall be lifted until 3:00 a.m. November 2, 1949, when it shall again become effective and continue in effect until 3:00 a.m. December 17, 1949.

ERWIN B. HOCK Director.

November 1, 1949

12.

ACTIVITY REPORT FOR OCTOBER 1949

ARRESTS:		
Total number of persons arrested	-----	10
Licensees and employees	-----	1
Bootleggers	-----	9
SEIZURES:		
Motor vehicles - cars	-----	2
- trucks	-----	1
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	2
Mash - gallons	-----	4,550.00
Distilled alcoholic beverages - gallons	-----	12.53
Wine - gallons	-----	.12
Brewed malt alcoholic beverages - gallons	-----	16.79
RETAIL LICENSEES:		
Premises inspected	-----	683
Premises where alcoholic beverages were gauged	-----	689
Bottles gauged	-----	12,335
Premises where violations were found	-----	24
Violations found	-----	27
Type of violations found:		
Unqualified employees	-----	8
Reg. #38 sign not posted	-----	7
Other mercantile business	-----	2
Prohibited signs	-----	1
Probable fronts	-----	1
Improper beer taps	-----	1
Other violations	-----	7
STATE LICENSEES:		
Premises inspected	-----	23
License applications investigated	-----	11
COMPLAINTS:		
Complaints assigned for investigation	-----	357
Investigations completed	-----	373
Investigations pending	-----	172
LABORATORY:		
Analyses made	-----	175
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	8
Liquor found to be not genuine as labeled - bottles	-----	10
IDENTIFICATION BUREAU:		
Criminal fingerprint identifications made	-----	22
Persons fingerprinted for non-criminal purposes	-----	229
Identification contacts made with other enforcement agencies	-----	156
Motor vehicle identifications via N. J. State Police Teletype	-----	12
DISCIPLINARY PROCEEDINGS:		
Cases transmitted to municipalities	-----	3
Violations involved:		
Permitting bookmaking on premises	-----	1
Sale to non-members by clubs	-----	1
Sale during prohibited hours	-----	1
Cases instituted at Division	-----	14
Violations involved:		
Sale to minors	-----	3
Sale during prohibited hours	-----	2
Possessing illicit liquor	-----	2
Fraud and front	-----	2
Permitting bookmaking on premises	-----	2
Hindering investigation	-----	1
Sale under Fair Trade price	-----	1
Failure to report retailer in default	-----	1
Delivery on credit to retailer in default	-----	1
Mislabeling beer taps	-----	1
Cases brought by municipalities on own initiative and reported to Division	-----	16
Violations involved:		
Sale to minors	-----	10
Sale during prohibited hours	-----	5
Permitting gambling on premises (dice)	-----	1
HEARINGS HELD AT DIVISION:		
Total number of hearings held	-----	35
Appeals	-----	8
Disciplinary proceedings	-----	16
Eligibility	-----	6
Seizures	-----	5
PERMITS ISSUED:		
Total number of permits issued	-----	1,499
Employment	-----	140
Solicitors	-----	157
Disposal of alcoholic beverages	-----	100
Social affairs	-----	418
Special wine	-----	533
Miscellaneous	-----	151

ERWIN B. HOCK, DIRECTOR

13. FAIR TRADE - IMPORTANT NOTICE OF PUBLICATION OF SUPPLEMENT FOR LISTING NEW PRICES ON IMPORTED AND DOMESTIC BRANDIES AND WINES.

November 1, 1949.

Industry members report that the devaluation of certain foreign currencies has resulted in a reduction of the cost to them of certain brandies and wines. They have expressed their intention to pass on to the consumer as soon as practicable, savings so effected.

Accordingly, manufacturers and wholesalers of imported or domestic brandies and wines may, in their discretion, amend their schedules of minimum consumer retail prices for such brands for the period commencing December 1, 1949. Such new supplemental Fair Trade listings must be submitted to this office on or before November 9, 1949.

It is emphasized that the forthcoming supplemental Fair Trade publication to be effective on December 1, 1949 will be issued solely for the listing of imported and domestic brandies and wines. Changes in minimum consumer price listings for brands of alcoholic beverages other than those above stated must await the publication of the next complete minimum resale price pamphlet to be effective January 1, 1950.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the supplemental price list is mailed to all retail licensees.

Wm. B. Heck
Director.