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

BULLETIN 869 MARCH 9, 1950.

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ITEM

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

BULLETIN 869 MARCH 9, 1950.

1. DISCIPLINARY PROCEEDINGS - ALLEGED SALE OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 30 - DIVISION FAILED TO SUSTAIN BURDEN OF PROOF - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against

SPORTMAN'S CAFE, INC.
224 Market St. & 3 Prince St.
Paterson 1, N. J.,

Holder of Plenary Retail Consumption License C-58, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

CONCLUSIONS AND ORDER

Emil Weisser, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to a charge alleging that it sold and delivered alcoholic beverages at retail in original containers for off-premises consumption on Sunday, October 16, 1949, in violation of Rule 1 of State Regulations No. 38.

The circumstances that gave rise to these proceedings were brought to the attention of this Division after a municipal policeman had apprehended a taxicab driver in the process of making delivery of six bottles of beer to a consumer shortly before 2:00 a.m. on the Sunday morning in question. Upon being interrogated by the policeman, the cab driver stated that he had just purchased the beer at the defendant's tavern.

The case for the prosecution is predicated principally upon the testimony of the cab driver. Without reciting the evidence in detail, it is sufficient to state that, while all of the circumstances described by the prosecution witnesses are consistent with the general issue, to wit, whether a sale of package goods was made during prohibited hours as alleged, none of those circumstances are definitively corroborative of the salient issue that such sale was made at defendant's licensed premises. Thus a permissive, but not compelling, inference may be drawn in support of the charge.

For the defense, the president of the corporate licensee testified that he was the only person on duty at the tavern on the Sunday morning in question, and he categorically denied the story related by the cab driver and unequivocally stated that he had not sold the beer to the cab driver.

Under the particular circumstances of this case, justice and fairness dictate that the defendant must be found not guilty of the charge. Cf. Re Weiss and Hochberg, Bulletin 514, Item 10; Re Home Wine and Liquor Co., Inc., Bulletin 555, Item 10.

Accordingly, it is, on this 15th day of February, 1950,

ORDERED that the charge herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

2. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION.

In the Matter of Disciplinary Proceedings against

PLAINFIELD LODGE, B.P.O. ELKS #885
116 Watchung Avenue
Plainfield, N. J.,

Holder of Club License CB-216, issued by the Director of the Division of Alcoholic Beverage Control.

ON PETITION
O R D E R

Carroll W. Hopkins, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

On February 10, 1950, the license herein was suspended for a period of ten days, commencing at 1:00 a.m. February 20, 1950 and terminating at 1:00 a.m. March 2, 1950.

It appears from a verified petition filed herein that, prior to February 10, 1950, the defendant had made arrangements for the annual meeting to be held at its licensed premises on March 1, 1950. The petition further recites that arrangements have been made for members of the organization living outside the community where its lodge is located to attend the club on the date referred to. Furthermore, definite arrangements have been made for the appearance of dignitaries and guests of members of the lodge.

It appearing, therefore, that numerous innocent persons will be inconvenienced by the suspension of defendant's license on March 1, 1950,

It is, on this 20th day of February, 1950,

ORDERED that the suspension of ten days heretofore imposed in these proceedings shall commence at 1:00 a.m. February 20, 1950 and continue in effect until 1:00 a.m. March 1, 1950; that thereafter said suspension shall be lifted until 1:00 a.m. March 2, 1950, when it shall again become effective and continue in effect until 1:00 a.m. March 3, 1950.

ERWIN B. HOCK
Director.

3. APPELLATE DECISIONS - ELIZABETH BEVERAGE DEALERS ASSN. v. ELIZABETH AND CATHOLIC WAR VETERANS, INC., ST. PATRICK MEMORIAL POST, NO. 1649.

ELIZABETH BEVERAGE DEALERS ASSN.,)

Appellant,)

-vs-) ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF ELIZABETH, and CATHOLIC WAR VETERANS, INC., ST. PATRICK MEMORIAL POST, NO. 1649,)

Respondents.)

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Sidney Simandl, Esq., Attorney for Appellant.
Louis P. Longobardi, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Elizabeth.
William J. Fagan, Esq., Attorney for Respondent Catholic War Veterans, Inc., St. Patrick Memorial Post, No. 1649.

BY THE DIRECTOR:

This is an appeal from respondent Board's action granting a club license to respondent Post.

Revised Statutes, 33:1-12(5) provides: "....Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the commissioner of alcoholic beverage control by rules and regulations." (Underscoring added.)

State Regulations No. 7 (Club Licenses) provide, in pertinent part:

"Rule 3. Except as provided in Rule 5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three years continuously immediately prior to the submission of its application for a license.

"Rule 4. Except as provided herein or in Rule 5, no license shall be issued to any club unless it shall have been in exclusive continuous possession and use of a clubhouse or club quarters for at least three years continuously immediately prior to the submission of its application for a license.....

"Rule 5. Any constituent unit, chartered or otherwise duly enfranchised chapter or member club of a national or state order, organization or association, which is in possession of suitable premises, shall not be prevented from obtaining a club license by reason of the fact that the unit, chapter or member club has not been in active operation in this State for at least three years continuously or has not been in exclusive continuous possession and use of a clubhouse or club quarters for the same period of time, provided said unit, chapter or member club obtains from the Commissioner, and presents to the issuing authority at or before the issuance of the license, a certificate stating that satisfactory proof has been submitted to the Commissioner that said unit, chapter or member club has been duly credentialed by a national or state order, organization or association which has been in active operation in this State for at least three years continuously immediately prior to submission of the application for a license...."

It is undisputed that respondent Post was not organized, or authorized to be organized, until May 17, 1949; and no application or petition has been made, on behalf of respondent Post, for the Commissioner's (Director's) certificate required by quoted Rule 5 of State Regulations No. 7. Thus, respondent Board had no jurisdiction to issue the license. The Board's action will, therefore, be reversed and the license cancelled forthwith.

In view of my determination on the jurisdictional ground, it is unnecessary for me to consider, here, the other reasons advanced for reversal of respondent Board's action.

Accordingly, it is, on this 21st day of February, 1950,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Elizabeth in issuing a club license to respondent Catholic War Veterans, Inc., St. Patrick Memorial Post, No. 1649, 245 Court Street, Elizabeth, be and the same is hereby reversed, and said license is hereby cancelled, effective immediately.

ERWIN B. HOCK
Director.

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

In the Matter of Disciplinary Proceedings against

THOMAS A. BENINATO & BROS. INC.
T/a TOM'S KOZY BAR & GRILL
Route 35, Old Spye Road, Morgan
Sayreville Borough
P.O. R.F.D. 1, South Amboy, N.J.,

Holder of Plenary Retail Consumption License C-17, issued by the Borough Council of the Borough of Sayreville.

CONCLUSIONS AND ORDER

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Thomas A. Beninato & Bros. Inc., by Joseph Beninato, President.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded guilty to the charge that, on December 27, 1949, it possessed a mislabeled beer tap in its tavern, in violation of Rule 1 of State Regulations No. 22.

An ABC agent, on routine inspection of the defendant's licensed premises on the day in question, found that beer was being drawn from a barrel marked "Ruppert" through a spigot labeled "Trommer's White Label".

Defendant has no previous adjudicated record. The license, therefore, will be suspended for a period of three days, less one day's remission for the plea entered herein, or a net suspension of two days. Re Hearns, Bulletin 854, Item 4.

Accordingly, it is, on this 23rd day of February, 1950,

ORDERED that Plenary Retail Consumption License C-17, issued by the Borough Council of the Borough of Sayreville to Thomas A. Beninato & Bros. Inc., t/a Tom's Kozy Bar & Grill, for premises Route 35, Old Spye Road, Morgan, Sayreville Borough, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. March 6, 1950, and terminating at 2:00 a.m. March 8, 1950.

ERWIN B. HOCK
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EDWARD R. GREENBERG
Bound Brook Road
Middlesex Borough
P.O. R.D. 1, Bound Brook, N. J.,

Holder of Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Middlesex.

CONCLUSIONS AND ORDER

Henry Handelman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

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

The file herein discloses that on December 17, 1949, two ABC agents observed the wife of the defendant-licensee serving two glasses of beer and a glass of Scotch whisky to three youths who were seated at a table in the rear of the licensed premises. Subsequent investigation disclosed that one of the youths was seventeen years of age, and the other two were twenty years of age.

Defendant has no previous adjudicated record. The minimum suspension for sales to minors where no aggravating circumstances appear is for a period of ten days. Since three minors -- one of whom was seventeen years of age -- were involved in this case, I shall suspend the license for a period of fifteen days, less five days for the plea entered herein, leaving a net suspension of ten days. Cf. Re Andy's Inc., Bulletin 732, Item 3.

Accordingly, it is, on this 23rd day of February, 1950,

ORDERED that Plenary Retail Consumption License C-4, issued by the Borough Council of the Borough of Middlesex to Edward R. Greenberg, Bound Brook Road, Middlesex Borough, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 6, 1950, and terminating at 2:00 a.m. March 16, 1950.

ERWIN B. HOCK
Director.

March1, 1950

6. ACTIVITY REPORT FOR FEBRUARY 1950

ARRESTS:			
Total number of persons arrested			20
Licensees and employees	7		
Bootleggers	12		
ABC agent impersonator	1		
SEIZURES:			
Motor vehicles - cars			1
- trucks			4
Stills - over 50 gallons			2
- 50 gallons or under			1
Mash - gallons			1,000.00
Distilled alcoholic beverages - gallons			8.13
Wine - gallons			2.96
Brewed malt alcoholic beverages - gallons			8.13
RETAIL LICENSEES:			
Premises inspected			771
Premises where alcoholic beverages were gauged			683
Bottles gauged			12,044
Premises where violations were found			28
Violations found			34
Type of violations found:			
Unqualified employees	20	Reg. #38 sign not posted	1
Gambling devices	4	Other mercantile business	1
Probable fronts	2	Other violations	6
STATE LICENSEES:			
Premises inspected			25
License applications investigated			14
COMPLAINTS:			
Complaints assigned for investigation			237
Investigations completed			316
Investigations pending			110
LABORATORY:			
Analyses made			122
"Shake-Up" cases (alcohol, water and artificial color) - bottles			5
Liquor found to be not genuine as labeled - bottles			6
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made			14
Persons fingerprinted for non-criminal purposes			139
Identification contacts made with other enforcement agencies			105
Motor vehicle identifications via N. J. State Police Teletype			2
DISCIPLINARY PROCEEDINGS			
Cases transmitted to municipalities			9
Violations involved:		Permitting bookmaking on premises	1
Sale during prohibited hours	3	Permitting females to tend bar	1
Sale to minors	3	Sale to non-members by clubs	1
Sale to intoxicated persons	3	Conducting business as a nuisance	1
Cases instituted at Division			8
Violations involved:			
Permitting immoral activity on premises	2		
Possessing illicit liquor	2	Combination sale	1
Permitting hostesses on premises	1	Sale at discount	1
Conducting business as a nuisance	1	Sale under Fair Trade price	1
Mislabeling beer taps	1	Sale during prohibited hours	1
Cases brought by municipalities on own initiative and reported to Division			2
Violations involved:			
Sale during prohibited hours	2		
HEARINGS HELD AT DIVISION:			
Total number of hearings held			29
Appeals	2		
Disciplinary proceedings	17		
Eligibility	8		
Tax revocation	2		
PERMITS ISSUED:			
Total number of permits issued			709
Employment	81	Social affairs	332
Solicitors'	95	Special wine	5
Disposal of alcoholic beverages	102	Miscellaneous	94

ERWIN B. HOCK, DIRECTOR

7. ADVERTISING - LICENSEES - MAY NOT USE MONEY, COINS OR CURRENCY AS ADVERTISING MEDIA.

February 27, 1950.

Gentlemen:

You hold a plenary retail consumption license.

Investigation reveals that you have been engaging in the practice of pasting small advertising stickers onto 25¢ pieces. These stickers are pasted onto the quarters in advance of each day's business, and the coins are then used when making change for your patrons. The sticker, made of durable scotch tape, advertises the "Anchor Room" in your retail liquor establishment as a "Nautical Nitery".

While this scheme of advertising is ingenious, it is misguided ingenuity. Coin of the realm is designed as a medium of exchange and not as a medium of advertising. There are enough permissible ways in which a liquor licensee may advertise in New Jersey without need of resorting to use of the nation's currency as an advertising vehicle. If money were to be exploited in this way, we would be faced with coins of every variety being festooned with proclamations of liquor establishments. From the viewpoint of sound and sensible liquor control, such a type of liquor advertisement is both undesirable and inappropriate.

Judging from the correspondence which your attorney had with the U. S. Treasury Department, that Department, it appears, disapproves of use of coins as carriers of advertising stickers; and so do I. Hence, I herewith specially rule that no liquor licensee in New Jersey may use money, coins or currency as a medium of advertising.

Accordingly, you are directed immediately to cease the above practice on penalty of suspension or revocation of your license. Please send me a prompt letter assuring me of your compliance with this directive.

Very truly yours,
ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PRIDE OF CAMDEN LODGE NO. 83
I.B.P.O.E. OF W.
711 Kaighn Avenue
Camden, N. J.,

Holder od Club License CB-27, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

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Pride of Camden Lodge No. 83, I.B.P.O.E. of W., defendant-licensee, by James C. Tucker, Exalted Ruler, et als.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging it sold and served alcoholic beverages on its licensed premises during hours when such sale and service are prohibited by a local ordinance.

On Sunday, February 5, 1950, at about 7:50 p.m., two ABC agents, upon entering defendant's licensed premises, observed a man at the bar with a bottle of beer in front of him. The bartender employed by defendant club admitted making the sale and service of the bottle of beer in question.

A local ordinance, adopted by the Board of Commissioners of the City of Camden, prohibits, among other things, such sale and service of alcoholic beverages on Sunday after 2:00 a.m.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days. Cf. Re Trenton Lodge #105 B.P.O. Elks, Bulletin 813, Item 13.

Accordingly, it is, on this 1st day of March, 1950,

ORDERED that Club License CB-27, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Pride of Camden Lodge No. 83, I.B.P.O.E. of W., for premises 711 Kaighn Avenue, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. March 6, 1950, and terminating at 2:00 a.m. March 16, 1950.

ERWIN B. HOCK
Director.

9. APPELLATE DECISIONS - SCHIFF AND DEUTCH AND MONMOUTH-OCEAN RETAIL LIQUOR STORES ASSOCIATION, INC. vs. LAKEWOOD AND GOLDBERG.

MORRIS SCHIFF and PHILIP DEUTCH, t/a SICKEL'S LIQUOR STORE, and MONMOUTH-OCEAN RETAIL LIQUOR STORES ASSOCIATION, INC.,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LAKEWOOD, and ROBERT M. GOLDBERG, t/a BOB'S TOWN TRADE LIQUORS,

Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

Harry E. Newman, Esq., Attorney for Appellants Schiff and Deutch.
Edward M. Rothstein, Esq., Attorney for Objectors.
Harold Feinberg, Esq., Attorney for Appellant Monmouth-Ocean Retail Liquor Stores Association, Inc.
Samuel Moskowitz, Esq., Attorney for New Jersey Retail Liquor Stores, an Objector.
James J. Myers, Esq., Attorney for Respondent Township Committee.
Milton Miller, Esq., Attorney for Respondent Robert M. Goldberg.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it transferred a plenary retail distribution license held by respondent Robert M. Goldberg from premises known as 241 Fourth Street to premises known as 260 Second Street, Lakewood.

Appellants allege that the action of respondent Township Committee was erroneous because (1) there was no public need for another license in the vicinity to which the license was transferred since that section of the municipality was already adequately served, and (2) the Township Committee predetermined the matter before any hearing.

Respondent Goldberg conducted his licensed business at 241 Fourth Street, near Clifton Avenue, for more than five years last past. The owner of said premises recently advised him that he desires the store at that address for his son's use and, hence, would not renew Goldberg's lease at its expiration. On December 1, 1949, after an application for transfer had been duly filed, and statutory requirements as to transfer complied with, respondent Township Committee granted a transfer of the license in question from 241 Fourth Street to 260 Second Street. The latter premises are also near Clifton Avenue.

The evidence herein discloses that appellants Schiff and Deutch are the holders of a plenary retail distribution license for premises at the northeast corner of Second Street and Clifton Avenue. It appears also that plenary retail distribution licenses have been issued to Altman's Pharmacy, on the northwest corner of Second Street and Clifton Avenue, and to Buchanan's, on the west side of Clifton Avenue, a short distance south of Second Street. However, it also appears that the intersection of Clifton Avenue and Second Street is the "center of town", at least sixty per cent. of the business places in the township are located in the vicinity of this intersection, and a large percentage of the shopping in the township is done on Second Street.

Considering the situation on the southerly side of Second Street, evidence indicates that there is a bank building on the southeast

corner of Clifton Avenue and Second Street; that Goldberg's premises adjoin the bank building, and that to the east of Goldberg's premises there are two markets, a tailor shop, a haberdashery, a restaurant, a music store, and other places of business. According to the evidence, one of the markets is conducted by the A & P and more than 1,000 customers per day patronize this market. It is evident that persons visiting these places of business on the south side of Second Street would have to cross heavy vehicular traffic to reach any other package store in this business district.

The number of licenses which should be permitted in a business district of this character is a matter confided to the sound discretion of the issuing authority. Kalish v. Linden and Verchick, Bulletin 71, Item 14; Mulcahy v. Maplewood and Topf, Bulletin 693, Item 4; Cooperate Service Co. v. Newark and Laurel Liquor Corp., Bulletin 813, Item 1. The fact that the transfer of the license may be contrary to the economic interest of appellants is not a sufficient reason for setting aside the transfer. The test to be applied is the welfare of the community. Knast and Kraus v. Camden and Eshner, Bulletin 810, Item 2. The case of Houtkin v. Lakewood, Bulletin 646, Item 1, is not controlling because in that case appellant failed to produce any evidence that a new license was needed on the northerly side of Second Street and, hence, it was decided that he had not sustained the burden of proof. In the present case the burden of proof rests upon the appellants. Rule 6 of State Regulations No. 15.

There is no evidence that the Township Committee predetermined the matter before any hearing. After written objections had been filed, objectors appeared at a meeting of the Township Committee held on October 13, 1949. The matter was adjourned to October 27, 1949, and again adjourned to December 1, 1949. Denial of a request made that evening for a further adjournment was not unreasonable. The objectors who then appeared were given full opportunity to be heard. After said objections were heard, the members of the Township Committee voted to grant the transfer by a 3 to 1 vote.

I conclude that appellants have failed to sustain the burden of proof in establishing that respondent Township Committee abused its discretion in granting the transfer of the license and, since there appears to be no other valid reason for reversal, I shall affirm the action of the Township Committee in transferring the license.

Accordingly, it is, on this 3rd day of March, 1950,

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

ERWIN B. HOCK
Director.

10. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - ALCOHOLIC BEVERAGES, RESTAURANT EQUIPMENT AND MERCHANDISE ORDERED FORFEITED - VARIOUS ARTICLES RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on September 23, 1949 of a quantity of alcoholic beverages, fixtures and furnishings at 82 Parkhurst Street, in the City of Newark, County of Essex and State of New Jersey.	Case No. 7517 ON HEARING CONCLUSIONS AND ORDER

Frederic C. Ritger, Esq., Attorney for National Cash Register Co.
Ruby Jones, Pro Se.
J. D. Maxwell, Pro Se.
Carrie T. Scott, Pro Se.
Samuel Waldor, trading as ABC Distributing Co., 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 a quantity of alcoholic beverages, various fixtures and furnishings and the sum of $44.35 in cash, described in a schedule attached hereto, seized on September 23, 1949 at 82 Parkhurst Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

On complaint that alcoholic beverages were being sold unlawfully an ABC agent entered a small restaurant in the basement of the dwelling at the above address on September 18, 1949 and there purchased some food and a bottle of ale from one Carrie T. Scott. On September 23rd this agent and another agent purchased food, and bottles of beer and drinks of whiskey at the place from Carrie T. Scott.

Carrie T. Scott did not hold any license authorizing her to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. Accordingly, the agents seized 64 bottles of beer and ale and 15 bottles of other alcoholic beverages which they found in the restaurant as well as the fixtures and equipment therein, and arrested Mrs. Scott. She gave the agents a signed statement concerning her activities in which she sets forth that she has resided at the Parkhurst Street address for about two years, and owns and operates a club designated as "La Casa de Amigos"; that she is the holder of a restaurant and tobacco license for the premises and makes her living from the sale of food; that she sold the two agents whiskey and beer, and that she had been selling alcoholic beverages there for several weeks to make some extra money.

It is clear that the 64 bottles of beer and 15 bottles of other alcoholic beverages seized in the establishment were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all property seized therewith 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, Ruby Jones appeared and sought return of a refrigerator; J.D. Maxwell appeared and sought return of a number of tables and chairs; Carrie T. Scott appeared and sought return of a Vita Juicer; Samuel Waldor appeared and sought return of a music machine, and an appearance was entered for National Cash Register Co. which sought return of a cash register.

I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

The evidence shows that the establishment was Mrs. Scott's private enterprise and that she previously had attempted to obtain a license to sell alcoholic beverages. The so-called club, "La Casa de Amigos", does not appear to have been an actual bona fide club but rather an instrumentality to further Mrs. Scott's business activities, with J. D. Maxwell perhaps having an interest in such business.

Dues were not required. There does not appear to be any minutes of meetings, or formalities of organization, or for that matter, any formal membership, or any active officers or trustees other than J.D. Maxwell, who calls himself chairman of the trustees. Mrs. Scott is described as manager. The primary function of the "club" appears to have been as a vehicle to obtain special permits on a few occasions authorizing the sale and service of alcoholic beverages at alleged social affairs conducted by the "club". J.D. Maxwell signed the applications for such permits and Mrs. Scott paid for the alcoholic beverages. So far as appears she retained the proceeds of the sale of such alcoholic beverages. The fact that it was not a bona fide organization, and hence not a proper applicant for such permits, was not discovered until after the seizure.

The persons who participated in or were aware of the sale of alcoholic beverages at the restaurant under the pretense that it was a club operating under a special permit or at other times, obviously cannot be considered as having acted in good faith. Maxwell was primarily instrumental in obtaining such permits. Mrs. Scott, as proprietor of the establishment and the person actually making the unlawful sale of alcoholic beverages, is the principal offender. Ruby Jones, who claims to be a member of the "club", came there frequently and observed the sale of alcoholic beverages. None of these persons can obtain return of any of the seized property. Cf. Crawford Crews Post (Seizure Case No. 7320), Bulletin 819, Item 5. Accordingly, the applications of J. D. Maxwell, Carrie T. Scott and Ruby Jones for return of the respective articles heretofore mentioned are denied.

The music machine was placed in the restaurant by Samuel Waldor and the cash register was sold to Carrie Scott by a conditional sales contract by the National Cash Register Co. in the regular course of business of the two claimants. Carrie Scott did not have any previous criminal record for violating any liquor laws. The several permits authorizing the sale of alcoholic beverages at the premises may have been misleading to a person who observed alcoholic beverages in the premises. I am satisfied of the innocence of the claimants and, accordingly, I shall recognize their claims.

The original purchase price of the cash register was $255.05 and the balance presently due is $200.05. There appears to be no advantage in the State retaining the cash register for the benefit of a state institution conditioned upon the payment of the lien claim, since it is readily apparent that a public sale of such cash register will not realize sufficient return to pay the lien claim and the costs of seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 13th day of March, 1950, National Cash Register Co. and Samuel Waldor pay the costs of seizure and storage of the cash register and music machine respectively, such articles will be returned to the respective claimants; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, including $44.35 in cash, 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 it be retained for use of hospitals and state, county and municipal institutions, or destroyed in whole or in part at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: March 3, 1950.

SCHEDULE "A"

64 - bottles of beer and ale
15 - bottles of other alcoholic beverages
12 - bottles of soda
45 - chairs
15 - tables
1 - Cold Spot Refrigerator
1 - National Cash Register Serial #454493 and $20.35 therein
1 - Coca Cola Cooler
1 - bar
112 - drinking glasses
2 - cabinets
1 - Silex
1 - Progressive gas stove
1 - Seeburg Symphonola #71977 and currency therein
1 - Seeburg Speaker Serial #23371
1 - electric toaster
1 - Berns exhaust fan
9 - neon lights
$24.00 in cash
Miscellaneous restaurant equipment as listed in inventory in file.

11. MORAL TURPITUDE - COMMERCIALIZED GAMBLING MAY OR MAY NOT INVOLVE MORAL TURPITUDE - UNDER FACTS OF CASE, APPLICANT HELD TO BE NOT INELIGIBLE TO BE EMPLOYED ON LICENSED PREMISES.

March 3, 1950

Re: Case No. 615

Subject pleaded guilty, on September 29, 1944, to a charge of bookmaking and betting on horses, and as a result thereof was fined $250.00. Subject testified that he was arrested for accepting "bets on horses" on the premises of a cigar store of which he was the proprietor; that he was not connected with any other bookmaker; and that his "business" was conducted on a small scale. The question presented herein is whether the crime to which subject pleaded guilty involved moral turpitude.

Commercialized gambling may or may not involve moral turpitude. In Case No. 239, Bulletin 305, Item 9, it was held that the conviction of the head of a ring conducting gambling establishments, where the activities of the ring were attended by methods of violence, did involve moral turpitude. In Case No. 283, Bulletin 337, Item 14, the conviction of a "lieutenant" of the real operator of a lottery conducted on a large scale, it was held, did involve moral turpitude. So also in a case wherein it was held multiple convictions showed a reckless disregard for law warranting the conclusion that the last offense involved moral turpitude. See Re Case No. 246, Bulletin 293, Item 10. In the instant case none of the elements aforementioned are found. I conclude that the single crime of which petitioner is convicted did not involve moral turpitude. Re Case No. 611, Bulletin 867, Item 8.

Although applicant is not disqualified by statute because of the aforesaid conviction, it is, nevertheless, the responsibility of the local issuing authority to determine to its satisfaction whether applicant is a fit person to be associated with the alcoholic beverage industry.

Clarence E. Kremer
Attorney.

APPROVED:
ERWIN B. HOCK
Director.

12. APPELLATE DECISIONS - HAINES v. PEMBERTON TOWNSHIP.

Case No. 2)
ALFRED D. HAINES,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF PEMBERTON,)
Respondent.)

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W. Thomas McGann, Esq., Attorney for Appellant.
Alexander Denbo, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for a plenary retail distribution license for premises located in the Browns Mills section of the Township of Pemberton.

The Petition of Appeal alleges that respondent's action was erroneous in that:

"(1) It deprived the appellant of a right provided for by Statute and local ordinance.

"(2) The reasons advanced for refusing application of appellant are without legal merit because they were not in keeping with the facts.

"(3) There are no other plenary retail distribution licenses issued in respondent Township and thus there is public need and demand for a 'retail package store'.

"(4) The respondent was influenced by conditions and circumstances of a private and political nature which are not legally binding on the appellant.

"(5) The issuing body disregarded the preponderance of the evidence in favor of the issuance of a license to the appellant and decided against the application of the appellant for reasons not indicated in their written resolution.

"(6) The reasons set forth against the issuance of said license, by the opponents of the same, were not made known in writing in keeping with the Notice of Application of the applicant, Alfred D. Haines."

On April 22, 1949, respondent denied appellant's prior application for a plenary retail distribution license. In my Conclusions and Order on appeal from that denial I stated:

"....Respondent's application-denying resolution of April 22d set forth no sufficient grounds of denial; indeed, the grounds set forth in such resolution were improper and without mention or consideration of the question of public convenience and necessity. However, as hereinafter appears, it is not necessary for me to deal here with the general merits.....

"Respondent did not have jurisdiction to grant appellant's application. As required by Rule 2 of State Regulations No. 2, where, as here, application is for a license for premises not yet constructed, the two Notices of Application must contain a statement that 'plans and specifications for building to be constructed may be examined at the office of the Municipal Clerk'.

"Where application is for a license for premises not yet constructed or completed, the most an issuing authority may do is grant the application subject to an express condition that the license shall not be issued unless and until the premises as described in the plans and specifications, submitted to and found acceptable by the issuing authority, shall first be completed. (Re Harris, Bulletin 183, Item 11; Re Salter, Bulletin 184, Item 8.)

"The record of the hearing on this appeal shows that appellant filed no plans and specifications and that appellant's published Notices of Application contained no mention of any plans and specifications. In the light of the jurisdictional defect -- failure to follow a requirement that is definitely essential -- I am constrained to affirm respondent's denial of the application.

"Accordingly, it is, on this 16th day of August, 1949,

"ORDERED that respondent's action be and the same is hereby affirmed and the appeal herein is hereby dismissed." (Haines v. Pemberton Township, Bulletin 851, Item 10.)

Taking up, in regular order, the Appeal Petition's advanced reasons for reversal in the instant appeal:

(1). Section 2 of the State Limitation Law (P. L. 1947, c. 94) provides that "no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each three thousand of its population as shown by the last then preceding Federal census." Section 3 of the State Limitation Law provides, in effect, that that law shall not prevent the issuance and existence of one plenary retail distribution license in a municipality whose latest Federal census population is less than three thousand. No plenary retail distribution license has been issued in Pemberton Township, the 1940 Federal census population of which was 2,386. Thus, the State Limitation Law did not prohibit the granting of appellant's application. Furthermore, granting of the application was not prohibited by the township's ordinance which fixes a fee for a plenary retail distribution license. But the fact that issuance of a license is not prohibited by State law or local ordinance does not mean that an applicant has a "right" to a license -- that his application must be granted. No person, however legally qualified, is entitled to secure an alcoholic beverage license as a matter of right. To quote from the Opinion of Parker, J., in Bumball v. Burnett, 115 N.J.L. 254, at p. 255 (Sup. Ct. 1935):

"Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N.J.L. 585, 595. 'No one has a right to demand a license: license is a special privilege granted to the few, denied to the many.' Ibid. 596. 'There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State....' Meehan v. Board, 29 N.J.L.J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N.J.L. 150." See, also, Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946).

(2) and (3). What are "the reasons advanced" for respondent's denial of the application, and what are the "facts"? Respondent's application-denying resolution of October 27, 1949, sets forth the following reasons:

"1. Not needed for public convenience.

"2. Not needed to serve the public.

"3. Package goods now sold by sixteen plenary consumption licensees in Pemberton Township; eleven of which are in Browns Mills area.

"4. There are sufficient number of licenses in the Browns Mills area of Pemberton Township.

"5. Petition received, signed by sixty-one persons objecting to the license and testimony of persons at hearing indicated to the committee that the license is not needed in Pemberton Township."

For the "facts", and for "opinions", reference must be to the record. At the hearing held below on October 27, 1949, seven persons appeared and spoke in favor of granting appellant's application and nine persons appeared and spoke in objection thereto. At the hearing on appeal five persons testified in favor of granting the license and two against. At both hearings those speaking in favor of the granting expressed the opinion that there is need in the locality for an establishment licensed to sell only by the bottle to take out, as distinguished from the existing licensed establishments selling also for on-premises consumption; and those speaking against the granting expressed the opinion that the existing licenses adequately serve the public need.

Respondent received petitions, signed by 173 persons, in favor of granting appellant's application and a petition, signed by 61 persons, against such granting. The weight to be accorded to petitions for or against granting of a license is entirely within the discretion of the issuing authority. (Re Powell, Bulletin 59, Item 15; Dunster v. Bernards Township, Bulletin 99, Item 1; Nunziato v. Matawan Township, Bulletin 763, Item 6.)

The township's 1940 Federal census population was 2,386. Licenses outstanding there are sixteen (16) plenary retail consumption, one (1) limited retail distribution, and one (1) club. At least ten (10) of the plenary retail consumption licensed premises are in the Browns Mills section in which appellant's premises are located.

Each of the plenary retail consumption licensees is, of course, privileged under his license to sell not only for consumption on the licensed premises by the glass or other open receptacle but also to sell in original containers for consumption off the licensed premises. The burden of proof to show need for a plenary retail distribution license at the location sought rests with appellant. More broadly, the burden of establishing that a municipal authority's action granting or denying an application was erroneous and should be reversed rests with the appellant. (Rule 6, State Regulations No. 15.)

(4). There is no evidence whatsoever, in the record, to show that respondent's action was improperly motivated.

(5). The rule regarding preponderance or weight of the evidence is inapplicable to proceedings, such as those before respondent, in which an issuing authority determines, in exercise of discretionary authority, to grant or deny an application for license. In any event, there is no evidence before me that respondent disregarded any of the statements or expressions in favor of issuance of the license applied for; nor is there any evidence that respondent's action was taken for reasons other than those indicated in its resolution.

(6). The prescribed form of Notice of Application (Rule 2, State Regulations No. 2) contains the statement: Objections, if any, should be made immediately in writing to the Municipal Clerk. However, objections are not necessarily limited to those made in writing. If other objectors appear, they too may be heard. And, while there is no indication that respondent had determined against the granting of the instant application prior to the hearing held October 27,1949, it is appropriate to point out that Rule 8 of State Regulations No. 2 provides: "No hearing need be held....if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant." Furthermore, objections may be heard for the first time on appeal and in the absence of any formal objection at a hearing before the municipal issuing authority. Pisaniello v. Township of Washington, Bulletin 716, Item 10.

In keeping with my discussion herein of the six reasons advanced for reversal, and upon the entire record before me in this appeal, I find that appellant has failed to sustain the burden of proving that respondent's action was arbitrary or unreasonable or otherwise in abuse of its discretionary power. (See Zicherman v. Driscoll, supra; Spector v. Roselle, Bulletin 703, Item 1.) Respondent's action is, therefore, affirmed.

Accordingly, it is, on this 8th day of March, 1950,

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

ERWIN B. HOCK
Director.

13. STATE LICENSES - NEW APPLICATION FILED.

Blanton Trucking Company, Incorporated
Milford, Virginia.
Application for Transportation License filed March 1, 1950.

Erwin B Hock
Director.