

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

BULLETIN 729

SEPTEMBER 10, 1946.

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

BULLETIN 729

SEPTEMBER 10, 1946.

1. APPELLATE DECISIONS - THOMPSON ET AL. v. WESTVILLE AND HINSHILLWOOD.

WILLIAM H. THOMPSON, et al.,	)	
Appellants,	)	
-vs-	)	ON APPEAL
BOROUGH COUNCIL OF THE BOROUGH	)	CONCLUSIONS AND ORDER.
OF WESTVILLE, and CHARLES	)	
HINSHILLWOOD,	)	
Respondents	)	

S. Rusling Leap, Esq. and William R. Smith, Esq., Attorneys for Appellants.  
Harold W. Hannold, Esq., Attorney for Respondent Borough Council.  
William T. Cahill, Esq., Attorney for Respondent-licensee,  
Charles Hinshillwood.

This is an appeal from the granting of a transfer of respondent Hinshillwood's 1945-46 plenary retail consumption license from 106 Woodbine Avenue to the S/W corner of Gateway Boulevard and Park Avenue, Westville.

At the time the application for transfer was filed, no building had been erected on the southwest corner of Gateway Boulevard and Park Avenue, but the property had been purchased from the Borough by Hinshillwood in January, 1946, and plans for a building to be erected upon said premises had been filed with the application for transfer. See Re Salter, Bulletin 184, Item 8. The transfer, application for which was granted by the Borough Council, never became effective because the building was not completed prior to the expiration of the 1945-46 fiscal year at midnight, June 30, 1946. Respondent Hinshillwood subsequently obtained a renewal of his license for the present fiscal year (1946-47) at his original premises, 106 Woodbine Avenue.

In view of the fact that the transfer in question never became effective (the premises not having been completed by June 30, 1946), the conclusion herein must necessarily be of an advisory nature for the future guidance of the parties to this appeal. Cf. Wagner v. Phillipsburg, Bulletin 554, Item 2.

One issue raised herein by appellants -- namely, that the deed from the Borough of Westville to Charles Hinshillwood contained restrictive covenants concerning the use of said premises -- can well be disposed of in the determination made in Methodist Episcopal Church v. Verona, Bulletin 101, Item 5, where Commissioner Burnett said:

".....ordinarily restrictive covenants are not properly the concern of license issuing authorities but are cognizable only by the civil courts. Barnegat Beach Assn v. Busby, 44 N. J. L. 627 (Sup. Ct. 1882); Gamble v. Avon-by-the-Sea, Bulletin 35, Item 6; Brighton Hotel v. Loder, Bulletin 41, Item 6; Doherty v. Atlantic City, Bulletin 58, Item 8."

I agree.

The real substantive question involved herein is whether respondent Borough Council abused its discretionary power in granting the transfer application under all the circumstances of the case.

Appellants contend that respondent Borough Council abused its discretionary power because (1) the premises to which the transfer was sought are located near a ball field and recreation center, and (2) the premises to which the transfer is sought are located in a residential district.

As to (1): The premises presently operated by respondent Hinshillwood at 106 Woodbine Avenue are located on a narrow strip of land between Gateway Boulevard and West Jersey & Seashore Railroad. The State Highway Department of the State of New Jersey has acquired, or is acquiring, this strip of land for the purpose of widening Gateway Boulevard (Route 45). Hinshillwood, therefore, applied for the transfer of his plenary retail consumption license to the southwest corner of Gateway Boulevard and Park Avenue, a distance of approximately 900 feet from his old premises and on the opposite side of the Gateway Boulevard. On the same side of the highway upon which his "new" premises are located and directly across Park Avenue, there is a baseball field on which is erected a large open stand located on the northwest corner of the Boulevard and Park Avenue. This stand faces the playing field, and the distance between the rear of the stand and the licensed premises is approximately 146 feet measured in a straight line. The field is owned by the Borough. There is evidence that children, as well as grownups, use the field and that occasionally, at least in the past, picnics were held on this Borough property. There is also evidence that Hinshillwood has held his license at 106 Woodbine Avenue since 1933; that his record as a licensee is clear, and that no difficulties have arisen despite the fact that those premises are not far from the recreational center. Reasonable men may differ as to whether the transfer application should have been granted because of the proximity of the recreational field. Under all the circumstances, however, I do not feel that appellant has established that respondent Borough Council abused its discretionary power in granting the transfer application despite the fact that the licensed premises would thus be brought nearer to the recreational center.

As to (2): From the evidence I conclude that the section of the Borough to the southwest of the property at the corner of Gateway Boulevard and Park Avenue is residential in character. The evidence shows that there are more than one hundred homes located on various side streets in this section of the Borough, a few of which face on the Boulevard. However, the premises to which transfer was sought are located on a heavily traveled highway, and a gasoline station is located nearby on the same highway. Under these circumstances, it does not appear that respondent Borough Council abused its discretion in granting the transfer application despite the objections of persons who reside in this section of the Borough. Cf. Caruso v. Kenilworth and Zhelesnik, Bulletin 714, Item 1.

It is well established that my function in these cases is not to inflict or substitute my opinion upon or for the issuing authority but, rather, to determine if reasonable grounds support its decision and, if so, to affirm whatever their view and irrespective of my own. Spector v. Roselle, Bulletin 703, Item 1. For the reasons aforesaid, I shall affirm the action of the Borough Council in granting the transfer. No order will be entered herein requiring the Borough Council to transfer the license which has already expired. If respondent Hinshillwood still desires to transfer his license to the premises in question, it will, of course, be necessary for him to file a new application to transfer the license he now holds and to comply with the provisions of R. S. 33:1-26. The Conclusions rendered herein will be of an advisory nature as to the issues raised in this case if such a subsequent application is made.

Accordingly, it is, on this 4th day of September, 1946,

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

ERWIN B. HOCK

Deputy Commissioner

2. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED TO TRANSPORT STOLEN BEER IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ORDERED FORFEITED - STOLEN BEER RESTORED TO OWNER.

In the Matter of the Seizure on ) Case No. 7000  
 June 22, 1946 of five kegs of )  
 beer and a Chevrolet truck, in )  
 the vicinity of 259 North Clinton )  
 Avenue, in the City of Trenton, ) ON HEARING  
 County of Mercer and State of New ) CONCLUSIONS AND ORDER  
 Jersey. )

Emanuel Kaplan, Esq., Attorney for Elisha J. White.  
 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether five kegs of beer and a Chevrolet truck, seized on June 22, 1946 in the vicinity of 259 North Clinton Avenue, Trenton, New Jersey, constitute unlawful property and should be forfeited.

This is a case where open-handed generosity was rewarded by underhanded knavery. It was early Saturday morning, June 22, 1946, the climactic day of the Princeton Reunion, and good cheer was everywhere on tap. Admidst this air of well being, some good fellows invited three young men to their class tent to sing and otherwise entertain them, and to enjoy a convivial drink.

These "entertainers", taking advantage of the situation, stole five kegs of beer from the tent, placed them in a truck owned by Elisha J. White, one of the "entertainers", drove to Trenton, and there attempted to sell the beer to a tavern owner. However, the tavern keeper suspected that the men had not obtained the beer lawfully and called the police. The police officers, upon their arrival, seized the beer and truck and arrested the three men.

The State Department of Alcoholic Beverage Control was notified of these events and the beer and truck were turned over to that Department.

The truck was not licensed to transport alcoholic beverages and none of the men held any license authorizing any of them to sell beer.

The beer is illicit because it was transported unlawfully, and, also, because it was possessed with the intent to be sold unlawfully. R. S. 33:1-1(i). Such illicit beer and the vehicle in which it was transported are subject to seizure and 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, Elisha J. White appeared with counsel and sought return of the truck.

White advanced the implausible story that the men in the class tent presented him and his companions with these five kegs of beer, as a demonstration of good fellowship, on the very morning of the day when open house would be at its peak. Moreover, even if White had the "illusion" that the beer was a "gift", it does not explain away his further offense of peddling the beer unlawfully to a retail licensee.

Under R. S. 33:1-66(f), I am authorized to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and unknowingly violated the law.

The transportation of stolen alcoholic beverages is a serious violation of the law. Seizure Case 6882, Bulletin 694, Item 4. White is one of the wrongdoers in that he transported and attempted to sell stolen alcoholic beverages, and hence neither acted in good faith nor is an innocent party. Cf. Seizure Case 6556. On the evidence presented, the principle of the cases cited applies with full force to the instant case. White's request for the return of the truck is denied.

The kegs of beer will be returned to Andrew P. Monroe, Jr., Chairman of the class, pursuant to his request, after the criminal proceedings in the case have been terminated.

Accordingly, it is DETERMINED and ORDERED that the Chevrolet truck, Serial No. T-3733-462, Engine No. 837915, bearing 1946 New Jersey Registration XN-8255, 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 the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 4, 1946.

SEIZURE - FORFEITURE PROCEEDINGS - HUCKSTERS' MOTOR VEHICLE USED TO TRANSPORT AND PEDDLE ALCOHOLIC BEVERAGES - ALCOHOLIC BEVERAGES AND OTHER MERCHANDISE IN THE VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on ) Case No. 7019  
July 19, 1946 of a quantity of )  
alcoholic beverages, an Inter- )  
national truck and other personal )  
property, on premises described as ) ON HEARING  
W. Arthur Reeves Bogs near the ) CONCLUSIONS AND ORDER  
Magnolia-New Lisbon Road, in the )  
Township of Pemberton, County of )  
Burlington and State of New Jersey.)

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

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, an International truck, and other personal property, described in a schedule attached hereto, seized on July 19, 1946 on the W. Arthur Reeves Bogs, located in Pemberton Township, New Jersey, constitute unlawful property and should be forfeited.

The State Department of Alcoholic Beverage Control received a specific complaint that a huckster was peddling alcoholic beverages in the above vicinity. Accordingly, ABC agents visited this location on July 19, 1946. One of the agents observed the truck in question, operated by Jacob Siegel, come to a stop. A group of men gathered around the vehicle, and Siegel sold one of the men a bottle containing a liquid, the exact nature of which the agent was unable to determine from his point of observation.

The agent accosted this man, who told him that he, too, could buy a bottle at the truck for \$1.75. Both men returned to the truck and there Siegel sold the agent a bottle of port wine for \$1.75. After making the purchase, the other ABC agents, by pre-arrangement, came to the truck and all of the agents identified themselves. Siegel admitted that he sold the port wine to the agent and likewise admitted that he had made a practice of selling alcoholic beverages from his truck to persons in that vicinity.

Siegel did not hold any license authorizing him to sell alcoholic beverages, and, in any event, alcoholic beverages may not be peddled, even by a retail licensee. Rule 3, State Regulations No. 17.

Siegel was arrested on the charge of unlawfully selling alcoholic beverages and the truck and its contents, including a quantity of alcoholic beverages, were seized.

The alcoholic beverages in the truck are illicit because they were intended for sale in violation of the Alcoholic Beverage Law. R. S. 33:1-1(i). Such illicit alcoholic beverages, together with the other articles in the truck, and the truck itself, are subject to seizure and 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 the provisions of R. S. 33:1-66, no one appeared to oppose forfeiture of the seized property.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, 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 the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 4, 1946.

SCHEDULE "A"

- 12 - bottles of alcoholic beverages
- 4 - empty beer bottles
- 72 - bottles soda
- miscellaneous foodstuffs and other  
personal property
- 1 - International truck, Serial No. 5706,  
Engine No. 5826, 1946 N. J. Registration  
XR-1174

4. ACTIVITY REPORT FOR AUGUST, 1946

<u>ARRESTS:</u>			
Licensees and employees	-----	14	Bootleggers
Total number of persons arrested	-----	14	
<u>SEIZURES:</u>			
Brewed malt beverages (gallons)	-----	185.97	
Distilled alcoholic beverages (gallons)	-----	16.47	
Illicit alcohol (gallons)	-----	1.10	
Wine	-----	7.60	
Motor vehicles - Cars	-----	1	
Trucks	-----	1	
<u>RETAIL LICENSEES:</u>			
Total number of premises inspected	-----	1084	
Total number of premises where alcoholic beverages were gauged	-----	674	
Total number of bottles gauged	-----	7622	
Total number of premises where violations were found	-----	101	
Total number of violations found	-----	133	
Type of violations found:			
Unqualified Employees	-----	58	Disposal permit necessary
Illicit liquor	-----	24	Improper beer taps
Regulation #38 sign not posted	-----	17	Prohibited signs
Price pamphlet not displayed	-----	8	Other mercantile business
Probable front	-----	7	Other violations
			3
<u>STATE LICENSEES:</u>			
Premises inspected	-----	3	
License applications investigated	-----	23	
<u>COMPLAINTS:</u>			
Complaints assigned for investigation	-----	344	
Complaints investigated, reviewed and closed	-----	438	
Investigations completed - not closed administratively	-----	5	
Investigations assigned, not yet completed	-----	190	
<u>LABORATORY:</u>			
Analyses made	-----	177	
"Shake up" cases (alcohol, water and artificial coloring)	-----	18	
Liquor found to be not genuine as labeled - bottles	-----	46	
<u>IDENTIFICATION BUREAU:</u>			
Criminal fingerprint identifications made	-----	31	
Persons fingerprinted for non-criminal purposes	-----	228	
Identification contacts made with other enforcement agencies	-----	228	
Motor vehicle identifications via N.J. State Police Teletype	-----	36	
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>			
Cases transmitted to municipalities	-----	20	
Violations involved:			
Mislabeled beer taps	-----	7	Gambling (cards)
Sale during prohibited hours	-----	4	Noise
Sale to minors	-----	4	Sale to non-members by clubs
Bookmaking	-----	3	
Cases instituted at Department	-----	21	
(2 cases also involving cancellation proceedings*)			
Violations involved:			
Illicit liquor	-----	11	Gambling (numbers writing)
Fraud and front	-----	5	Purchase from improper source
Issuance in excess of quota	-----	2	Storage on unlicensed premises
Sale to minors	-----	2	
Cases brought by municipalities on own initiative and reported to Department	-----	5	
Violations involved:			
Sale during prohibited hours	-----	2	Bookmaking
Sale to minors	-----	2	
<u>HEARINGS HELD AT DEPARTMENT:</u>			
Total number of hearings held	-----	66	
Appeals	-----	18	Seizures
Disciplinary proceedings	-----	26	Application for license
Eligibility	-----	8	
<u>PERMITS ISSUED:</u>			
Total number of permits issued	-----	1053	
Employment	-----	265	
Solicitors	-----	90	
Social	-----	322	
Disposal of alcoholic beverages	-----	216	
Special wine	-----	12	
Miscellaneous permits	-----	113	

ERWIN E. HOCK  
Deputy Commissioner

5. LIMITATION OF NUMBER OF RETAIL LICENSES - HEREIN OF "HOTELS" AND INTERPRETATION AND RULING AS TO MEANING OF "SLEEPING ROOMS" IN SECTION 10, CHAPTER 147, P. L. 1946.

September 5, 1946

Hon. Amos F. Dixon  
Stillwater, N. J.

Dear Assemblyman Dixon:

I have your letter of August 29th concerning interpretation of Section 10 of the State Limitation Law (Chapter 147 of the Laws of 1946), and containing the following paragraphs:

"In a large room partitioned with partitions not ceiling high, arranged to make a number of rooms for sleeping quarters, would each cubicle be considered a separate sleeping room?"

"Are sleeping rooms for employees included in the fifty required to qualify for a license for a hotel?"

"Another question has also been raised by an operator who has a number of cabins on his grounds for his guests who eat in a dining room in the main building and have their cabins cared for by the hotel employees. Are these rooms included in the fifty required?"

First, it is to be understood that no one is entitled to a license in the sense of having a legal right thereto -- that Section 10 of the State Limitation Law merely excepts the indicated "hotels" from the Act's operation.

As you know, Chapter 147 contains no definition of the term "hotel". But in the light of the clear general purpose of Chapter 147, it would seem the intendment of the Legislature that Section 10 contemplates, within the meaning of "sleeping rooms", neither cubicles formed of partitions less than ceiling high nor rooms for employees. It would seem apparent that a different interpretation would, as regards the cubicles, permit and encourage widespread evasions of the Act's essential purpose; and, within the Act's general contemplation taken together with Section 10, that "fifty (50) sleeping rooms" means fifty sleeping rooms regularly used for the accommodation of guests and does not include sleeping rooms for employees of the establishment. It is, therefore, my ex parte interpretation and ruling that cubicles with partitions less than ceiling high and sleeping rooms for employees are not included in the "fifty (50) or more sleeping rooms" set forth and required in Section 10, P. L. 1946, c. 147. It will be understood that this interpretation and ruling is, as to both points covered, subject to reconsideration in the event of a formal appeal.

I am unable to rule at this time with respect to your letter's third question. It may well be that the term "hotel", as used in Section 10 of Chapter 147, contemplates not only a single structure or two or more connected structures but also, in a particular situation, an establishment having a main unit and appurtenant operated smaller units such as bungalows or cottages. But "What constitutes an hotel is largely a question of fact to be determined by a consideration of all the circumstances in any given case." (Lutz v. Somers Point, Bulletin 146, Item 5).

The determination as to whether an establishment qualifies as a "hotel" within the exception set forth in Section 10 rests, in the first instance, with the issuing authority with which the "hotel" application is filed (Revised Statutes, 33:1-19), and a municipal issuing authority's action granting or denying such application is appealable to the State Commissioner pursuant to Revised Statutes, 33:1-22.

There has, as yet, been no appeal to the Commissioner involving the question of a municipal issuing authority's determination and action as to what constitutes a "hotel" within the meaning of that term in Section 10 of Chapter 147. There have, however, been criteria set forth by the State Commissioner concerning the meaning of the term "hotel" in the "200 feet rule" (Revised Statutes, 33:1-76): Re Carona, Bulletin 29, Item 5; and appellate rulings and determinations by the Commissioner on the question whether a specific establishment constituted a "hotel" as distinguished from a roadhouse, tourist home, boarding house, etc.: A.B.C. Holding Company v. Newton, Bulletin 58, Item 11; Apgar v. Tewksbury Township, Bulletin 66, Item 2; Geiger v. Readington, Bulletin 79, Item 11; Anthony v. Branchville, Bulletin 80, Item 9; Hutchinson v. Wyckoff, Bulletin 84, Item 3; Latz v. Somers Point, Bulletin 146, Item 5; Bialoglow v. Independence Township, Bulletin 254, Item 7; and Rasmussen v. Peapack-Gladstone, Bulletin 364, Item 1.

Very truly yours,  
 ERWIN B. HOCK  
 Deputy Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - BEER PURCHASED AND STORED UNLAWFULLY BY RETAIL LICENSEE ORDERED FORFEITED.

In the Matter of the Seizure on July 12, 1946 of 12 kegs of beer and 3 empty beer kegs at 72 Beachway, in the Borough of Keansburg, County of Monmouth and State of New Jersey.	) ) ) )	Case No. 7009  ON HEARING CONCLUSIONS AND ORDER
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 Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 12 kegs of beer and 3 empty beer kegs seized on July 12, 1946 at the licensed tavern and restaurant of Dimitrios Vassiliades, located at 72 Beachway, Keansburg, N. J. constitute unlawful property and should be forfeited.

On the day in question, ABC agents received information that kegs of beer had been delivered to the premises in a truck which did not bear any transportation insignia or the name of any brewery. Accordingly, ABC agents visited the premises, and in the barroom found a keg of "Schaefer" beer on tap, a keg of "Rheingold" beer untapped, two empty "Ballantine" kegs and an empty "Burton" keg.

The agents then went into the yard of the premises, entered a small building, and there found five kegs of "Trommers", 1 keg of "Schaefer", and 1 keg of "Burton" beer. Four kegs of "Burton" beer were in the yard.

Stephen Sgouris, in charge of the licensed premises, who represented to the agents that he had some partnership interest in the licensed business, acknowledged that he only had invoices for "Rheingold" beer. Sgouris told the agents that the other brands of beer had been brought to the tavern, on three occasions, by a bartender in his employ, the last occasion being on July 11th, when he brought ten kegs to the tavern. On every occasion Sgouris paid the bartender for the beer without the production of any invoices and without asking the bartender the source of the beer.

The agents questioned the bartender, but he refused to give any explanation. The agents then seized the 12 full kegs of beer, excepting the keg of "Rheingold", and the three empty beer kegs. Subsequent investigation developed that three kegs of beer were sold by a Hoboken retail licensee to the bartender ostensibly for personal consumption.

The application upon which Vassiliades' license was granted does not include the yard or small building as part of the licensed premises.

The sale of alcoholic beverages by a non-licensee to any person, including a retail licensee, is unlawful. R. S. 33:1-2. It is likewise unlawful for a retail licensee to sell alcoholic beverages to another retail licensee for resale except pursuant to a special permit. R. S. 33:1-2. Rule 15 of State Regulations No. 20. Hence, whether the bartender sold the beer for himself or for another retailer is immaterial, since in either event the beer was sold illegally.

Furthermore, the seized beer is illicit because it was not stored on the licensed premises. It is a violation of the Alcoholic Beverage Law for a retail licensee to store alcoholic beverages intended for resale at a place other than the licensed premises without a permit from the State Department of Alcoholic Beverage Control. See R. S. 33:1-2, 50. Rule 25 of State Regulations No. 20; Re Pellington, Bulletin 628, Item 1.

Vassiliades did not hold any permit from this Department authorizing him to purchase or store the beer. Hence the beer is subject to seizure and forfeiture because it was sold and stored unlawfully. (R. S. 33:1-1(i) and (y); R. S. 33:1-2; R. S. 33:1-66; also see Re Bradley, Bulletin 590, Item 1.

Disciplinary proceedings have been brought against Vassiliades' license on charges, among others, that he purchased and stored the alcoholic beverages in violation of law. Independent conclusions will be entered in that case.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to oppose forfeiture of the beer.

Accordingly, it is DETERMINED and ORDERED that the 12 full kegs of beer and 3 empty beer kegs constitute 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 the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 5, 1946.

7. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against )

NICHOLAS DeVITA )  
T/a DEMPSEY'S )  
Hainesville, Route S-31 )  
Sandyston Township )  
P.O. Branchville R.D. 1, N.J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Sandyston. )

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

Defendant has pleaded non vult to a charge that he possessed illicit alcoholic beverages at his licensed premises, in violation of R. S. 33:1-50.

On July 3, 1946, an investigator of the State Department of Alcoholic Beverage Control seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when his field test indicated that the contents of said bottle were not genuine as labeled. Subsequent analysis by the department chemist warrants the conclusion that the said bottle had been at least partially refilled with another Canadian whiskey.

In submitting his plea, defendant disclaims all knowledge of the "refill". He says, however, "In spite of this, I realize that I am fully responsible for anything that happens in my place of business." He is right. Re Barrale, Bulletin 705, Item 5.

The minimum suspension for so-called "refill cases" involving one bottle is fifteen days. Re Rudolph, Bulletin 680, Item 1. Defendant has a prior record. In January 1941 his license was suspended for fifteen days after he had pleaded guilty to a charge of possessing an illicit alcoholic beverage. Bulletin 438, Item 10. Ordinarily, a second violation of a similar character would warrant double the minimum suspension. However, since more than five years elapsed between these violations, I shall suspend defendant's license in this case for a period of twenty days.

Accordingly, it is, on this 9th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Sandyston to Nicholas DeVita, t/a Dempsey's, for premises in Hainesville, Route S-31, Sandyston Township, be and the same is hereby suspended for a period of twenty (20) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK  
Deputy Commissioner.

8. DISCIPLINARY PROCEEDINGS - "FRONT" - FALSE ANSWER IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF THE LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against FRANK McQUEENEY 34-36 Fairmount Avenue Newark 7, N. J.,

Holder of Plenary Retail Consumption License C-53 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark, and transferred during the pendency of these proceedings to

ANTHONY McWEENEY for the same premises.

CONCLUSIONS AND ORDER

Emil H. Block, Esq., Attorney for Defendant-licensee. Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to a charge that he held his license as a "front" for a partnership composed of defendant and his brother, Anthony McWeeney.

This situation, which has continued since 1934, apparently arose because of a mistaken belief that Anthony McWeeney, an alien native of Eire, was by reason of such alienage disqualified from holding the license in his name. Because of reciprocal trade agreements with the United States, nationals of Eire are not disqualified solely because of their nationality from holding a liquor license. Re McGuigan, Bulletin 130, Item 5; Re Londa, Bulletin 693, Item 8. It also appears that Anthony McWeeney was convicted of a violation of the National Prohibition Act in 1932. There is nothing, however, to indicate that the aforesaid conviction was the motivation for establishment of the "front" referred to herein. Actually such conviction is not ordinarily and is not in this case a conviction of a crime involving moral turpitude within the meaning of R. S. 33:1-25.

After the charges were served, Frank McQueeney withdrew his entire interest from the license and the business conducted thereunder, and the license has now been transferred to Anthony McWeeney who, I am satisfied, is now the active and sole owner of the business.

This "front" situation, continuing for a long period and after January 1, 1946, falls within the letter and the spirit of the policy announced in Re Nicomini, Bulletin 686, Item 7. No other aggravating circumstances intervening, however, I shall suspend the license for the minimum period of thirty days. Cf. Re Karas, Bulletin 724, Item 8.

Accordingly, it is, on this 10th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-53, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Frank McQueeney for premises 34-36 Fairmount Avenue, Newark, and transferred during the pendency of these proceedings to Anthony McWeeney for the same premises, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. September 16, 1946, and terminating at 2:00 a.m. October 16, 1946.

ERWIN B. HOCK Deputy Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL PARTS ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure on June 12, 1946 of a number of still parts at 73 Division Street, in the City of Garfield, County of Bergen and State of New Jersey.

Case No. 6995

ON HEARING CONCLUSIONS AND ORDER

Joseph S. Zaccone, Pro se. Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 2 of the Revised Statutes, to determine whether six still parts, described in a schedule attached hereto, seized on June 12, 1946 at 73 Division Street, Garfield, N. J., constitute unlawful property and should be forfeited, and, further, to determine whether the premises should be padlocked.

On June 12, 1946 ABC agents executed a search warrant for the two-story frame dwelling at the above address, and found and seized the still parts in the attic. Joseph Zaccone, owner of the premises, appeared on the scene while the agents were engaged in the search and told them that he had seen the still parts in the attic shortly after he purchased the premises, some nine or ten months prior to the raid. However, he claimed that he did not know that they were still parts but regarded them as junk. The two tenants in the building claimed that they did not know that the still parts were in the attic.

Zaccone was arrested on the charge of possessing unregistered still parts.

The still parts were not registered with the State Commissioner of Alcoholic Beverage Control as required by R. S. 33:2-1. Hence the still parts constitute unlawful property and are subject to forfeiture. In addition, the premises are subject to padlocking. R.S. 33:2-5.

When the matter came on for hearing, pursuant to R.S. 33:2-4, Zaccone appeared and sought to avoid padlocking of the premises.

Where circumstances warrant, I may waive padlocking even though the owner of the premises has been or is likely to be convicted in criminal court for possessing unregistered still parts. Under present-day conditions, it would not be fair to compel the two innocent tenants to vacate their apartments. Little, if any, purpose would be served in padlocking merely the attic. I shall, therefore, waive padlocking, without deciding whether or not Zaccone knew that the articles in the attic were still parts.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, constitute unlawful property and that the same be and hereby is forfeited in accordance with the provisions of R.S. 33:2-5, 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 Commissioner.

ERWIN B. HOCK  
Deputy Commissioner.

Dated: September 9, 1946.

SCHEDULE "A"

- 1 - galvanized cooler
- 4 - sections copper column
- 1 - copper cooker

10. APPELLATE DECISIONS - HUETTEMAN AND BRUCKER v. EAST RUTHERFORD AND LIPTON - DISCONTINUED.  
 HUETTEMAN AND BRUCKER v. EAST RUTHERFORD AND CZECH - DISCONTINUED.

Cases No. 2

JOHN HUETTEMAN and GEORGE BRUCKER, )  
 )  
 Appellants, )

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF EAST RUTHERFORD, and IRVING LIPTON, t/a LIPTON'S WINES AND LIQUORS, )  
 )  
 Respondents. )

ON APPEAL

----- )  
 JOHN HUETTEMAN and GEORGE BRUCKER, )  
 )  
 Appellants, )

CONCLUSIONS AND ORDER

-vs-

MAYOR AND COUNCIL OF THE BOROUGH OF EAST RUTHERFORD, and THEODORE CZECH, t/a CARLETON WINE AND LIQUOR STORE, )  
 )  
 Respondents. )  
 ----- )

Samuel Moskowitz, Esq., Attorney for Appellants.  
 Albert V. D'Amato, Esq., Attorney for Respondent Borough Council.  
 Kasen, Schnitzer & Kasen, Esqs., Attorneys for Respondent, Irving Lipton.  
 Selser and Shenier, Esqs., by Charles C. Shenier, Esq., Attorneys for Respondent Theodore Czech.

These appeals are from the renewal of plenary retail distribution licenses for the current licensing year to the respondent Lipton for premises 267-269 Paterson Avenue, and to respondent Czech for premises 35 Jersey Street, both located in the Borough of East Rutherford. The issuance of the original licenses for the last licensing year was sustained on appeal. See Bulletin 724, Item 7.

All the interested parties, through their respective counsel, have stipulated that both appeals may now be discontinued. Since no reason appears to the contrary,

It is, on this 9th day of September, 1946,

ORDERED, that both of these appeals be and the same are hereby discontinued.

ERWIN B. HOCK  
Deputy Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO MINORS - AGGRAVATING CIRCUMSTANCES - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

ANTHONY KASICA )  
2 Monroe Street )  
Garfield, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-65, issued by the City Council of the City of Garfield. )  
----- )

Walter H. Jones, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleaded non vult to charges alleging that on Saturday night and early Sunday morning, May 4 and 5, 1946, he sold alcoholic beverages to two minors, and that, on an occasion during March, 1946, he sold alcoholic beverages to one of said minors and also to a third minor; in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The three minors mentioned in the charges herein are the same minors referred to in Re Perry, Bulletin 728, Item 1.

The file herein discloses that on the evening of May 4, 1946, Anna --- and Viola --- were served with four or five glasses of beer by a waitress in defendant's premises. In the latter part of March, beer had been served to Anna --- and Emma --- by a bartender in defendant's premises.

This is an aggravated case because it appears that all the minors were very young. Moreover, this is the fourth violation committed by defendant. See Re Kasica, Bulletin 714, Item 4, as to his previous adjudicated record. I would be inclined to revoke his license were it not for the fact that the violation herein was committed prior to the time decision was rendered in the case cited above. Thus there was no "period for repentance" between the third and fourth violations. Under all the circumstances and considering the plea entered herein, I shall suspend defendant's license in this proceeding for a period of ninety days, less five days for the plea entered herein, making a net suspension of eighty-five days.

Accordingly, it is, on this 10th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-65, issued by the City Council of the City of Garfield to Anthony Kasica, for premises 2 Monroe Street, Garfield, be and the same is hereby suspended for eighty-five (85) days, commencing at 4:00 a.m. September 16, 1946, and terminating at 4:00 a.m. December 10, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

12. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF MUNICIPAL ORDINANCE - PERMITTING A BRAWL ON LICENSED PREMISES - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WALT WHITMAN ARISTOCRAT CLUB )  
1027 Lawrence Street )  
Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-29, )  
issued by the Municipal Board of )  
Alcoholic Beverage Control of the )  
City of Camden. )  
----- )

Walt Whitman Aristocrat Club, Defendant-licensee, by Addison Foulitz, Trustee-Manager.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant, by its trustee-manager, pleads guilty to the following charges: (1) that it sold, served and delivered alcoholic beverages during prohibited hours, in violation of a local ordinance; (2) it allowed, permitted and suffered a disturbance and brawl in and upon its licensed premises, in violation of Rule 5 of State Regulations No. 20; (3) and (4) it failed to disclose in answer to questions in its application that one of its officers was convicted of a crime as a result of the unlawful sale of liquor, and also to disclose in its application that its license had previously been suspended because of an hours violation; such failure to answer truthfully being in violation of R. S. 33:1-25.

The investigation in the instant case discloses that between 3:00 a.m. and 3:45 a.m. on June 11, 1946, alcoholic beverages were being sold and served to several members and their guests. Furthermore, it appears that a brawl took place between Clarence Douglass, treasurer of the defendant club, and one Thaddeus V. Jones, Jr., during which Douglass is alleged to have drawn a gun and Jones is alleged to have wrested the gun from Douglass. In any event, several shots were fired into the floor of the premises and thereafter the occurrence was reported to the police.

When the application for a license for the 1946-47 period was filed, it failed to disclose that Clarence Douglass, treasurer, had pleaded guilty on October 3, 1929, to the crime of unlawful sale of liquor. Furthermore, the application did not divulge that defendant's license had previously been suspended by the local issuing authority for five days, effective March 3, 1941, because of sales of alcoholic beverages during prohibited hours and sales to non-members.

Under all the circumstances and considering the plea entered herein, I shall suspend defendant's license for a period of ninety days, with remission of five days for the guilty plea entered herein, or a net suspension of eighty-five days.

Accordingly, it is, on this 10th day of September, 1946,

ORDERED, that Club License CB-29, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Walt Whitman

Aristocrat Club, for premises 1027 Lawrence Street, Camden, be and the same is hereby suspended for a period of eighty-five (85) days, commencing at 2:00 a.m. September 16, 1946, and terminating at 2:00 a.m. December 10, 1946.

ERWIN B. HOCK  
Deputy Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED.

Wilén Brothers, Inc.  
250 W. Cambria St.,  
Philadelphia, Pa.

Application filed September 5, 1946 for transfer of Wine Wholesale License WW-18 from Samuel & Morris Wilén, t/a Wilén Brothers.

Anthony J. Davanzo and Jerry Molinari  
T/a Modern Transit Co.  
79 Elm St.  
Montclair, N. J.

Application for Transportation License filed September 5, 1946.

*Erwin B. Hock*

Deputy Commissioner.