26 Rose Avenue,
Madison,
Morris County, New Jersey

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

November 24, 1954

BULLETIN 1038

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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 1038 NOVEMBER 24, 1954.

1. COURT DECISIONS - McFADDEN'S LOUNGE, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-307-53, September Term, 1954

McFADDEN'S LOUNGE, INC.,)
Appellant,)
-vs-)
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,)
Respondent.)

Argued November 1, 1954. Decided November 12, 1954.

Before Judges Clapp, Jayne, and Francis.

Mr. Harry Kay argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent (Mr. Grover C. Richman, Jr., Attorney General of New Jersey).

The opinion of the court was delivered by

JAYNE, J.A.D.

Experience has firmly established that taverns where wine, men, women, and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession. Broadly stated, the present appeal is addressed to the propriety of the disciplinary action occasioned by an alleged infraction of that obligation.

A plenary retail consumption license was issued to the appellant by the Municipal Board of Alcoholic Beverage Control of the City of Newark which privilege was utilized at a night club conducted by the appellant at Nos. 88-94 Halstead Street.

On November 30, 1949 the then Director of the State A.B.C. caused a warning to be dispatched to appellant, excerpts from which are here quoted:

"Gentlemen:

Agents of this Division report that recently, while making undercover checks at your tavern, they witnessed a team of two men billed and introduced as the 'McFadden Boys, Bill & Tom' perform with music, songs and 'side remarks' for the entertainment of your patrons. While the music and songs, so called popular numbers, appear to have

been kept to the scripts, many of the 'side remarks' were questionable and highly suggestive. They went well beyond any humor and bordered dangerously close to be classified as 'smutty,' and as such possibly to be deemed to constitute lewdness and immoral activities on the licensed premises.

* * * * * * *

However, you are specifically warned that you must clean up the entertainment at your licensed premises. Should any future violation of like character be found at your tavern, warranting proceedings, the present warning may well be taken into account in determining proper penalty.

Please let us have, immediately and without fail, a letter signed personally by your president or vice-president acknowledging receipt of this warning and giving your pledge of future compliance with all the liquor laws and regulations."

The president of the licensee acknowledged the receipt of the Director's communication and promptly replied:

"I am President of McFaddens Lounge Inc. and one of the McFadden Brothers on whom the agents reported. My brother Bill and I have been entertaining in and around Essex County for the past fifteen years and have never been aware that our brand of humor was offensive to anyone. On the contrary, through our long experience in show business, we feel that our entertainment is good clean fun for everyone.

However, if any of the material we had been doing was construed by your agents as bordering on being classified as 'smutty' and as such placing our license in jeopardy, rest assured that it can be dispensed with immediately without in any way impairing the entertainment value of the act."

Both the warning and the responsive assurance seem to have lost their potentiality in the passage of time, for on September 2, 1953 the following accusation was made against the appellant by the Director of the Division of Alcoholic Beverage Control:

"On Friday night, August 21, 1953 and early Saturday morning, August 22, 1953 and on Friday night, August 28, 1953 and early Saturday morning, August 29, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, in that male entertainers sang songs, recited stories and uttered words and phrases having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning, in violation of Rule 5 of State Regulations No. 20."

The portion of Rule 5 of State Regulation No. 20 of present pertinency reads:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, * * *."

The promulgation of the foregoing rule by the Division of A.B.C. has been judicially regarded to be within the orbit of the authority conferred upon the administrative agency by N.J.S.A. 33:1-39, as amended. In re Schneider, 12 N. J. Super. 449 (App. Div. 1951); Greenbrier, Inc. v. Hock, 14 N. J. Super. 39 (App. Div. 1951), certif. den., 7 N. J. 581 (1951); In re Larsen, 17 N. J. Super. 564 (App. Div. 1952); In re 17 Club, Inc., 26 N. J. Super. 43 (App. Div. 1953).

Following a hearing the then Director of the Division concluded that the present appellant had disobeyed the designated rule and ordered the suspension of the license for a period of 25 days from February 9, 1954 to March 6, 1954. Compliance with the order has been deferred until the determination of the present appeal.

It is not inappropriate briefly to insert here the information that pending this appeal the decision of the Supreme Court in Mazza v. Cavicchia, 15 N. J. 498 (1954) was rendered, and although this appeal was retained, the proceedings under review were remanded to the Division of the A. B. C. to be further pursued in conformity with the decision in the Mazza case. Such was done, and the present Director of the Division arrived at the same conclusion as that of his predecessor and likewise ordered the suspension of the appellant's license for a period of 25 days. We have no reason to doubt that he devoted his eye and mind to the transcription of the evidence adduced at the prior hearing. The former procedural criticisms were evidently erased.

The appellant's surviving and predominant criticism of the Director's decision is that the application of Rule 5 to the factual circumstances constitutes an arbitrary abridgement of the constitutional rights of the implicated parties to the freedom of speech.

As an initial premise it is acknowledged that the paraphrased lyrics of the songs and the stories as reported were actually delivered on the designated occasions by the entertainers at the tavern with the knowledge and acquiescence of the officers of the licensee and were composed or selected and communicated for the ticklish amusement and entertainment of the patrons, and not for any purpose of academic indoctrination.

Manifestly the jollity and merriment sought to be diffused by the songs and stories inhered, it is supposed, in their implied suggestiveness of illicit sexual relations. It requires only ordinary frankness to state that the compositions exemplify a crude and smutty exercise in semantics -- decent words procreating indecent ideas, decorous language utilized to impart indecorous concepts.

The propriety of such deliverances is perhaps basically estimated in view of the time, place, the appropriate conventional standards, and the object, purpose, and effect of their theme. True, fashions in both language and dress have changed over the passing years in the field of entertainment in their contemporaneous and conformable accommodation to the mental and visual breadth and tempo of modern life. The spicy exhibition apparently tickles the box office. Endeavors to moderate or to resist the elevation of the rapturous and erotic flavor of such entertainments commonly encounter the solemnity of constitutional objections.

Certainly no less than a ton of literature is reasonably available on the subject of freedom of speech and its transilient censorship. Today redundancy in the further discussion of the subject is

practically inescapable. There is no justifiable excuse for it here, other than to reiterate that the right of free speech protected by the First Amendment and mirrored in the Fourteenth of our federal Constitution is not absolute at all times and under all circumstances, and to disclose significantly that we are here only concerned with the enforceable applicability of a restrictive and disciplinary rule governing the conduct of those who have been granted the special privilege of vending alcoholic beverages at a designated location.

The stringency of such a regulation must be measured in its relation to the reasonably apprehended evils of the trade. Its infraction must be determined from the factual circumstances of the particular occurrence or course of conduct.

Here the record supplies us with the lyrics of the songs and the language of the stories. The pivotal question is, did they have such a "lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning" as charged, as to constitute "filthy or obscene language or conduct" within the explicit or connotative signification of Rule 5 of the State Regulation to which specific reference has hereinbefore been made?

No inconsiderable portion of the weight of the literature anent freedom of speech has been furnished by dissertations on the tests of alleged obscene language and other accusations of acts of obscenity. Many former definitions and analyses have been adulterated, modernized, or supplanted as the tolerance of the pudibund has enlarged and the temperatures of the puritanical sin hunters have lowered.

An acquaintance with pertinent decisional adjudications caused Judge Bok in his admirable opinion in Commonwealth v. Gordon, 66 Penna. D. & C. Rep. 101, 132 (1949) to observe that:

> "It has been said that the matter charged, to be obscene, must 'suggest impure or libidinous thoughts,' must 'invite to lewd and lascivious practices and conduct,' must 'be offensive to chastity,' must 'incite dissolute acts,' must 'create a desire for gratification of animal passions,' must 'encourage unlawful indulgences of lust,' must 'attempt to satisfy the morbid appetite of the salacious,' must 'pander to the prurient taste.'"

In our home forums we have recently heard Mr. Justice William Brennan say "the question is whether the dominant note of the presentation is erotic allurement 'tending to excite lustful and lecherous desire,' dirt for dirt's sake only, smut and inartistic filth, with no evident purpose but 'to counsel or invite to vice and voluptuousness.'" Adams Theatre Co. v. Keenan, 12 N. J. 267 (1953).

We have noticed Judge Goldmann quote Judge Bok's derivation that from all the cases the modern rule is that obscenity is measured by the effective erotic allurement, and that the erotic allurement is measured by whether it is sexually impure, i.e., pornographic, "dirt for dirt's sake," a calculated incitement to sexual desire. Bantam Books, Inc. v. Melko, 25 N. J. Super. 292, 316 (Ch. Div. 1953).

We are informed that the patrons of the appellant's tavern are not impressionable and easily impassionable youths, but adult

males and females between the ages of 25 and 35 years of age. Nevertheless we would suppose that persons between those ages continue to be in their "sexteens."

And then we are importuned on behalf of the appellant to recognize from common knowledge in contrast the many sensually suggestive songs that are currently communicated to the public with immunity in stage performances and by radio and television. Mr. Justice Jacobs, then presiding in the Appellate Division, answered that the test for obscenity is not a comparison with other publications or deliverances. State v. Weitershausen, 11 N. J. Super. 487, 492 (App. Div. 1951), certif. den., 7 N. J. 791 (1951); see, Commonwealth v. Isenstadt, 318 Mass. 543, 62 N. E. 2d 840 (Sup. Jud. Ct. 1945); Commonwealth v. Donaducy, 167 Pa. Super. 611, 76 A. 2d 440 (1950).

It seems both prudent and proper for us to consider the natural and probable tendency of these songs and stories to arouse sex impulses in the particular and in some respects exceptional environment normally existing in the exhilarated gaiety of a licensed tavern. Certainly the consumption of alcohol itself promotes in some degree and in the case of many a relaxation of concern in proprieties and a transient indulgence in regretful indiscretions at such privileged resorts. Such places, if not otherwise tilled, become fertile pastures in which risque songs and stories sprout, grow to the height of vulgarity and ultimately to that of obscenity if the appetites of the patrons are thereby satiated.

Alluding to common knowledge, does not everyone know that the allurement to the sexual propensities is the only inspirational and receptive attraction toward that type of entertainment? Neither the purpose nor the effect is intended to be edifying but rather jokingly and insidiously to electrify the susceptive sexual impulses and emotions.

It must be realized that we are not presently concerned with the preliminary censorship of a book or of an oral address or lecture. Our immediate interest and attention is confined to the disciplinary action taken against the licensee of a public tavern, whose privileges may lawfully be tightly restricted to limit to the utmost the evils of the trade. Vide, Paul v. Gloucester County, 50 N. J. L. 585 (E. & A. 1888); Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947), reversed on other grounds, 136 N.J.L. 161 (E. & A. 1947); Hudson Bergen, &c., Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, supra.

We are accordingly thus guided in the direction of our appraisal of the songs and stories, the nature, characteristics, and effect of which we are asked to grade in the particular surroundings in which they were projected. While we may frankly concede that they were not extremely saturated with revolting filth, dirtiness, and obscenity, they were, as my associate Judge Francis defined obscenity in his charge to the jury in State v. Weitershausen, supra, "offensive to the chastity of the mind, to the delicacy and purity of thought, something suggestive of lustfulness, lasciviousness and sensuality" and "would tend to deprave the morals * * * by suggesting lewd thoughts and exciting sensual desires."

Not alone the general public but liquor licensees themselves should realize that the Alcoholic Beverage Control statute and the rules promulgated by the administrative representative of the Legislature are designed to guard the permissive sale of intoxicating beverages against the broad variety of abuses which if consciously condoned or ignored will inevitably again outlaw the presently sanctioned pursuit.

The power of the Director of the Division of Alcoholic Beverage Control to restrain such exhibitions in a licensed tavern under his evident interpretation of Rule 5 does not seem to us to be reasonably questionable.

Our appellate function does not envelop the authority optionally or arbitrarily to encroach upon the supervisory province entrusted to the Director by the Legislature.

The decision of the Director here impugned is affirmed.

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2. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL AND ILLICIT STILL PARAPHERNALIA - ALCOHOL AND PARAPHERNALIA ORDERED FORFEITED - MOTOR VEHICLE RENTED FROM "U-DRIVE-IT" COMPANY - NORMAL BUSINESS PRACTICE OF SUCH CONCERN, WITHOUT INDEPENDENT INVESTIGATION OF ITS CUSTOMERS, ACCEPTED FOR THE PRESENT AS EVIDENCE OF GOOD FAITH - MOTOR VEHICLE RETURNED TO SUCH COMPANY.

In the Matter of the Seizure on May 18, 1954, of two bottles of alcoholic beverages, six empty 150 gallon wooden hogsheads, ten 50 pound bags of coke, and an International truck, at the intersection of Park Avenue and Ridge Road, in the Borough of Rutherford, County of Bergen and State of New Jersey.	Case No. 8612 ON HEARING CONCLUSIONS AND ORDER

Five Boro U-Drive Inc., by Samuel Popock, President.
I. Edward Amada, 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 May 20, 1954 signed by Samuel Popock, as President of Five Boro U-Drive Inc., to determine whether a quantity of alcoholic beverages, various personal property, and an International truck, described in a schedule attached hereto, seized on May 18, 1954 at the intersection of Park Ave. and Ridge Road, Rutherford, New Jersey, constitute unlawful property and should be forfeited.

Pending hearing in the case Samuel Popock, as President of Five Boro U-Drive Inc., deposited $500.00 under protest, pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the International truck, and thereupon obtained return of such motor vehicle. Mr. Popock has stipulated on behalf of the U-Drive concern that such Director should determine, in the present proceedings, whether such sum should be forfeited, or returned to that company.

At the seizure hearing held pursuant to R. S. 33:1-66 and the aforesaid stipulation, an appearance was entered on behalf of Five Boro U-Drive Inc., which sought return of the deposit of $500.00. No one opposed forfeiture of the balance of the personal property seized.

Reports of ABC agents and other documents in the file, presented in evidence with consent of the claimant, disclose the following facts:

At about 1:30 a.m. on May 18, 1954 Rutherford police officers halted the International truck at the above location for investigation. Julius Marion was driving the truck and George Flagg was a passenger therein. Both were residents of Brooklyn, N. Y. The officers detected an alcoholic odor within the truck, and found therein six empty 150 gallon wooden hogsheads, ten 50 pound bags of coke and two bottles with alcoholic beverages.

The officers also found a car rental contract dated May 17, 1954 purportedly issued by Brooklyn U-Drive Inc. to John E. Taylor evidencing the rental of the truck. Marion told the police that he had been hired by a stranger to drive the truck to a gas station located in Delaware, where he was to meet this man, and that Flagg was his helper. He claimed that he did not know John E. Taylor. Flagg was recently involved in a seizure of a Ford coupe transporting a bottle of illicit alcohol in Flagg's suitcase. Seizure Case No. 8562, Bulletin 1028, Item 7.

Chemical analysis of the alcohol in the two bottles found in the truck disclose that it is alcohol and water, fit for beverage purposes, with an alcoholic content of 58 per cent by volume. These bottles had no labels, or stamps indicating the payment of tax on alcoholic beverages, affixed thereto. The alcohol is therefore illicit. R. S. 33:1-88, R.S. 33:1-1(i).

Such illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. The hogsheads and coke are articles frequently used in the process of manufacturing illicit alcoholic beverages, and under the circumstances here present, the inference is justified that they were intended for such use. Such articles therefore likewise constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The U-Drive Company asserts that it acted in good faith, rented the vehicle in the usual course of business, and did not know or have any reason to suspect that the vehicle would be used in any illegal alcoholic beverage activity.

Samuel Popock explains that he formerly operated under the name of Brooklyn U-Drive Inc., but that this company ceased to do business, and he organized the Five Boro company, but continued to utilize the printed forms of the former company. The motor vehicle is registered in the name of the Five Boro company.

Mr. Popock testified that John E. Taylor presented himself at Mr. Popock's place of business, and rented the truck. Taylor presented his chauffeur's license, and a document certifying that he was employed as a bus driver by the New York Transit Authority. Taylor told Popock that he intended to move some household furniture. Popock states that he did not know, or have any dealings with either Marion or Flagg; that this is the first occasion when any of his motor vehicles were seized for any violation of a liquor law, and that he has never been accused of a crime.

The rental appears to have been made in the normal procedure followed by persons in the "U-Drive-It" business. Nevertheless, in forfeiture proceedings, persons engaged in such a business were expected to conduct investigations concerning the background and character of persons with whom they dealt, like any other claimants, otherwise such a claim would be denied. U-Drive-It Co., Bulletin 157, Item 10. In the intervening seventeen years, this appears to be the second such case. The anticipated problem of the use of "U-Drive-It" motor vehicles by bootleggers has not materialized. Hence, the normal procedure of a well-conducted "U-Drive-It" business, followed in the instant case, will continue to be accepted as

evidencing good faith and reasonable prudence. If the problem ever becomes more acute, the standard of conduct outlined in the above cited case will be reinstated.

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure and storage of the motor vehicle be deducted from the deposit of $500.00 and the balance returned to the Five Boro U-Drive Inc.; and it is further

DETERMINED and ORDERED that the balance of 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 Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: October 19, 1954.

SCHEDULE "A"

2 - bottles of alcoholic beverages
6 - empty 150 gallon wooden hogsheads
10 - 50 lb. bags of coke
1 - International truck, Serial No. 1341784, Engine No. GR0223238761, N. Y. Registration 382-886.

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF STOLEN ALCOHOLIC BEVERAGES - PART OF ALCOHOLIC BEVERAGES RETURNED TO LICENSEES FROM WHOM STOLEN - BALANCE OF UNIDENTIFIED STOLEN ALCOHOLIC BEVERAGES ORDERED FORFEITED - OWNER OF MOTOR VEHICLE (MOTHER OF JUVENILE OFFENDER) RELIEVED OF FORFEITURE UPON ESTABLISHING ABSENCE OF NEGLIGENCE ON HER PART.

In the Matter of the Seizure on May 17, 1954 of a quantity of alcoholic beverages at 179 Oliver Street and at the intersection of Elm and Jefferson Streets, and the seizure on June 21, 1954 of a Dodge sedan on Broad Street, all in the City of Newark, County of Essex and State of New Jersey.	)	Case No. 8638 ON HEARING CONCLUSIONS AND ORDER

Jerome L. Kessler, Esq., Attorney for Brigida D'Alberto.
I. Arthur Levy, Esq., Attorney for Sports Club Portuguese.
Joseph Lordi, Esq., Attorney for Calabrese-Lamonaco-Diadone, Amvet Post #56.
Amadeo Cavallo, Secretary, Luso-American Fraternal Association.
I. Edward Amada, 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 June 22, 1954 signed by Jerome L. Kessler as attorney for Brigida D'Alberto, to determine whether a quantity of alcoholic beverages, and a Dodge sedan, described in a schedule attached hereto, seized at the time and place hereinafter set forth, constitute unlawful property and should be forfeited.

In the early morning hours of May 17, 1954 Newark Police officers halted the Dodge sedan, registered in the name of Brigida D'Alberto, operated by her son Joaquim D'Alberto, at the intersection of Elm and Jefferson Streets, Newark, New Jersey. Two other boys were passengers in the car. The officers found 21 four-fifth and quart bottles of whiskey of various brands and a bottle of wine in the car. Questioned as to the source of these beverages, the boys admitted they had stolen the beverages that morning from the Sports Club Portuguese.

Thereupon the officers seized the alcoholic beverages, and took the boys into custody. Later the boys told the police officers that they stole 22 bottles of alcoholic beverages on May 12, 1954 from Calabrese-Lamonaco-Diadone, Amvet Post #56, and that on May 13th, 1954, they stole other alcoholic beverages from Luso-American Fraternal Association; that all of these beverages were transported in the Dodge sedan to 179 Oliver Street, Newark, and there sold to one James Vacca. All of the above named social organizations are licensed to sell alcoholic beverages.

The police officers immediately went to the Oliver Street address and there seized 94 bottles of various alcoholic beverages from the residence of James Vacca. The Division of Alcoholic Beverage Control was notified of these facts and thereafter, on June 21, 1954, its agents seized the Dodge sedan. The seized alcoholic beverages, which appear to be all tax paid, were turned over to A.B.C. agents.

Pending hearing in the case, Brigida D'Alberto deposited $200.00 under protest pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of the Dodge sedan, and thereupon obtained return of such motor vehicle. Mrs. D'Alberto, by her attorney, has stipulated that such Director should determine in the present proceedings, whether such sum should be forfeited, or returned to her.

When the matter came on for hearing pursuant to R.S. 33:1-66, and such stipulation, appearances were entered on behalf of Brigida D'Alberto, who sought return of the deposit of $200.00, and on behalf of the above named social organizations, which sought return of the alcoholic beverages stolen from them respectively.

The motor vehicle is subject to forfeiture because the alcoholic beverages transported therein were obviously intended for unlawful sale, and in any event, even if, although unlikely, intended for personal consumption, exceeded the limited quantity which may be transported for that purpose in a vehicle not licensed to transport alcoholic beverages. R. S. 33:1-1(i), R.S. 33:1-2, R.S. 33:1-66.

The alcoholic beverages, although apparently tax paid, are technically likewise subject to forfeiture because of the unlawful transportation thereof and intended unlawful sale. From a practical standpoint, however, such alcoholic beverages as are in bottles which are full, sealed, and specifically identified will be returned to the licensees from whom they were stolen.

The 22 bottles of alcoholic beverages found in the motor vehicle as more specifically described in Schedule "A" attached hereto, have been specifically identified as those stolen from the Sports Club Portuguese, and 16 sealed bottles of such beverages will be returned to the organization after such beverages are no longer needed for evidential purposes in the criminal proceedings in the case.

The boys admitted the theft of 22 bottles of alcoholic beverages from Calabrese-Lamonaco-Diadone, Amvet Post #56. A list of 26 stolen bottles of alcoholic beverages was prepared by the association. Of these, 12 bottles as listed in the aforesaid Schedule "A", seized at 179 Oliver Street, correspond to the association's list, and will be returned to it under the same conditions heretofore expressed.

An undetermined quantity of alcoholic beverages was stolen from Luso-American Fraternal Association. A list of 125 stolen bottles of alcoholic beverages was prepared by the association. Of these 47 bottles, as listed in the aforesaid Schedule "A", correspond to such association's list, and will be returned to it under the same conditions heretofore expressed.

Two of the boys involved are juveniles. The repeated use by the son of his mother's car to transport alcoholic beverages stolen by the boys seems to demonstrate a lack of supervision of the son's activities, with the possibility that perhaps the car was actually owned by the son. However, upon full development of the facts, such does not appear to be the case.

Both the mother and the father appear to be decent, hard-working persons. The boy is their only child. The parents had the funds to purchase a car, the boy did not. Both parents sought to learn to operate an automobile for a number of years, as evidenced by various permits for that purpose obtained by them. In April, 1954 they purchased the Dodge sedan, primarily for the use of their son to go to work, and secondarily, to use in learning to drive a car.

From their description, their son displayed no special inclination either to study or work. The parents had a son-in-law who was a baker, and they encouraged their son to learn that trade. The son worked spasmodically with the son-in-law, and perhaps for other bakers. The usual hours for such work were in the late evening and early morning hours. Hence it appears normal for the boy to use the car at such hours. The parents may be subject to criticism for not checking more closely whether the boy was actually working on each occasion, but it seems likely that if they had made such a check, the boy would have given them some satisfactory excuse, as he did on one or two of such occasions. While the boy had the use of the car practically at will, the parents' conduct was what was normal under the circumstances, and does not denote a careless indifference to the son's use of the car. Cf. Seizure Case No. 8544, Bulletin 1020, Item 4. I am satisfied that the parents acted in good faith, and did not know, or have any reason to suspect, that the boy would use the car to transport alcoholic beverages in violation of the law.

Accordingly, it is DETERMINED and ORDERED that the costs of the seizure and storage of the motor vehicle be deducted from the deposit of $200.00, and the balance returned to Brigida D'Alberto; and it is further

DETERMINED and ORDERED that the specific alcoholic beverages listed in the aforesaid Schedule "A" as the property of the respective associations be returned to such organizations after they are no longer needed for evidential purposes; and it is further

DETERMINED and ORDERED that the balance of the alcoholic beverages, either open bottles or being those not identified as stolen from the respective associations, as listed in the aforesaid Schedule "A", constitutes unlawful property, and the same be and

hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that it be retained for the use of hospitals and state, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: November 3, 1954.

SCHEDULE "A"

(1) To be returned to Sports Club Portuguese.

1 - 4/5 quart bottle of Kintore Brand Scotch Whisky
1 - 4/5 quart bottle of Highland Queen Brand Scotch Whisky
4 - quart bottles of Wilson Brand Whiskey
1 - quart bottle of Three Feathers Brand Whiskey
1 - quart bottle of Golden Wedding Brand Whiskey
2 - quarts of Pedro Domecq Fundadore Brandy
1 - 4/5 quart bottle of Sao Miguel Brandy
1 - 4/5 quart bottle of King William Scotch Whisky
1 - 4/5 quart bottle of Ambassadore Brand Scotch Whisky
1 - quart bottle of Carstairs Whiskey
1 - quart bottle of Gallagher & Burton Whiskey
1 - 4/5 quart bottle of Idolo Brand Sherry Wine

(2) To be returned to Calabrese-Lamanaco-Diadone, Amvet Post #56.

4 - 4/5 quart bottles of Seagram V. O. Whiskey
3 - quart bottles of Seagram 7 Crown Whiskey
2 - 4/5 quart bottles of Haig & Haig Scotch, 5 Star
1 - 4/5 quart bottle of Haig & Haig Pinch Bottle Scotch
1 - quart bottle of Schenley Black Label Whiskey
1 - 4/5 quart bottle of House of Lords Scotch Whisky

(3) To be returned to Luso-American Fraternal Association.

7 - quart bottles of Seagram 7 Crown Whiskey
1 - 4/5 quart bottle of Haig & Haig 5 Star Scotch Whisky
1 - 4/5 quart bottle Haig & Haig Pinch Bottle Scotch
3 - quart bottles of Schenley Black Label Whiskey
8 - quart bottles of Carstairs Whiskey
2 - quart bottles of Three Feathers Whiskey
1 - quart bottle of Gordon's Gin
1 - 4/5 quart bottle of Martin's V.V.O. Scotch Whisky
3 - 4/5 quart bottles of Jacquin Rock & Rye
2 - 4/5 quart bottles of Jacquin Rock & Rye (Crystallized)
1 - 4/5 quart bottle of Cuantro Brand Annisette
4 - 4/5 quart bottles (Decanter) Schenley Whiskey
1 - 4/5 quart bottle of Calvert Reserve Whiskey
5 - quart bottles of Calvert Reserve Whiskey
2 - 4/5 quart bottles of Pedro Domecq Brandy
2 - 4/5 quart bottles of St. Remy Brandy
3 - 4/5 quart bottles of Cruz Ado Brandy

(4) To be forfeited.

The balance of 41 bottles of various brands of alcoholic beverages as listed on the inventory in the case.

(5) 1 - Dodge sedan, Serial No. 30936180
N. J. Registration FZY90.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on August 14, 1954, of 4 two-quart jars of alcohol and a Mercury coupe on the northbound lane of the New Jersey Turnpike in Washington Township, County of Mercer and State of New Jersey.	Case No. 8685 ON HEARING CONCLUSIONS AND ORDER

First National Bank and Trust Company of New Haven, Connecticut, by Eugene Lawlor, Collection Manager.
Rafferty & Blacher, Esqs., by Philip Blacher, Esq., Attorneys for Mt. Carmel Motors, Inc.
Jessie Poe, Pro Se.
I. Edward Amada, 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 4 two-quart jars of alcohol and a Mercury coupe, described in a schedule attached hereto, seized on August 14, 1954 on the northbound lane of the New Jersey Turnpike in Washington Township, New Jersey, constitute unlawful property and should be forfeited.

A New Jersey State Trooper halted the Mercury coupe on the above date and location during a routine patrol of traffic on the highway. The car was being driven by Lucus Poe, its registered owner. When the trooper discovered the jars of alcohol in the car, without labels or stamps indicating the payment of tax on alcoholic beverages, he seized the car and alcohol. Such car and alcohol were later turned over to agents of the Division of Alcoholic Beverage Control.

A sample of the contents of one of the jars was analyzed by the Division chemist, who reports that it is an alcoholic beverage containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 46 per cent.

When the matter came on for hearing, pursuant to R.S. 33:1-66, a representative of the First National Bank and Trust Company of New Haven, Connecticut, appeared and sought recognition on its behalf of an alleged lien claim against the motor vehicle; and a representative of Mt. Carmel Motors, Inc., the dealer who sold the car, and who is secondarily responsible to the bank for the debt, appeared to safeguard its interests. Jessie Poe, wife of Lucus Poe, also appeared, but presented no claim to the car either on her own or on behalf of her husband.

The reports of the A.B.C. agents and other documents in the file which establish the facts above outlined as to the seizure were presented in evidence with consent of all persons present at the hearing. No one opposed forfeiture of the jars of alcohol.

The alcohol is illicit because of the absence of labels, or tax stamps, on the jars. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the motor vehicle in which it was transported and found, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

A conditional sales contract dated July 2, 1954, evidencing the sale of the Mercury coupe in question by Mt. Carmel Motors, Inc., to Lucus Poe and Jessie Poe was presented in evidence. The balance

of the purchase price secured by the contract was $1356.30, and the contract was assigned to the above named bank. The first payment was due on the contract on August 2, 1954, but was never paid.

Prior to purchasing such contract, the bank received information that Lucus Poe was a resident of New Haven, and was employed by a local industrial concern, with earnings of $60.00 a week. The bank was also furnished with trade references. The bank checked this information and found it to be correct, and that Jessie Poe was also employed by her husband's concern. The trade references were contacted by the bank, which advised that they had satisfactory business relations with Lucus Poe. Lucus Poe does not appear to have any previous criminal record.

I am satisfied that the bank acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the motor vehicle. I shall therefore recognize its lien of $1356.30.

The Director of the Division of Purchase & Property has advised that the State of New Jersey is not interested in retaining the Mercury coupe for the use of any state agency upon payment of the lien claim. The retail value of such vehicle does not appear to exceed the amount of such lien and the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 15th day of November, 1954, First National Bank and Trust Company of New Haven, Connecticut pays the costs incurred in the seizure and storage of the Mercury coupe, described in Schedule "A" attached hereto, such motor vehicle will be returned to such bank; and it is further

DETERMINED and ORDERED that the jars of alcohol described in the aforesaid Schedule "A" constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they 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 Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: November 4, 1954.

SCHEDULE "A"

4 - two-quart jars of alcohol
1 - Mercury coupe, Engine No. 52ME19387M, 1954 Conn. Registration No. E8-499.

5. DISCIPLINARY PROCEEDINGS - ILLEGAL SITUATION CORRECTED - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED.

In the Matter of Disciplinary Proceedings against MARIE PONE T/a HUBBY'S INN Kasonbey's Lane & Spotswood Road Monroe Township (Middlesex County)) P. O. Jamesburg, N. J., Holder of Plenary Retail Consumption License C-7 issued by the Township Committee of Monroe Township (Middlesex County).	ON PETITION O R D E R

BY THE DIRECTOR:

On September 20, 1954, I suspended defendant's license for the balance of its term, effective at 3:00 a.m., October 5, 1954, after I had found defendant guilty of charges alleging in effect that her husband, Dominic J. Pone, had an undisclosed interest in her license. Leave was given to apply to me for an order lifting said suspension if the illegal situation was thereafter corrected, provided, however, that the suspension would not be lifted until the expiration of twenty days from the effective date thereof. Re Pone, Bulletin 1034, Item 5.

Marie Pone and Dominic J. Pone have filed a petition herein from which it appears that, on October 19, 1954, the Township Committee of Monroe Township adopted a resolution granting their application filed for a transfer of said license to them, subject, however, to my aforesaid order dated September 20, 1954. A certified copy of said resolution was forwarded to me with said petition.

It thus appearing that the unlawful situation has been corrected and that the suspension will have been in effect for twenty days at 3:00 a.m., October 25, 1954,

It is, on this 22nd day of October, 1954,

ORDERED that the suspension heretofore imposed be lifted and that License C-7 be restored to full force and operation at 3:00 a.m., October 25, 1954, or as soon thereafter as the transfer of said license to Marie Pone and Dominic J. Pone is endorsed on the face of the license certificate by the Township Clerk.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE TO NON-MEMBERS - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
EIGHTH WARD PROGRESSIVE REPUBLICAN CLUB 1700 Master Street Camden, N. J.,	)	CONCLUSIONS AND ORDER
Holder of Club License CB-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	)	

Eighth Ward Progressive Republican Club, by Frank C. Lyle, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to the following charge:

"On September 24, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages to a person not a bona fide member of your club or a bona fide guest of such member; in violation of Rule 8 of State Regulations No. 7."

The file herein discloses that on September 24, 1954, at 9:40 p.m., an ABC agent entered defendant's licensed club wherein, after admitting non-membership in the organization, he was served alcoholic beverages by Clarence Scruggs, Treasurer, to whom the agent identified himself.

Defendant has a prior adjudicated record. Effective June 2, 1942, its license was suspended for ten days by this Division for an "hours" violation and effective August 8, 1942, its license was revoked by the same authority on a "front" charge. See Bulletin 514, Item 4, and Bulletin 524, Item 7. However, since the aforesaid violations occurred more than ten years ago, they will not be considered in fixing the penalty herein. Re Tumulty, Bulletin 1024, Item 5. I shall suspend defendant's license for the minimum period of fifteen days, and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Burlington Lodge, Bulletin 983, Item 8.

Accordingly, it is, on this 28th day of October, 1954,

ORDERED that Club License CB-41, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Eighth Ward Progressive Republican Club, for premises 1700 Master Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. November 8, 1954, and terminating at 2:00 a.m. November 18, 1954.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

VINCENT CAPUTI
T/a HOTEL LEONARD
85-87 South Clinton Avenue
Trenton 9, N. J.,

Holder of Plenary Retail Consumption License C-156, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at his licensed premises to a minor and allowed, permitted and suffered consumption of said alcoholic beverages by said minor in and upon his licensed premises in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that on or about August 7, 1954 Pvt. Nancy E. ---, W.A.C., age 18, visited defendant's licensed premises and was served a glass of beer.

Defendant has no prior adjudicated record. I shall suspend defendant's license for a period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Watters, Bulletin 954, Item 9.

Accordingly, it is, on this 22nd day of October, 1954,

ORDERED that Plenary Retail Consumption License C-156, issued by the Board of Commissioners of the City of Trenton to Vincent Caputi, t/a Hotel Leonard, for premises 85-87 South Clinton Avenue, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. November 1, 1954, and terminating at 2:00 a.m. November 6, 1954.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

James E. Cambria & Pasquale A. Albanese
T/a Hedrick Distributing Company
11 Gypsum Street, Kearny, N. J.
Application filed November 18, 1954 for Limited Wholesale License.

William Howe Davis
Director.