

Mr. Ernest M. Tapner,
26 Rose Avenue,
Madison,

DP

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.

BULLETIN 862

DECEMBER 19, 1949.

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

BULLETIN 862

DECEMBER 19, 1949.

1. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES AT "DUDE RANCH" - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT OF THE ESTABLISHMENT ORDERED FORFEITED.

In the Matter of the Seizure on) Case No. 7438
May 11, 1949, of a quantity of)
beer and other alcoholic beverages)
and various fixtures, furnishings)
and equipment at the Silver Lake) ON HEARING
Dude Ranch located on Stagg Hill) CONCLUSIONS AND ORDER
Road in the Township of Mahwah,)
County of Bergen and State of New)
Jersey.)

Joseph H. Gaudielle, Esq., by B. Franklyn Boggia, Esq.,
Attorneys for Charles Gooden.
Harry Castelbaum, Esq., appearing for 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 and various fixtures, furnishings and equipment, itemized in a schedule attached hereto, seized on May 11, 1949 at the Silver Lake Dude Ranch located on Stagg Hill Road, Mahwah, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages to them on the premises.

When the matter came on for hearing pursuant to R.S. 33:1-66, Charles Gooden, the owner of the establishment, appeared with counsel and sought return of the furnishings and equipment, on claim that any sales of alcoholic beverages at the premises were made without his knowledge or consent by persons who were not his employees or engaged in any work for him.

The testimony of the ABC agents is that two of the agents were at the ranch on May 9. They talked with a man who was attending the horses, and observed two other men working about the place. Two women (Alice Alexander and Barbara Smith) appeared on the scene, greeted the agents, and informed them that the owner of the establishment was in New York. When the agents, ostensibly as prospective guests, inquired about the facilities available at the ranch, the women handed them a circular describing the place and the rates. During the ensuing discussion the women offered to show the place to the agents and, when one of such agents inquired whether there was a barroom, the women conducted the agents to a building in which there was gymnasium equipment and a counter or bar for the service of beverages.

There Barbara Smith went behind the bar and said she was going to have a coke. One of the agents asked Barbara whether she had any cold beer. She answered in the affirmative, whereupon the agent ordered three cans of beer and two drinks of whiskey, which were served by Barbara. When asked the price of the drinks, Barbara stated that the amount was \$1.70. One of the agents paid this amount, which Barbara turned over to Alice Alexander. The agents say that Alice Alexander placed this money in a cash register in another building. She denies that such is the fact.

On May 10 these two agents and another agent entered the ranch, met the two women and went to the barroom. One of the agents purchased three glasses of whiskey and three cans of beer from Alice Alexander, and paid her \$2.10. Another agent then purchased a round of drinks from Alice Alexander.

On May 11 these three agents again visited the ranch, met Alice Alexander and asked for drinks of alcoholic beverages. Possibly suspecting at this time that actually they were not bona fide prospective guests, she told them there was no whiskey or beer on the premises. Thereupon the agents disclosed their identity, searched the barroom and seized nine bottles of various brands of alcoholic beverages, and twenty cans and four bottles of beer which were behind the bar.

Neither Charles Gooden, Alice Alexander nor Barbara Smith held a license authorizing any of them to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

The sale of alcoholic beverages to the agents is not disputed. Both Barbara Smith and Alice Alexander, in signed statements, admit the sales of beer and whiskey made by them on May 9 and 10, respectively.

The natural and normal conclusion from these facts is that, while full scale dude ranch activities had not as yet commenced early in May, nevertheless alcoholic beverages were available for sale to such persons as came there, and that the alcoholic beverages behind the bar on May 11 were intended for that purpose.

Gooden in effect asks that this evidence be disregarded, on claim that the actual facts are that the place was not open for business; that Alice Alexander was not yet in his employ, and that the alcoholic beverages belonged to her and were sold by her on her own account, without his knowledge. I am not convinced, from the evidence presented by Gooden, that such are the facts.

Gooden says that he operated a training camp there for pugilists for the past five years, and that about April 1, 1949, he decided to convert it into a dude ranch, but that the change-over had not as yet been actually accomplished in that the legal details of incorporating the enterprise had not been completed.

On the other hand, there were seven horses at the ranch, three male employees, and Alice Alexander and Barbara Smith. Circulars describing the place had been printed and mailed to prospective guests. The advantages of the place were advertised in various newspapers. Early in May there were, of course, few, if any, patrons to be expected on other than weekends. It is not logical to believe that the activities at the ranch were at a standstill and that the facilities were not available to guests.

For example, Gooden says that there were seven men and four women at the ranch on Mother's Day (May 8); that it was a social affair, with one of the guests bringing liquor consisting of two cases of beer and two bottles of Scotch. However, the evidence establishes that it was a pay-per-drink affair, in that the agents seized a "guest check" with the name "Barbara" written thereon, itemizing the sale of various drinks of alcoholic beverages for the total sum of \$6.85.

In her statement Barbara Smith declares that this check represents sales of alcoholic beverages made by her a few days before the raid, upon instructions of Alice Alexander, and that she gave Alice

the money. Alice Alexander fixes the date of this occurrence as May 8 and admits that she received from Barbara the \$6.85 represented by this check.

It is also significant that Gooden, on May 10, when checking the activities at the ranch, in a telephone conversation asked Alice Alexander whether the agents had hired any horses. I am satisfied that the ranch was open for business.

Concerning Alice Alexander's status at the ranch, she said in her statement of May 11 that her position at the place was that of bookkeeper and waitress. At the hearing she testified that she came to the ranch the latter part of April 1949, and was waiting to commence work there on May 30. Gooden says that she had no duties at the place while he was absent; that a Mr. Webster was his caretaker. However, it was Alice Alexander and Barbara Smith who handed the circular to the agents and exhibited the place to them. It was Alice Alexander with whom Gooden spoke when checking the activities at the ranch. It is dubious that Webster was the caretaker in that he accompanied Gooden to the hearing in the case, yet was not called upon by Gooden to testify as to what duties, if any, he had at the ranch.

The facts set forth are substantial evidence that Alice Alexander was the person actually designated by Gooden in his absence to exhibit the facilities of the establishment and discuss arrangements with prospective guests of the ranch.

Gooden's disclaimer of ownership of the alcoholic beverages, or responsibility for their presence in his ranch, rests upon conflicting and unsatisfactory explanations. He testified that there were no alcoholic beverages at the ranch, except a bottle of gin for his own use, prior to May 8; that on that day one of the persons at the "social affair" brought two cases of beer and a couple of bottles of Scotch to the place, and that whatever was left over presumably was that found behind the bar. When it was pointed out to him that there were nine bottles of alcoholic beverages found there, and asked to whom they belong, he answered "to no one in particular". His attention was then called to a signed statement which he gave the agents on May 12, which set forth a similar question, and that he answered, "It did belong to Alice because I know she had it there -- Alice had a couple of friends and they brought it with them, a bottle or two at a time."

The inconsistencies in these stories, coupled with Gooden's account of the consumption of alcoholic beverages on May 8 by persons in attendance at what he describes as a "social affair" but which in reality was on a paying guest basis, convinces me that Gooden was the owner of the alcoholic beverages and that they were sold on his behalf in connection with the operation of the ranch.

In any event, Gooden, as proprietor of the establishment, cannot avoid forfeiture of the equipment of his place for a violation of the Alcoholic Beverage Law committed by Alice Alexander, with or without his knowledge, while she was left in charge of the place, which included the building with the bar, or counter, and cooler for beverages. A person who entrusts his business establishment to another is responsible, in forfeiture proceedings, for the unlawful sale of alcoholic beverages therein by such person. Cf. cases cited in Seizure Case No. 7002, Bulletin 731, Item 2. As I said in Seizure Case No. 7385, Bulletin 845, Item 3, otherwise it would seriously undermine the legislative intent to forfeit the stock in trade and equipment found in a speakeasy, since many speakeasy proprietors

would probably attempt to avoid such penalty by adopting the simple expedient of personally abstaining from selling alcoholic beverages at their establishments, meanwhile professing ignorance of such sales by their employees.

For the reasons above expressed, I find that the alcoholic beverages seized in Gooden's barroom and gymnasium were intended for unlawful sale and hence are illicit. R.S. 33:1-1(i). Such illicit alcoholic beverages and all personal property seized therewith in the building are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Under the circumstances of the case, cause for forfeiture having been established, Gooden's application for return of the seized property is denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, and that it be retained for the use of hospitals and State, county and municipal institutions, or destroyed in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: November 28, 1949.

SCHEDULE "A"

- 20 - cans of beer
- 4 - bottles of beer
- 7 - 4/5 qts. of whiskey
- 2 - qts. of gin
- 42 - drinking glasses
- 1 - bar
- 1 - Coca Cola cooler
- 1 - metal sink
- 1 - metal ice box
- 18 - chairs, 9 stools, 5 tables
- box of gloves and other gymnasium equipment
- 3 - booths
- 1 - loud speaker and microphone
- 2 - electric lamps
- 1 - piano, Serial No. 118488
- 1 - piano bench
- 4 - sections of folding screens
- 1 - Wurlitzer music box, Serial No. A-29445-A and currency therein
- 1 - scale
- 1 - caloric coal stove
- 1 - coal stove
- 4 - fluorescent lights

2. APPELLATE DECISIONS - GRIPPEN v. LAKEWOOD AND LEVIN.

NELLIE GRIPPEN, Trustee of the)
real estate for the infants)
GLORIA GRIPPEN, JOSEPH JAMES)
GRIPPEN, JR., ALBERT DENNIS)
GRIPPEN and PATRICIA GRIPPEN,)

Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
TOWNSHIP OF LAKEWOOD, and)
VICTOR M. LEVIN, trading as)
BRUNSWICK BAR,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Morton C. Steinberg, Esq., Attorney for Appellant.
James J. Myers, Esq., Attorney for Respondent Board of Commissioners.
Michael P. Silverman, Esq., Attorney for Respondent Victor M. Levin.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners in issuing a plenary retail consumption license to respondent Victor M. Levin for premises known as the Brunswick Hotel located at Forest Avenue and Ninth Street, in the Township of Lakewood.

It was stipulated at the hearing herein that appellant, as trustee for the children mentioned in the appeal, is the owner of real estate in the Township of Lakewood and, hence, I find that she is authorized by the provisions of R.S. 33:1-22 to bring this appeal as a taxpayer. See Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502.

The petition of appeal sets forth (1) that the said plenary retail consumption license was issued in violation of the zoning ordinance of the Township of Lakewood which was originally adopted in 1923, and (2) that the license serves no public necessity or convenience.

As to (1): On May 11, 1923, the Township Committee, which, apparently, was then the governing body of the Township of Lakewood, adopted a Building Zone Ordinance. Whatever its effect at the time of its adoption, the ordinance is fully effective at the present time because of the 1927 amendment to the Constitution of the State of New Jersey and R.S. 40:55-51 (P.L. 1928, c. 274).

Section 14 of said Building Zone Ordinance provides as follows:

"HOTEL 'A' AND HOTEL 'B' DISTRICT USE PROVISIONS

(a) Within any Hotel 'A' or Hotel 'B' District, as indicated on the Building Zone Map, no building or premises shall be used for other than one or more of the following three specified classes of purposes:

(1) Any use hereinbefore specified as permitted in Residence 'A' or Residence 'B' Districts.

(2) Hotels, club houses, lodge rooms and auditoriums (not theatres); apartment houses and tenement houses.

(3) Orphanages, old peoples' homes, charitable institutions not correctional, dispensaries, dormitories and boarding schools.

(b) Billboards and advertising signs, except for small identification signs placed against the principal building, are not permitted."

The evidence herein discloses that the Brunswick Hotel is situated on a plot of ground approximately 400 feet by 400 feet, and that the building itself is approximately 200 feet by 200 feet. The building contains eighty-two rooms, in addition to four rooms occupied by the family, and has been operated as a hotel by respondent Victor M. Levin, or members of his family, since 1927. On the evidence presented it clearly appears that the premises in question constitute a hotel within the meaning of that term as used in Section 14(2) of the ordinance.

Appellant, however, contends that, because the Brunswick Hotel was necessarily unlicensed at the time of the adoption of the Building Zone Ordinance due to the fact that National Prohibition was in effect at that time, the subsequent issuance of a liquor license to the Brunswick Hotel constitutes a violation of Section 14 of said ordinance. Before specifically considering that point, it is in order to review, here, prior decisions concerning zoning violations, many of which decisions are cited in the briefs filed by the respective parties to this appeal.

A liquor license issued in violation of a municipal ordinance must be set aside. Warren Street Chapel v. Trenton, 56 N.J.L. 411; Bachman v. Phillipsburg, 68 N.J.L. 552; Ostrowsky v. Newark, 102 N.J. Eq. 169. Thus, where a local issuing authority denied a license because the premises for which the license was sought were located in a district zoned solely for residential purposes, its action was affirmed: Murchio v. Wayne, Bulletin 379, Item 7; Nugent & Hignett v. Linden, Bulletin 263, Item 7. So, also, a license was set aside where it appeared that the premises were located within an area zoned solely for residential purposes. East Brunswick Township Board of Adjustment v. East Brunswick and Mills, Bulletin 223, Item 5. However, those cases are not in point because the Brunswick Hotel is located in a zone where hotels are permitted under the terms of the ordinance.

Numerous cases have been decided which concern the extension of a nonconforming use. Speake v. Closter (decided by the Supreme Court on April 4, 1934, but not reported); Talbot v. Mendham and Keppler, Bulletin 117, Item 1; Corradi v. Closter, Bulletin 219, Item 3; Marinaccio v. Ocean, Bulletin 264, Item 11; Marra v. Cedar Grove, Bulletin 302, Item 15; Miles v. Piscataway, Bulletin 484, Item 5; Gabelloni v. Franklin, Bulletin 529, Item 8, and Nasso v. Bridgewater, Bulletin 744, Item 10. All of these cases involved unlicensed restaurants which had been in existence prior to the adoption of a zoning ordinance which included such premises in a residential district. Under the provisions of R.S. 40:55-48, any non-conforming use or structure existing at the time of the passage of an ordinance may be continued upon the lot or in the building so occupied. The question, therefore, in each of these cases was whether the subsequent issuance of a liquor license for the restaurant permitted the continued operation of the restaurant as a nonconforming use or whether it constituted a new and independent use not permissible in a residential district. It was held in each case that operation under a liquor license constituted a new and independent use. Illustrative of the principle set forth in these cases is the following excerpt from Marinaccio v. Ocean, supra:

"When the restaurant began operation (1928-9) and when the zoning ordinance was adopted (1930), Prohibition was in effect. As a result, although the restaurant may continue as a nonconforming use in this residential zone, it may continue only as a non-liquor vending restaurant, since its exemption from the ordinance is limited to its nonconforming character at the time that ordinance was adopted ***.

"The privilege of selling or serving liquor is not inherent in or incident to a restaurant business. Such a privilege is a new and independent use."

In the present case, no question of nonconforming use is involved. As pointed out, the Brunswick Hotel is located in a zone where hotels are not prohibited but are permitted under the terms of the ordinance.

Thus, it seems clear to me that the cases cited by appellant and the other hereinabove cited cases may not be considered to be in point. Appellant's argument in contention (1) appears to be a novel one. In that contention I am unable to concur. I cannot agree that the ordinance's use of the word "hotels" (i.e., the absence therefrom of the term "alcoholic beverage licensed hotels", or some similar term) caused issuance of the license here questioned to be in violation of the ordinance. The respondent Board has construed the zoning ordinance as permitting issuance of the license thereunder, and I am unable to conclude or find that such construction of the ordinance is unreasonable or otherwise improper.

As to (2): A hotel is not entitled as of right to a liquor license. Hosts, Inc. v. Point Pleasant Beach, Bulletin 732, Item 2. However, the burden is upon appellant to show that respondent Board abused its discretion. Rule 6 of State Regulations No. 15. Upon the evidence presented, I conclude that appellant has not established that respondent Board abused its discretion in issuing the license and, hence, I shall affirm its action. Williams v. Atlantic Highlands and Smith, Bulletin 715, Item 7; Highlands Tavern Owners Ass'n v. Highlands and Bahrs, Bulletin 756, Item 8.

Accordingly, it is, on this 30th day of November, 1949,

ORDERED that the action of respondent Board of Commissioners, in issuing a plenary retail consumption license to respondent Victor M. Levin, trading as Brunswick Bar, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

December 1, 1949

3.

ACTIVITY REPORT FOR NOVEMBER 1949.

ARRESTS:

Total number of persons arrested	-----	12
Licensees and employees	-----	2
Bootleggers	-----	10

SEIZURES:

Motor vehicles - cars	-----	1
- trucks	-----	1
Stills - over 50 gallons	-----	1
- 50 gallons or under	-----	2
Mash - gallons	-----	200.00
Distilled alcoholic beverages - gallons	-----	98.21
Wine - gallons	-----	180.51
Brewed malt alcoholic beverages - gallons	-----	2.71

RETAIL LICENSEES:

Premises inspected	-----	777
Premises where alcoholic beverages were gauged	-----	704
Bottles gauged	-----	11,642
Premises where violations were found	-----	37
Violations found	-----	37
Type of violations found:		
Unqualified employees	-----	8
Other mercantile business	-----	6
Reg. #38 sign not posted	-----	5
Prohibited signs	-----	2
Probable fronts	-----	1
Disposal permit necessary	-----	1
Other violations	-----	14

STATE LICENSEES:

Premises inspected	-----	6
License applications investigated	-----	6

COMPLAINTS:

Complaints assigned for investigation	-----	346
Investigations completed	-----	429
Investigations pending	-----	127

LABORATORY:

Analyses made	-----	142
"Shake-up" cases (alcohol, water and artificial color) - bottles	-----	6
Liquor found to be not genuine as labeled - bottles	-----	20

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	-----	2
Persons fingerprinted for non-criminal purposes	-----	132
Identification contacts made with other enforcement agencies	-----	103
Motor vehicle identifications via N. J. State Police Teletype	-----	3

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities	-----	11
Violations involved:		
Sale during prohibited hours	-----	6
Sale to non-members by clubs	-----	4
Permitting brawls on premises	-----	2
Sale to minors	-----	1
Permitting lottery activity on premises (numbers writing)	-----	1
Permitting bookmaking on premises	-----	1
Sale to intoxicated persons	-----	1
Sale outside scope of license	-----	1
Cases instituted at Division	-----	10
Violations involved:		
Sale during prohibited hours	-----	3
Sale under Fair Trade price	-----	2
Sale outside scope of license	-----	2
Possessing illicit liquor	-----	2
Permitting immoral activity on premises	-----	1
Aiding and abetting unlicensed sale	-----	1
Sale to minors	-----	1
Fraud and front	-----	1
Employing unqualified person	-----	1
Possessing contraceptives on premises	-----	1
Permitting bookmaking on premises	-----	1
Permitting hostesses on premises	-----	1
Failure to display license certificate	-----	1
Failure to afford view into premises during prohibited hours	-----	1
Cases brought by municipalities on own initiative and reported to Division	-----	5
Violations involved:		
Sale to minors	-----	2
Permitting noise on premises	-----	1
Permitting brawls on premises	-----	1
Permitting bookmaking on premises	-----	1

HEARINGS HELD AT DIVISION:

Total number of hearings held	-----	27
Appeals	-----	2
Disciplinary proceedings	-----	11
Eligibility	-----	8
Seizures	-----	5
Tax revocation	-----	1

PERMITS ISSUED:

Total number of permits issued	-----	1,518
Employment	-----	96
Solicitors	-----	95
Disposal of alcoholic beverages	-----	122
Social affairs	-----	441
Special wine	-----	676
Miscellaneous	-----	88

ERWIN B. HOCK, DIRECTOR

4. APPELLATE DECISIONS - KREHEL v. BAYONNE AND CARPATHO-RUSSIAN AMERICAN CITIZENS CLUB, INC.

THEOPHIL D. KREHEL,)
Appellant,)

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF BAYONNE, and CARPATHO-)
RUSSIAN AMERICAN CITIZENS CLUB,)
INC.,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Theophil D. Krehel, Appellant, Pro Se.
Stephen F. Sladowski, Esq., Attorney for Respondent Board of
Commissioners of the City of Bayonne.
Joseph Moritz, Esq., Attorney for Respondent Carpatho-Russian
American Citizens Club, Inc.

BY THE DIRECTOR:

Appellant, a resident of New York City and allegedly a member of the church known as SS. Peter and Paul Russian Orthodox Greek Catholic Church, appeals herein from the action of respondent Board of Commissioners in renewing, for the present licensing year, a club license held by respondent Carpatho-Russian American Citizens Club, Inc. Appellant testified at the hearing that he is a member of the church heretofore mentioned and, as such a member, he has, in my opinion, sufficient standing to institute the within appeal. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken et al., 135 N.J.L. 503.

Respondent Carpatho-Russian American Citizens Club, Inc. is a corporation organized for social and benevolent purposes, and its membership is composed of members of SS. Peter and Paul Russian Orthodox Greek Catholic Church. It occupies, without cost, a clubhouse located within two hundred feet of said church, on land owned by the church. It originally obtained a club license from respondent Board of Commissioners in July 1946, and obtained a renewal of said license for each succeeding licensing year to and including the present licensing year. No objection was filed to the original issuance of the license or to any renewal thereof until an application was filed for renewal for the present licensing year, at which time Rev. Damian Krehel, who was then apparently Pastor of the church, filed a written objection with the respondent Board of Commissioners. After a hearing held upon said objection, respondent Board renewed the license and this appeal was thereafter filed by appellant, who is the son of Rev. Damian Krehel.

The lengthy petition of appeal herein sets forth numerous grounds for reversal, some of which, in my opinion, are not cognizable by the local issuing authority, or by me upon appeal. Thus, Paragraph 3(h) to Paragraph 3(m) allege, in effect, that the maintenance of a "saloon or commercial enterprise" on church property violates Canon 76 of the Sixth Ecumenical Council of the Russian Orthodox Greek Catholic Church. Respondents contend that the Club is not a "saloon or commercial enterprise". In any event, it appears to me that any alleged violation of Canon 76 (which may result in excommunication) is properly the concern only of the ecclesiastical authorities which have jurisdiction to enforce the laws of the church. For the aforesaid reason I am disregarding Paragraph 3(h) to Paragraph 3(m) of the petition of appeal.

This leaves for consideration Paragraph 3(a) to Paragraph 3(g) which, in substance, allege that no effective waiver of the provisions of R.S. 33:1-76 has been filed and, hence, that the application should have been denied because the licensed premises are within two hundred feet of the church.

The record shows that a waiver in proper form was filed for the 1947-48 licensing year. That waiver was signed by and sworn to by Stephen Kostura, President, who alleged therein that he was authorized to sign the waiver on behalf of the church. See Bulletin 243, Item 8. The waiver for the 1948-49 licensing year was signed by Stephen Kostura, President, Stephen Kuzmich, Treasurer, and John A. Pelehack, Secretary, and recites that they are officers of the Sts. Peter and Paul Greek Russian Orthodox Catholic Church. The waiver for the 1949-50 licensing year is as follows:

"June 1, 1949.

"To Whom it May Concern:

The undersigned Executive Officers of the Sts. Peter and Paul Russian Orthodox Church, Bayonne, N. J. having granted permission to the Carpatho Russian American Citizens Club, Inc. to occupy frame building in rear of 95 West 27th Street, Bayonne as a Licensed Club, hereby waive the fact that premises are within 200 feet of the Church situated at 94 West 28th Street, Bayonne, N. J.

Stephen Kostura, President.
Stephen Kuzmick, Treasurer.
John A. Pelehack, Secretary."

Appellant contends that the officers named in the waiver for the present licensing year were not officers of the church in June 1949 because they had not been sworn in by the Pastor and because two of them had not been properly approved by higher ecclesiastical authorities. However, the record shows that, in accordance with the by-laws of the church, these three officers were elected at an annual parish meeting in January 1948. They were re-elected at an annual parish meeting in January 1949. Their right to hold their respective offices cannot be collaterally attacked in this proceeding. If not de jure officers, they were at least de facto officers of the church for the year 1949, having been regularly elected in 1948, and, under the statutes of the State of New Jersey and the by-laws of the church, they continued to hold their respective offices until their successors were elected and qualified.

In Schilstra v. Van Den Heuvel, 82 N.J. Eq. 612 (E. & A. 1914), the Court says:

"***Under the system of jurisprudence which prevails in this state, the only tribunal in which the right to an office can be judicially determined is the supreme court, and the only method by which it can be put in issue is by proceedings in the nature of a quo warranto (citing cases). And this is true not only with relation to state and municipal offices, but also those of private corporations (citing cases), religious as well as secular." State v. Crowell, 9 N.J.L. (4 Halst.) 390; Pulis v. Iserman, 71 N.J.L. (42 Vr.) 408.

The law remains unchanged, although prerogative writs have been superseded, and the present practice would require an application to the Superior Court under Rule 3:81 of Rules Governing Civil Practice in the Superior Court.

The statute (R.S. 33:1-76) does not specify any particular form of waiver and merely provides that the "protection of this section may be waived....by the duly authorized governing body on authority of such church...." In the interest of uniformity and to guide local

issuing authorities and other interested parties, a suggested form of waiver was prepared by the late Commissioner Burnett and included in Bulletin 243, Item 8. Although the waiver herein does not follow the language of that suggested form, it represents a substantial compliance therewith and, especially under the circumstances of this case, cannot be said to be violative of the statute. It is clear that no one was misled as to what the waiver was intended to cover and the mere fact that its language differs from the suggested form does not render it invalid.

The action of the respondent issuing authority is affirmed.

Accordingly, it is, on this 2nd day of December, 1949,

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

ERWIN B. HOCK
Director.

5. DISQUALIFICATION - APPLICATION TO LIFT - ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS WHILE DISQUALIFIED - GOOD FAITH OF APPLICANT IN DISCLOSING CONVICTION IN APPLICATION FOR LICENSE - APPLICATION TO LIFT DISQUALIFICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to)
R.S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 811.
-----)

BY THE DIRECTOR:

On March 22, 1929, petitioner, who was then eighteen years of age, was sentenced to an indefinite term in a state reformatory. The sentence resulted from a plea of guilty to the crime of burglary in the third degree. It appears from the records received at this Division, which records are corroborated by the testimony of petitioner, that he and two companions broke into several dwelling houses and stole and carried away various articles of personal property from said houses. Petitioner remained in the penal institution until paroled on October 21, 1930.

On November 20, 1933, petitioner was placed on probation by a police magistrate on a charge of malicious mischief. On January 23, 1935, petitioner pleaded non vult to the crime of atrocious assault and battery and was placed on probation by a judge of a Court of Quarter Sessions. Petitioner testified that he and several other youths engaged in a fight and several days thereafter he was apprehended by the law enforcement authorities and charged with the crime in question.

The crime of burglary in the third degree involves moral turpitude. Re Case No. 394, Bulletin 486, Item 5. It is unnecessary, therefore, to determine whether the crime of atrocious assault and battery, under the circumstances of the case, involves moral turpitude.

Although petitioner evidently has not been convicted since 1935, he has been employed as a bartender in two liquor establishments during the past few years and also was a liquor licensee during part of the year 1947. Petitioner states that he was granted permission by the officer in charge of the "Liquor Bureau" in the city where he

resided to work in licensed premises; also that he set forth the burglary conviction in his application for liquor license, at which time he was advised by the same officer, who is now deceased, that it was unnecessary to divulge in detail the later conviction of atrocious assault and battery.

An investigation by this Division supports petitioner's contention that he did disclose the crime of burglary in the application filed by him when he obtained his liquor license. Petitioner testified that it was his understanding that since he was given permission locally to be associated with the alcoholic beverage industry no further relief was needed.

Petitioner produced three character witnesses (a certified public accountant, an employee of a large insurance company and a housewife) who testified that they have known petitioner fifteen or more years and that he bears a reputation of being a law-abiding person in the community in which he resides. The Police Department of the municipality in which petitioner lives indicates that there are no investigations or complaints pending wherein petitioner is a party.

Petitioner was a member of the armed forces for three years during the late war and served in the European theater of operations. He is now suffering from a back condition which is service connected. Petitioner is unemployed at the present time.

Normally, I would have no hesitation in granting relief in this matter since petitioner has no criminal record since 1935. What gives me slight pause, however, is the fact that while disqualified, petitioner became a licensee and also worked as a bartender in licensed premises. However, there is no evidence that petitioner deceived the local issuing authority in obtaining a license and also permission to be employed as a bartender. I believe that petitioner acted in good faith and because of his good record since 1935, shall lift his present disqualification.

Accordingly, it is, on this 8th day of December, 1949,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Director.

6. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR 16 YEARS DESPITE RECENT CONVICTION AS DISORDERLY PERSON - APPLICATION TO LIFT DISQUALIFICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R.S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 789.
-----)

BY THE DIRECTOR:

In January 1923, when petitioner was nineteen years of age, he pleaded guilty in a Court of Quarter Sessions to five charges of breaking, entering and larceny, and was sentenced to a reformatory. The crime involved moral turpitude. In December 1932 he was convicted on charges of loitering and conspiracy to rob, and was sentenced to a County Penitentiary for sixty days. In March 1943 he was convicted in a Court of Quarter Sessions on a charge of atrocious assault and battery. As a result thereof he was sentenced to serve eighteen months in a County Penitentiary but, after serving one month of his sentence, the operation thereof was suspended and he was placed on probation for three years. Petitioner has not been convicted of any crime since April 1943.

At the hearing herein three witnesses who have known petitioner for a period of more than five years testified that, during the time they have known him, he has conducted himself in a law-abiding manner. The Chief of Police of the municipality in which he resides has certified that no complaints or investigations concerning petitioner are pending.

Despite the fact that petitioner has not been convicted of any crime during the past five years, it is necessary for him to show that he has conducted himself in a law-abiding manner during that period and that his association with the alcoholic beverage industry will not be contrary to public interest. In April 1947 a Police Recorder found petitioner guilty of a disorderly conduct charge and ordered him to pay a \$100.00 fine and costs and to make restitution to a complainant. At the hearing petitioner testified that during 1947 he was engaged in the business of repairing electrical appliances, and that while so engaged he became involved in an argument with two women customers who alleged that he had damaged a washing machine and a refrigerator. As a result of this argument he was arrested, found guilty of disorderly conduct, and ordered to make restitution to the owner of the refrigerator.

The conviction as a disorderly person appears to be a single lapse during the last sixteen years. His conviction as a disorderly person does not constitute a conviction of a crime. Re Case No. 65, Bulletin 193, Item 11. I do not believe that this single lapse -- not a crime, and in itself not serious -- overcomes petitioner's otherwise clear record since 1943, and the favorable testimony of his character witnesses. Re Case No. 46, Bulletin 299, Item 9; Re Case No. 48, Bulletin 300, Item 8; Re Case No. 315, Bulletin 608, Item 5.

From the evidence I conclude that petitioner has conducted himself in a law-abiding manner during the last five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 8th day of December, 1949,

ORDERED that petitioner's statutory disqualification because of the convictions above described, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Director.

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PEDDLED FROM MOTOR VEHICLE USED AS TRAVELING LUNCH WAGON - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on)
November 2, 1949 of a quantity of)
beer, a Ford truck and various)
other articles at the intersec-)
tion of Abington Avenue and Mount)
Prospect Avenue in the City of)
Newark, County of Essex and State)
of New Jersey.)

Case No. 7532

ON HEARING
CONCLUSIONS AND ORDER

-----)

Alphonse Giordano, 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, and further pursuant to a stipulation entered into by Alphonse Giordano on November 2, 1949, to determine whether a quantity of beer, a Ford truck, and various other articles, described in the schedule attached hereto, seized on November 2, 1949 at the intersection of Abington Avenue and Mount Prospect Avenue, Newark, New Jersey constitute unlawful property and should be forfeited.

It appears that the Division of Alcoholic Beverage Control received a specific complaint that alcoholic beverages were being sold, from a motor vehicle, to employees on a construction job in the vicinity. Accordingly, ABC agents went to the place at about noon on November 2nd, observed the motor vehicle, on which there was the inscription "Jake's Lunch Wagon", parked on the highway with several workers nearby holding cans of beer. An ABC agent went to the truck and purchased a can of beer and a sandwich from a man, later identified as Alphonse Giordano, the owner of the truck. The agents then disclosed their identity.

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

The agents obtained a signed statement from Giordano in which he purports to claim that one or more workmen on the job gave him \$3.00 in advance to buy a case of beer, and that he then collected twenty cents from such of the men as came to his wagon and asked for a bottle or can of beer. He kept the difference between the cost and the money collected, amounting to \$1.80 per case, to pay for icing the beer. He admits that he sold the can of beer to the ABC agent.

Giordano was arrested by the ABC agents, who seized the truck and its contents, which included six cans of beer.

The seized beer is an illicit alcoholic beverage because it was intended for sale in violation of the Alcoholic Beverage Law. R.S. 33:1-1(i). Such illicit beer, together with the other articles in

the truck, and the truck itself, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Pending the seizure hearing in the case, the truck and its contents, excepting the six cans of beer, were returned to Alphonse Giordano upon payment of the sum of \$125.00, the appraised retail value thereof, to the Director of the Division of Alcoholic Beverage Control, under protest, pursuant to R.S. 33:1-66. Giordano has stipulated that said Director shall determine in this proceeding whether this sum shall be returned to him or forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Giordano appeared and sought return of the \$125.00.

Under R.S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has acted in good faith and has unknowingly violated the law.

Giordano does not claim ignorance of the law. He testified, "If I get caught serving beer to you fellows, I will get locked up." This confirms what has repeatedly been said; that at this late date everyone knows or should know that it is illegal to sell alcoholic beverages without a license. Apparently yielding to the importunities of the workers, Giordano took a chance and was caught. He made some profit on the sales of beer and actually sold beer to the ABC agent. Even if money was advanced to him by one or more of the workers, it was no less a sale, considering the method and manner of distributing the beer and the acceptance of payment per bottle or can. Since Giordano has not established that he unknowingly violated the law, I am compelled to deny his request for return of the \$125.00. Cf. Seizure Case No. 7145, Bulletin 783, Item 6.

Accordingly, it is DETERMINED and ORDERED that the six cans of beer constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66 and that the beer 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; and it is further

DETERMINED and ORDERED that the Ford truck and the other articles, listed in Schedule "A" attached hereto, constitute unlawful property and that the sum of \$125.00 representing the retail value of such truck and other articles returned to Alphonse Giordano, paid under protest to the Director of Alcoholic Beverage Control by Alphonse Giordano, be and hereby is forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law.

Dated: December 9, 1949.

ERWIN B. HOCK
Director.

SCHEDULE "A"

- 6 - cans of beer
- 1 - 10-gal. thermos jug
- 2 - cases of soda
- 1 - 5-gal. thermos jug
- 100 - paper containers
- 1 - wooden box
- 1 - Ford truck, Engine No. 2292617, 1949 N. J. Reg. XN1847

8. DISQUALIFICATION - GOOD CONDUCT DURING PERIOD OF FIVE YEARS SINCE APPLICANT ADVISED THAT HE WAS INELIGIBLE - APPLICATION TO LIFT DISQUALIFICATION GRANTED.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, Pursuant)
to R.S. 33:1-31.2.)

CONCLUSIONS
AND ORDER

Case No. 813.
- - - - -)

BY THE DIRECTOR:

On June 19, 1945, the Commissioner expressed the opinion that the petitioner herein was not then eligible to be employed by a liquor licensee in New Jersey because he had been convicted of the crime of conspiring to use the mails to defraud. Re Eligibility Case No. 567, Bulletin 672, Item 1.

As a result of the conviction hereinabove set forth, applicant was confined to a Federal Correctional Institution from June 14, 1944 until December 5, 1944, at which time he was released on parole. While it appears that petitioner had previously, namely, on February 9, 1939, pleaded nolo contendere in the United States District Court to a charge of violating the Volstead Act, it further appears from his fingerprint returns and from his testimony herein that he has not been arrested or convicted of any crime since December 5, 1944.

At the hearing herein petitioner testified that, since his release from the Correctional Institution, he has conducted his own business, buying and selling general merchandise, in another state. He has further testified that he has not engaged in any way in the liquor business since December 5, 1944. He now desires to be employed as a solicitor by a New Jersey wholesale licensee.

On behalf of the petitioner, four witnesses, namely, a lawyer, a contractor, a certified public accountant and a manufacturer, testified that they have known petitioner for more than five years and that he has been law-abiding during that period of time.

I find that petitioner has conducted himself in a law-abiding manner for at least five years last past, and from the evidence presented herein I conclude that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 13th day of December, 1949,

ORDERED that petitioner's statutory disqualification, because of the convictions described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Eugene and Dorothy Gardella
T/a Eugene Gardella and Company
6 River St.
Sea Bright, N. J.

Application for Limited Wholesale License filed December 8, 1949.

P. Saldutti & Son, Inc.
497 Raymond Blvd.
Newark, N. J.

Application for Transportation License filed December 8, 1949.

Joseph, Alfred, George, Walter & Charles Nash
T/a Chas. Nash & Sons - (Limited Wholesale License WL-24)
64 Hutton St.
Jersey City, N. J.

Application for additional warehouse at 176 New York Avenue,
Jersey City, N. J., filed December 9, 1949.

Arlington Transportation Co.
4809 Cottage Ave.
North Bergen, N. J.

Application for Transportation License filed December 15, 1949.

William B. Hoek

Director.

