

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

BULLETIN 733

OCTOBER 10, 1946.

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

BULLETIN 733

OCTOBER 10, 1946.

1. APPELLATE DECISIONS - GOLDBERG AND TAYLOR v. LINCOLN PARK AND MARSHALL.

HARRY A. GOLDBERG and)
MARIAN C. TAYLOR,)

Appellants,)

-vs-)

ON APPEAL
CONCLUSIONS AND ORDER

MAYOR AND COUNCIL OF THE BOROUGH)
OF LINCOLN PARK, and JOHN F.)
MARSHALL, trading as MARSHALL'S)
PACKAGE STORE,)

Respondents)
- - - - -)

Charles Gansler, Esq. and Sidney Simandl, Esq., Attorneys for
Appellants.

David Young, 3rd, Esq., Attorney for Respondent Mayor and Council.
Joseph J. Maraziti, Esq., Attorney for Respondent-licensee.

This is an appeal from the granting by respondent, Mayor and Council of the Borough of Lincoln Park, of a plenary retail distribution license to respondent, John F. Marshall, for premises on Main Street, Lincoln Park, N. J.

The appellant appeals from the action of the local issuing authority on the following grounds: (1) that the ordinance pursuant to which the license was granted to respondent was ineffective on April 10, 1946, the date when the Mayor and Borough Council approved the application submitted by Marshall, as said ordinance had merely come up for final reading on that date and immediately thereafter the governing body approved the application aforementioned; and (2) that there was no public need or convenience to be served by the issuance of the license to Marshall.

The ordinance adopted in the instant case amended Section 5 of an existing ordinance and increased the number of plenary retail distribution licenses permitted to be issued in the municipality from two to three. At a meeting of the Council on April 10, 1946, the amendment to Section 5 was approved on final reading and at the same meeting a license was issued to respondent Marshall. Publication of the adoption of the amendment to the ordinance was not made until the following day.

In substantiation of his contention that the ordinance under which the license was issued was ineffective at the time the license was issued and that the ordinance did not become effective until it was published on the following day, appellant cites the case of Newark v. Grodecki, 21 N. J. Misc. 241. In that case, Judge Hartshorne of the Essex County Court of Common Pleas, when called upon to determine the validity of a penal ordinance as amended, said, among other things, that "while the Home Rule Act does not state in so many words that the publication above alluded to (R. S. 40:49-2; N. J. S. A. 40:49-2) shall occur 'before any ordinance shall take effect,' such is its obvious intent ***". True, the publication relative to ordinances passed by a Borough Council (R. S. 40:93-2) provides that the requirements as to publication and notice of hearing shall be the same as prescribed by R. S. 40:49-2.

Commissioner Burnett stated, when called upon to pass on the acts of an illegally constituted Municipal Board of Alcoholic Beverage Control,

"However, logic must give way in this case to the fairer tests of good faith and ordinary human experience. Honest licensees, who in good faith and in reliance upon the color of apparent authority have paid the City its fees, incurred expenses, made commitments and otherwise changed their position on the faith of the licenses granted, must be properly protected. **** It would be utterly unfair under these circumstances and at this juncture either to refuse them licenses, Berkelhammer v. Trenton, Bulletin 28, Item 5, or to declare their present licenses void and to condemn good citizens as unwitting criminals. **** No punishment should or will be inflicted on honest licensees who without fault on their part have been placed in this invidious position."

Re Webster, Bulletin 40, Item 12. Also, in the matter of Re Griffin, Bulletin 117, Item 9, wherein a resolution was adopted purporting to amend an ordinance and in furtherance thereof several licenses had been issued, Commissioner Burnett said,

"Each of these licensees has acted in good faith and with reliance upon the apparent validity of his license. And now that each has made commitments and incurred expenditures, it would clearly be unfair that they should suffer or be deprived of their licenses at this late date through no fault of their own. The Township Committee should at once by resolution expressly ratify and affirm the issuance of these licenses."

In the instant case, according to records of the Department of Alcoholic Beverage Control, a resolution was adopted at a meeting of the Mayor and Borough Council of Lincoln Park on June 26, 1946, affirming and ratifying the issuance of the license for the period 1945-46 to respondent Marshall. Therefore, any defect in the original issuance of the license appears to have been remedied, causing this particular objection to become moot.

The testimony presented in the instant case shows the licensed premises of respondent Marshall to be located across the street from the licensed premises of appellant Goldberg. The contention of Goldberg, and several of appellant's witnesses, is that there is no need or necessity for an additional license in that immediate vicinity. Lincoln Park, according to the 1940 census, had a population of 2,186, and at the present time, including the Marshall license, there are three plenary retail distribution licenses and five plenary retail consumption licenses. This on its face would appear to be more than ample for the needs of the citizens of the municipality. However, it has been testified by various witnesses produced by the respondent that Lincoln Park is a resort and that during the summer season the population is increased considerably. That, of course, is a factor to be considered.

At the meeting held on April 10, 1946, three Councilmen voted to deny and three Councilmen voted to grant the application filed by respondent Marshall. Mayor Sponberg then cast the deciding vote in favor of the granting of said application.

At the hearing herein, the three Councilmen who voted to deny testified as follows: John Villorosi testified that his main objection to the issuance of the license was that it was directly across

the street from appellant Goldberg's establishment. R. Emerson Taylor testified that he voted to deny for the same reason. David Benjamin testified that he voted in favor of the ordinance increasing the number of distribution licenses by one and reducing the number of consumption licenses by one because "I didn't get the drift of the thing being changed to three distribution. It didn't soak in." He voted to deny Marshall's application. He further testified that it would suit him perfectly if there were no liquor establishments of any kind in Lincoln Park.

Frank L. Eichert, one of the Councilmen who voted to grant the application, testified that there was, in his opinion, a need for another distribution license in the municipality. Two other Councilmen who did not appear at the hearing also voted in favor of the issuance of the license to respondent Marshall. Mayor Charles Spongberg, who cast the deciding vote in favor of the issuance of the license, testified that he was of the opinion that an additional liquor license was needed in the municipality.

Admittedly, it is difficult to determine the burden of proof requisite to demonstrate that the community needs or will be more properly or conveniently served by an additional liquor store. The ultimate test, however, would be "public convenience and necessity." Colonna v. Montclair, Bulletin 39, Item 8. The premises in which respondent Marshall is conducting his business are located in the business section of the town. This fact, no doubt, was one of the factors taken into consideration by the majority of the members of the local issuing authority when the license was approved.

My function on appeals of this type, however, is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and if so to affirm, irrespective of my personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; North End Tavern, Inc. v. Northvale, Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

Under all the circumstances, the appellants have not sustained the burden of proof in establishing that respondent Mayor and Council abused its discretionary power in granting a license to respondent Marshall. Therefore, I cannot hold that the action of the respondent Mayor and Council is so unreasonable as to require reversal of its action. The action of the Mayor and Council must be affirmed.

Accordingly, it is, on this 1st day of October, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

2. ELIGIBILITY - COMMERCIALIZED GAMBLING UNDER FACTS OF CASE FOUND TO INVOLVE MORAL TURPITUDE - APPLICANT HELD INELIGIBLE TO HOLD A LIQUOR LICENSE OR TO BE EMPLOYED BY A LIQUOR LICENSEE.

October 7, 1946.

Re: Case No. 587

Applicant, who seeks a ruling as to his eligibility to be connected with or employed by a holder of a liquor license in this State, was convicted in May of 1945 for the violation of a municipal ordinance against gambling and fined \$50.00 and costs.

In March, 1946, he was tried in a Court of Quarter Sessions and found guilty by a jury on indictments for maintaining a "gambling house" and "bookmaking", in violation of R. S. 2:135-3. Thereupon he was sentenced to pay a fine of \$1,000.00 and to serve sixty days in a County Jail. This conviction appears to be the result of a raid conducted in October, 1945, on a poolroom operated by the applicant. On one floor of the poolroom there was in progress a card game in which applicant was participating. Some \$300.00 or \$400.00 was involved in the game. On another floor of the building, bookmaking on horse races was being conducted. From the nature of the indictment and the finding of guilt by a jury, it would appear applicant was engaging in gambling in a commercial way. Commercialized gambling is a crime which ordinarily involves moral turpitude. Re Case No. 239, Bulletin 305, Item 9. Regarding questions and explanations, Bulletin 2, Item 8.

Applicant testified that he is innocent of the crime; that the real operator of the business was the man who was taking the horse bets. However, his conviction cannot be collaterally attacked in these proceedings. Re Case No. 236, Bulletin 279, Item 2.

It is obvious from the record that the applicant was the principal in the illegal enterprise. This, coupled with the fact that he previously paid a fine on a gambling charge, warrants the conclusion that the crime of which applicant was convicted in 1946 is a crime involving moral turpitude, within the meaning of R. S. 33:1-25.

I recommend that applicant be advised that he is not eligible to hold a liquor license in this State or to be employed by or connected in any business capacity whatsoever with the holder of such a license, within the meaning of R. S. 33:1-25, 26.

Edward F. Hodges
Attorney.

APPROVED:
ERWIN B. HOCK
Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR A PERIOD OF 15 DAYS.

In the Matter of Disciplinary
Proceedings against

ANDREW BOSHART
T/a CAVERN POINT TAVERN
784-86 Garfield Avenue
Jersey City 5, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-
tion License C-378, issued by
the Board of Commissioners of the
City of Jersey City.

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

Defendant pleads non vult to a charge alleging that he possessed a 4/5 quart bottle of "Carstairs White Seal Blended Whiskey", which contained an alcoholic beverage not genuine as labeled, in violation of R. S. 33:1-50.

During an inspection of the defendant's premises on August 23, 1946, an ABC agent tested thirty-one bottles of the open stock of liquor in defendant's premises and seized the bottle in question. Subsequent analysis by the chemist employed by the Department of Alcoholic Beverage Control disclosed that the contents of the seized bottle varied substantially in acids and solids from the contents of a genuine bottle of the same product.

Defendant denied any knowledge of the violation. However, the licensee must be held strictly responsible for any refills found in his stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendant has no previous adjudicated record. I shall, therefore, suspend defendant's license for a period of fifteen days. Cf. Re Rudolph, Bulletin 680, Item 1.

Accordingly, it is, on this 7th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-378, issued by the Board of Commissioners of the City of Jersey City to Andrew Boshart, t/a Caven Point Tavern, for premises 784-86 Garfield Avenue, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days. In accordance with notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

4. ACTIVITY REPORT FOR SEPTEMBER, 1946.

ARRESTS: Licensee and employees - - - - - 2 Bootleggers - - - - - 9
Total number of persons arrested - - - - - 11

SEIZURES:
Motor vehicles - trucks - - - - - 2
Brewed malt beverages - gallons - - - - - 48.82
Distilled alcoholic beverages - gallons - - - - - 1.21
Illicit alcohol - gallons - - - - - 1.00
Wine - gallons - - - - - 55.21
Mesh - gallons - - - - - .94

RETAIL LICENSEES:
Total number of premises inspected - - - - - 914
Total number of premises where alcoholic beverages were gauged - - - - - 875
Total number of bottles gauged - - - - - 13,264
Total number of premises where violations were found - - - - - 168
Total number of violations found - - - - - 297
Type of violations found:
Unqualified employees - - - - - 59 Probable fronts - - - - - 6
Gambling devices - - - - - 51 Prohibited signs - - - - - 2
Regulations No. 38 sign not posted - - - - - 32 Price pamphlet not displayed - - - - - 2
Illicit liquor - bottles - - - - - 30 Improper beer taps - - - - - 1
Disposal permit necessary - - - - - 13 Other violations - - - - - 3
Other mercantile business - - - - - 8

STATE LICENSEES:
Premises inspected - - - - - 15
License applications investigated - - - - - 13

COMPLAINTS:
Complaints assigned for investigation - - - - - 375
Complaints investigated, reviewed and closed - - - - - 397
Investigations completed - not closed administratively - - - - - 3
Investigations assigned, not yet completed - - - - - 145

LABORATORY:
Analyses made - - - - - 104
"Shake up" cases (alcohol, water and artificial color) - bottles - - - - - 8
Liquor found to be not genuine as labeled - bottles - - - - - 25

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - 9
Persons fingerprinted for non-criminal purposes - - - - - 199
Identification contacts made with other enforcement agencies - - - - - 183
Motor vehicle identifications via N.J. State Police Teletype - - - - - 5

DISCIPLINARY PROCEEDINGS INSTITUTED:
Cases transmitted to municipalities - - - - - 18
Violations involved:
Sale during prohibited hours - - - - - 9 Hostesses - - - - - 1
Sale to minors - - - - - 5 Improperly labeled beer taps - 1
Unqualified employees - - - - - 2 Lewdness - - - - - 1
Fraud in application - - - - - 1
Cases instituted by Department (1 case also involving cancellation proceedings*) - - - - - 22
Violations involved:
Illicit liquor - - - - - 10 Minor holding more than
Fraud and front - - - - - 6 10% of stock* - - - - - 1
Purchase from improper source - - - - - 3 Sale contrary to condition
Sale outside scope of license - - - - - 2 in permit - - - - - 1
Unqualified employees - - - - - 3 Sale during prohibited hours - 1
Improper transportation - - - - - 1 Sale to minors - - - - - 1
Sale under Fair Trade - - - - - 1

Cases brought by municipalities on own initiative and reported to Department - - - - - 4
Violations involved:
Brawls - - - - - 2 Sales to minors - - - - - 2

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held - - - - - 49
Appeals - - - - - 20 Seizures - - - - - 5
Disciplinary proceedings - - - - - 16 Applications for license - 3
Eligibility - - - - - 5

PERMITS ISSUED:
Total number of permits issued - - - - - 783
Employment - - - - - 152
Solicitors - - - - - 82
Social affairs - - - - - 253
Disposal of alcoholic beverages - - - - - 144
Special wine - - - - - 65
Miscellaneous permits - - - - - 87

ERWIN B. HOCK
Deputy Commissioner

5. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1946 THROUGH SEPTEMBER 30, 1946

ARRESTS:

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
Licensees and employees	0	4	2	6
Bootleggers	23	14	9	46

SEIZURES:

Stillis - under 50 gallons	2	0	0	2
over 50 gallons	1	0	0	1
Motor vehicles - cars	1	1	0	2
trucks	7	1	2	10
Alcohol - gallons	388.33	1.10	1.00	390.43
Brewed malt alcoholic beverages (beer, ale, etc.) - gallons	277.82	185.99	48.82	512.63
Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons	407.29	16.47	1.21	424.97
Wine - gallons	198.21	7.60	35.21	241.02
Mash - gallons	6.2	0	.94	7.14

RETAIL LICENSEES:

Total number of premises inspected	1380	1084	914	3378
Total number of premises where alcoholic beverages were gauged	550	674	875	2099
Total number of bottles gauged	8539	7622	13264	29425
Total number of premises where violations were found	157	101	168	426
Total number of violations found	217	133	207	557
Type of violations found:				
Unqualified employees	51	58	59	168
Regulations #38 sign not posted	74	17	32	123
Illicit liquor - bottles	36	24	30	90
Labeling devices	0	0	51	51
Price pamphlet not displayed	23	8	2	33
Disposal permit necessary	7	7	13	27
Probable fronts	7	7	6	20
Prohibited signs	12	2	2	16
Improper beer taps	4	6	1	11
Other mercantile business	1	1	8	10
Other violations	2	3	3	8

STATE LICENSEES:

Premises inspected	2	3	45	50
License applications investigated	33	23	13	69

COMPLAINTS:

Complaints assigned for investigation	509	344	375	1228
Complaints investigated, reviewed and closed	336	438	397	1171
Investigations completed - not closed administratively	54	5	3	62
Investigations assigned, not yet completed	173	190	145	508

LABORATORY:

Analyses made	84	177	104	365
"Shake up" cases (alcohol, water and artificial coloring)	6	18	8	32
Liquor found to be not genuine as labeled - bottles	17	46	25	88

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made	17	31	9	57
Persons fingerprinted for non-criminal purposes	316	228	199	743
Identification contacts made with other enforcement agencies	351	228	183	762
Motor vehicle identifications via N.J. State Police teletype	9	36	5	50

DISCIPLINARY PROCEEDINGS INSTITUTED:

Cases transmitted to municipalities	11	20	18	49
Violations involved:				
Sale during prohibited hours	5	4	9	18
Sale to minors	2	4	5	11
Mislabeled beer taps	0	7	1	8
Bookmaking	2	3	0	5
Unqualified employees	1	0	2	3
Gambling (cards)	1	1	0	2
Sale to non-members by club	1	1	0	2
Gambling (numbers)	1	0	0	1
Noise	0	1	0	1
Fraud in application	0	0	1	1
Hostesses	0	0	1	1
Lewdness	0	0	1	1

DISCIPLINARY PROCEEDINGS INSTITUTED: (Cont'd)

	July 27	Aug. 21	Sept. 22	Total 70
Cases instituted at Department				
Violations involved:				
Illicit liquor	10	11	10	31
Fraud and front	3	5	6	14
Purchase from improper source	8	1	3	11
Sale outside scope of license	4	0	2	7
Sale to minors	1	2	1	4
Unqualified employees	1	0	3	4
Sale during prohibited hours	2	0	1	3
Hindering investigation	2	0	0	2
Storage off licensed premises	1	1	0	2
Issuance in excess of quota	0	2	0	2
Brawls	1	0	0	1
Slot machines	1	0	0	1
Gambling (numbers writing)	0	1	0	1
Improper transportation	0	0	1	1
Minor holding more than 10% of stock	0	0	1	1
Sale contrary to condition in permit	0	0	1	1
Sale under Fair Trade	0	0	1	1
Mislabelled beer taps	1	0	0	1
Cases brought by municipalities on own initiative and reported to Department	5	5	4	14
Violations involved:				
Sale to minors	1	2	2	5
Brawls	1	0	2	3
Sale during prohibited hours	1	2	0	3
Business conducted as a nuisance	1	0	0	1
Inadequate view into premises during closing hours	1	0	0	1
Persons of ill repute	1	0	0	1
Licensee working while drunk	1	0	0	1
Bookmaking	0	1	0	1
CANCELLATION PROCEEDINGS INSTITUTED:	0	2	1	3
Violations involved:				
Issuance in excess of quota	0	2	0	2
Minor holding more than 10% of stock	0	0	1	1
HEARINGS HELD AT DEPARTMENT:				
Total number of hearings held	51	66	49	166
Appeals	12	18	20	50
Disciplinary proceedings	18	26	16	60
Eligibility	9	8	5	22
Seizures	7	13	5	25
Applications for license	5	1	3	9
PERMITS ISSUED:				
Total number of permits issued	4807	1053	783	6643
Solicitors	2185	90	82	2357
Employment	1606	265	152	2023
Social affairs	221	322	253	796
Disposal of alcoholic beverages	152	216	144	512
Special Wine	29	12	65	106
Miscellaneous permits	614	148	87	849

Erwin B. Hock
Deputy Commissioner

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - FALSE STATEMENT IN
LICENSE APPLICATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR A
PERIOD OF 25 DAYS.

In the Matter of Disciplinary)
Proceedings against)

MILTON G. RIPPON)
Warwick Turnpike)
West Milford Township)
P. O. Hewitt, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-31, issued by the)
Township Committee of the Township)
of West Milford.)
-----)

Milton G. Rippon, Defendant-licensee, Pro se.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic
Beverage Control.

Defendant has pleaded non vult to the following charge:

"On August 22, 1946 you possessed illicit alcoholic bever-
ages at your licensed premises, viz., one 4/5 quart bottle
labeled 'Canadian Club Blended Canadian Whisky', which
bottle contained alcoholic beverages not genuine as labeled;
such possession being in violation of R. S. 33:1-50."

On August 22, 1946, an investigator employed by the Department
of Alcoholic Beverage Control seized the bottle mentioned in the
charge when it appeared from his preliminary test that the contents
thereof were not genuine as labeled.

Subsequent analysis by a chemist employed by the Department of
Alcoholic Beverage Control disclosed that the contents of the seized
bottle were not genuine as labeled because the solids were too high
and the acids too low for this brand of whiskey.

In mitigation, defendant alleges that he did not tamper with the
contents of the seized bottle; that he operates a restaurant and bar
and that it would not be to his advantage to attempt to substitute
one whiskey for another. He states that he believes a bartender com-
mitted the violation. In any event, the licensee is responsible for
any "refills" found in his stock of liquor. Re Kurian, Bulletin 517,
Item 2.

Defendant has also pleaded non vult to a supplemental charge
that in his application filed for the current fiscal year he falsely
denied that he had ever been interested in any license which was sus-
pended, said false statement being in violation of R. S. 33:1-25.
Defendant alleges that the failure to reveal his prior suspension was
inadvertent and states that said suspension was revealed in his first
application filed for a license in the Township of West Milford on
March 2, 1945. Investigation discloses that the conviction was
revealed by defendant in his application filed on March 2, 1945.
Under the circumstances, it is probable that the local issuing au-
thority was not misled by the failure to disclose the conviction in
his application filed for the current fiscal year. Nevertheless,
licensees must learn to answer frankly and fully all questions in the
application.

Defendant has a prior record. In 1943 he pleaded non vult to
charges which allege that he had concealed the interest of other per-
sons in a license which he then held in Paterson, New Jersey.
Re Rippon, Bulletin 600, Item 9.

Under all of the circumstances in this case, and in view of the plea entered, I shall suspend defendant's license for a period of twenty-five days.

Accordingly, it is, on this 7th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-31, issued by the Township Committee of the Township of West Milford to Milton G. Rippon, Warwick Turnpike, West Milford Township, be and the same is hereby suspended for twenty-five (25) days.

Pursuant to order of August 23, 1946, Bulletin 727, Item 12, the effective date of said suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of the Seizure on)	Case No. 7021
July 25, 1946, of fourteen cases)	
of beer and an Oakland sedan, on)	
Main Street, near Holmes Street,)	ON HEARING
in the Town of Belleville, County)	CONCLUSIONS AND ORDER
of Essex and State of New Jersey.)	
-----)		

Abe W. Wasserman, Esq., Attorney for Stanley Harubin.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether 14 cases of beer and an Oakland sedan, seized on July 25, 1946, on Main Street, Belleville, N. J., constitute unlawful property and should be forfeited.

Stanley Harubin, the owner of the sedan, was employed in the shipping department of the Hoffman Beverage Company, a licensed beer distributor located in Newark. On July 25, 1946, allegedly having need for beer at the christening of his child, he made an arrangement with a truck driver employed by the Hoffman Company whereby, when loading the truck with beer for deliveries, he (Harubin) placed 14 extra cases of beer on the truck without the knowledge or consent of his employer. The truck driver concealed these cases of beer behind a meadowland fence in Ridgefield Park, N. J.

When deliveries for the day were completed, the truck driver met Harubin and both men went to Ridgefield Park in Harubin's Oakland sedan. There the truck driver pointed out the place where the beer was concealed. The beer was then loaded into Harubin's sedan and he and his companion were on their way back to Newark when the car broke down in Belleville. Belleville police officers who came upon the scene seized the car and beer and detained Harubin when he failed to give a satisfactory explanation of the presence of the beer in his car.

The State Department of Alcoholic Beverage Control was notified of these events, and on the next day ABC agents questioned Harubin and the truck driver, who gave them signed statements containing a detailed account of their above mentioned activities.

The car and the beer were then turned over to this Department and Harubin was arrested on charges of unlawful possession and transportation of alcoholic beverages and his companion was arrested on

similar charges, as well as the additional charge of aiding and abetting Harubin to commit such violations.

The Oakland sedan was not licensed by the State Department of Alcoholic Beverage Control to transport alcoholic beverages, and the quantity exceeded that permitted to be transported for personal consumption without a license or permit. Hence, aside from the improper manner in which Harubin obtained the beer, it was transported unlawfully. R. S. 33:1-2.

By reason of such unlawful transportation, the beer is illicit. R. S. 33:1-1(i). Illicit alcoholic beverages and the vehicle in which they are transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-36.

Pending a seizure hearing in the case, the Oakland sedan was returned to Stanley Harubin upon payment, under protest, of the sum of \$50.00, the appraised retail value of the car, to the State Commissioner of Alcoholic Beverage Control, pursuant to R. S. 33:1-66. Harubin has stipulated that the Commissioner shall determine in this proceeding whether this money shall be returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66, Harubin appeared with counsel and sought return of the \$50.00. The Hoffman Beverage Company advised that it desired return of the beer.

Under R. S. 33:1-66(e) and (f), I have discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and either (1) unknowingly violated the law personally, or (2) had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

It is obvious that the Hoffman Beverage Company is entirely innocent in the matter. The 14 cases of beer will be returned to it after the criminal proceedings in the case have been terminated.

Harubin stands on a different footing. He misappropriated the beer with full knowledge that it was unlawful conduct. Clearly, the element of good faith is absent in any such illegal enterprise, and this in itself is sufficient to warrant denial of the return of the money. See Seizure Case No. 6882, Bulletin 694, Item 4. Furthermore, Harubin, when transporting the beer in an unlicensed vehicle, knew that he was violating the law governing transportation of alcoholic beverages. He was employed by the distributor for about six years, loading beer on trucks. He was familiar with transportation insignia issued by this Department, observed many such insignia on delivery trucks at the distributor's premises, and admits that he knew that these insignia evidenced a license to transport alcoholic beverages in such trucks.

Harubin's loss of his employment and of the \$50.00 which he deposited is the natural consequence of his misdeed. It does not, as he claims, impose an undue hardship upon him, and does not warrant relieving him of forfeiture of the money. For the reasons herein expressed, Harubin's application for the return of the \$50.00 is denied.

Accordingly, it is DETERMINED and ORDERED that the Oakland sedan described in Schedule "A" attached hereto constitutes unlawful property and that the sum of \$50.00 representing the retail value of such car, paid under protest to the State Commissioner of Alcoholic Beverage Control by Stanley Harubin, be and hereby is forfeited in

accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK
Deputy Commissioner.

Dated: October 9, 1946.

SCHEDULE "A"

- 1 - 1929 Oakland Sedan, Serial No. 252254, Engine No. 265267, bearing 1946 New Jersey Registration JH 35 T.

8. DISCIPLINARY PROCEEDINGS - EXERCISING THE RIGHTS AND PRIVILEGES OF LICENSE PRIOR TO ACQUISITION THEREOF - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 10 DAYS.

In the Matter of Disciplinary Proceedings against

NADERAY INCORPORATED
Ocean Avenue & West End Avenue
Long Branch, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of Long Branch.

Defendant-licensee, by Michael F. Reilly, Secretary-Treasurer.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded non vult to a charge alleging that, between April 2, 1946 and July 16, 1946, in violation of R.S. 33:1-26, it exercised the rights and privileges of a license issued to James DeSalvio.

The file in this case discloses that on April 2, 1946, James DeSalvio obtained a transfer to himself of an existing plenary retail consumption license. Defendant was thereafter incorporated and one-third of its shares was issued to James DeSalvio, who was also elected President of defendant corporation. The remaining two-thirds of its shares was issued to other individuals. The license was renewed for the current fiscal year in the name of James DeSalvio but was transferred, on July 16, 1946, from him to defendant corporation. However, during the period between April 2, 1946 and July 16, 1946, defendant corporation operated the business under the license issued to and standing in the name of James DeSalvio.

Correction of the illegal situation appears to have been made as of July 16, 1946. Nevertheless, a suspension must be imposed for violation of the law.

Defendant has no prior record. Hence, I shall suspend its license for a period of ten days. Re LaBarba, Bulletin 709, Item 14.

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

ORDERED, that Plenary Retail Consumption License C-50, issued by the Board of Commissioners of the City of Long Branch to Naderay Incorporated, for premises at Ocean Avenue & West End Avenue, Long Branch, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. October 15, 1946, and terminating at 2:00 a.m. October 25, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. APPELLATE DECISIONS - MILLER AND THOMPSON v. UPPER TOWNSHIP.

VICTOR MILLER and JACK THOMPSON,
trading as BEESLEY'S POINT HOTEL,

Appellants,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF UPPER,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

Albert M. Ash, Esq., Attorney for Appellants.
Charles A. Bonnell, Esq., Attorney for Respondent.
Augustus S. Goetz, Esq., Attorney for Objectors.

This is an appeal from the denial by respondent of appellant's application for a plenary retail consumption license for premises known as Beesley's Point Hotel.

The petition of appeal recites that the action of respondent was erroneous because public convenience and necessity warrant the granting of the application for a license. The answer filed by respondent alleges that the issuance of a license to appellant would violate the provision of a Township ordinance limiting the number of plenary retail consumption licenses, and also denies that there is a necessity for such a license at the present time in the Township of Upper.

The evidence herein shows that since June 15, 1940, a local ordinance has been in effect limiting the number of plenary retail consumption licenses to four. At the present time five plenary retail consumption licenses are in existence in the township. These five licenses remain in effect because they had been originally issued prior to June 15, 1940, and the ordinance mentioned above provided that it would not "prevent the renewal of plenary retail consumption licenses outstanding at the time of the adoption of this limitation." It should be noted, however, that the ordinance also provides that no new plenary retail consumption license should be issued until the number outstanding was reduced by surrender, revocation or non-renewal to less than four. No license has been issued to any premises operated as a hotel.

While the ordinance remains in effect, it is binding upon the Township Committee. Bachman v. Phillipsburg, 68 N. J. L. 552. Appellants, however, contend that the ordinance is unreasonable in its application to the present case because appellants operate a hotel and there is need for a licensed hotel in the community. Appellants further argue that the Commissioner of Alcoholic Beverage Control has the power, under R. S. 33:1-41, to set aside the provisions of an ordinance where they are unreasonable. The New Jersey Supreme Court has expressed doubt as to the power of the Commissioner to set aside the provisions of an ordinance. See Phillipsburg v. Burnett, 125 N. J. L. 157. In any event, the power would not be exercised unless it clearly appeared that the ordinance was unreasonable in itself or as applied to appellants.

A careful reading of the record and of the appellants' brief clearly indicates that they rely almost entirely on the fact that the proposed licensed premises is a fifty-sleeping-room hotel and that public convenience and necessity require the granting of the license sought. Appellants recently purchased the property which, according to the records, has never been licensed. Alterations to the buildings have been made with the object of making it a hotel having fifty sleeping rooms. The facts that it is a hotel with fifty sleeping

rooms, and that no other hotel in the township has a license, do not in themselves constitute reasons for reversal. As recently pointed out in Hosts, Inc. v. Point Pleasant Beach, Bulletin 732, Item 2, the test is "public necessity and convenience" -- not whether a given place is a hotel or not. Lincoln Ave. Corporation v. Wildwood, Bulletin 540, Item 2.

There is little, if any, evidence as to the need of an additional license in the Township of Upper. The township, according to the 1940 Federal census, has a population of 1,620. It is a resort town and during the summer has a population of 6,000 to 7,000, but the summer visitors reside principally in a section of the township known as Strathmere, which is located about ten miles from Beesley's Point Hotel. If appellants were to depend solely upon the local population, it is quite probable that they would, as one witness expressed it, "starve to death". It is apparent that they intend to depend principally on transient trade, but the evidence indicates that transients may be adequately serviced by the existing licenses in the Township of Upper and those located in Somers Point, which is a short distance away. As indicated above, the township already has one consumption license for each 324 inhabitants.

The record also shows that on June 10, 1946, after appellants' application was filed, there was introduced, and passed on first reading by a vote of two-to-one, an amendment to the existing ordinance whereby the existing numerical limitation of four plenary retail consumption licenses would be continued in effect but which amendment also contained the following clause:

"***provided, however, that there shall be no restrictions which shall prevent the issuance of a new plenary retail consumption license to a person who operates a hotel containing fifty (50) sleeping rooms or who may hereafter construct and establish a new hotel containing at least fifty (50) sleeping rooms."

After a public hearing held upon the proposed amendment to the ordinance, the amendment failed of final passage and adoption on June 24, 1946, by a vote of two-to-one. Appellants allege that the committeeman who voted in favor of the amendment at the first reading thereof, and who subsequently voted against the final passage of the amendment, did so because of "pressure from a small group of members of the Seaville M. E. Church and the Women's Christian Temperance Union." The record shows that the public hearing was attended by a large number of citizens, and that approximately 70% of those present opposed the adoption of the amendment. Under the circumstances, it seems probable that the township committeeman was influenced by public sentiment, but there is absolutely no evidence of any improper influence by anyone or any evidence that the township committeeman was improperly motivated in voting against the final passage of the amendment.

A careful reading of the record fails to show any evidence that respondent acted arbitrarily or unreasonably in denying the appellants' application for a license. The action of respondent is, therefore, affirmed. Current v. Fredon, Bulletin 184, Item 1.

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

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

ERWIN B. HOCK
Deputy Commissioner.

10. APPELLATE DECISIONS - RUSS v. LOGAN TOWNSHIP.

GLADYS M. RUSS,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF LOGAN,

Respondent

ON APPEAL
CONCLUSIONS AND ORDERHendrickson & Wick, Esqs., by Robert C. Hendrickson, Esq.,
Attorneys for Appellant.

J. Edward McGlinchy, Esq., Attorney for Respondent.

Appellant appeals from denial of her application for a plenary retail distribution license for premises located on the west side of State Highway 44, also known as Crown Point Road, in the Township of Logan.

Respondent asserts that the application was properly denied because (1) it was against public opinion as evidenced by a petition filed by the residents of the township opposing the issuance of any additional liquor license of any type, and (2) that the present retail consumption licensee operating in the township could properly supply and service the citizens of the community with alcoholic beverages without the issuance of the additional license applied for.

Respondent Township is an extensive rural community with a population, as disclosed by the 1940 census, of 1630. Although no plenary retail distribution license has been issued in the township, respondent has issued one plenary retail consumption license, the holder of which has the privilege of selling alcoholic beverages for off-premises consumption as well as for on-premises consumption. Appellant has no building at the present time but stated that "As soon as we get out license we have hopes of putting the building up."

At the hearing below, a petition with 67 names thereon opposing the issuance of the license was presented to the Township Committee and three persons appeared and voiced objections. The application for the license was denied by unanimous vote of the Township Committee. Harry C. Haines, Chairman of the Township Committee, testified that he voted in opposition to the issuance of the license because of the expression of public sentiment against the issuance of an additional license. Gilbert Rostaing, a member of the Township Committee, testified, "We have a saloon that takes care of the wants and the needs of our population." He added further that he voted to deny the application for three reasons: (1) no building; (2) through public sentiment, an application by a veteran for a consumption license had recently been denied, and (3) material that could be used in a house for a GI must be used in the proposed building. Foster Hunt, another township committeeman, testified that the reason he voted to deny the application of appellant was because of "the sentiment of the people of the community."

Erwin R. Russ, husband of the petitioner (and a member of the New Jersey State Police) testified, in an attempt to show a need or convenience to be served by the issuance of an additional license, that it was his opinion that "a number of people will not go into a barroom to buy liquor or beer and would go into a package store".

No one has a right to demand a license. A license to sell alcoholic beverages is a special privilege granted to the few and denied to the many. In Paul v. Gloucester County, 50 N. J. L. 585, 596, the Court of Errors and Appeals, in an opinion delivered by Mr. Justice Van Syckel, stated:

"We will probably, *** be led into error if we reason upon this subject as we may in respect to those pursuits which are open to all on the mere payment of a license fee."

The observation of Mr. Justice Van Syckel made in 1888 in the Paul case, supra, applies with full force today.

No testimony was presented in the instant case which would indicate that necessity or convenience of the citizens of the community required the issuance of an additional license. The contention that a package store should be permitted in the township because it is unreasonable to compel a person to enter a tavern to purchase bottled liquor is without merit. Boody v. Gloucester, Bulletin 300, Item 11; Iacovone v. Gloucester, Bulletin 644, Item 4; Becker v. Fair Haven, Bulletin 713, Item 3.

Although the point was not raised at the hearing herein, the evidence indicates that appellant's husband may have an interest in the license sought by her. No license may be issued to any person engaged in the enforcement of the law. In any event, the Alcoholic Beverage Law, except in certain cases not here important, vests in the governing board or body of each municipality the responsibility for administering the issuance of retail distribution licenses within their respective municipalities. R. S. 33:1-19; R. S. 33:1-24. The decision of a local issuing authority denying an application for a new license should not be reversed in the absence of clear and convincing proof that the decision below was arbitrary or unreasonable.

The appellant has not shown that the action of respondent was arbitrary and contrary to the best interests of the community at large, or motivated by anything but an honest and sound exercise of discretion.

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

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

ERWIN B. HOCK
Deputy Commissioner.

11. STATE LICENSES - NEW APPLICATIONS FILED.

Joseph Stanziale and Albert A. Manganelli
T/a Best Wines

5906 Hudson Blvd., West New York, N. J.

Application filed October 4, 1946 for transfer of Plenary Winery License V-30 from Joseph Stanziale, t/a Best Wines.

Roma Wine Company

150 Bay St., Jersey City, N. J.

Application filed October 7, 1946 for Plenary Wholesale License.

Louis A. Hucker, Jr., t/a Overpeck Beverage Distributors

195 Bergen Pike, Ridgefield Park, N. J.

Application for State Beverage Distributor's License filed October 10, 1946.

Erwin B. Hock
Deputy Commissioner.

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