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

BULLETIN 331 JULY 12, 1939.

1. SPECIAL PERMITS - REVOKED FOR VIOLATION OF LAW SUBSEQUENT TO ISSUE - HEREIN OF THE WEARING OF THE SWASTIKA.

In the Matter of the)
Special Permit)
heretofore issued to) ON ORDER TO SHOW CAUSE
AUGUST KLAPPROTT) CONCLUSIONS

For the State: Emerson A. Tschupp, Esq.,
For the Licensee: Wilbur V. Keegan, Esq.

BY THE COMMISSIONER (orally on July 6, 1939 at the close of argument):

The first question raised one of jurisdiction in that the statute, Chapter 98 of the Laws of 1939, does not specifically delegate to me any authority to enforce it. That is true of a great many laws which I have enforced in the State of New Jersey for the last five years. If murder or rape occur on licensed premises, action is quickly taken by this Department. There is nothing in the law about gambling, vice or immorality which specifically delegates it to me to enforce, but the point is that the law is going to be enforced in licensed premises in the State of New Jersey whether there is any specific delegation or not. I therefore rule that I have jurisdiction in the premises.

The issues have been fairly presented by both sides and it has been a delight to sit in a case where the procedure has been orderly and intelligent.

The big thing is whether the law which became effective on June 26, has been violated at Camp Nordland. Klapprott has had a liquor license for the last two years. When he applied for a renewal, the Township Committee received objections and set a date for hearing, but the hearing took so long that they could not possibly complete the case until after the fiscal year expired on June 30. In order that his rights might be preserved, pending a decision, I granted a special permit. In line with the usual practice the permit provides on its face that it might be cancelled by the Commissioner in his absolute discretion at any time without notice or assignment of reason. In spite of that reserved power, the power has never been arbitrarily exercised. It has always been upon notice and an opportunity to be heard. The question before me now is, "Should it be cancelled?", and that in turn depends upon whether the laws of the State of New Jersey have been violated.

The statute has two effective parts: Section 1, subdivision a, makes it unlawful for any person to appear in the

public view attired in a uniform similar to that worn by the military or semi-military or storm troopers or other official or semi-official forces of any foreign state, or to be attired in any distinctive part of such uniform or to assemble in any place with other persons similarly attired.

You will note that it does not say "identical".

Now, I am sitting as a judge. The question is not whether the Legislature should have passed it. That is a question to address to the Legislature. The law as written says that it is unlawful to appear in a similar uniform. Sub-division b makes it unlawful to be attired in such a uniform and to "imitate" the drill formations and salutes. Once again it is not "identity", it is "similarity."

Now the witness, Macfarland, testified that the uniform, as he saw it on the 4th at Nordland consisted of a gray shirt, sometimes brown, black trousers or leggings, Sam Brown belt and black overseas cap, and that was tested up with many different uniforms set forth in this red book, the organization book of the National Socialist Party of Germany.

I say right here that there is no question of propaganda, no question of crime involved or any incitement to riot. The one question to which I confine myself is whether this statute was violated.

The witness Kunze pointed out on these various tables in the red book all these different uniforms in use in Germany and he said that there was a definite, distinct attempt to avoid any similarity in the uniform used by the Bund in this country. Now, I do not agree that that is any reason for looking askance at what he says, as suggested by counsel for the State. I think that is a proper thing to do, that is, to try to avoid such similarity. The real question, however, is not whether they tried to avoid, but whether they did avoid.

Now, on table two there are two men, and as I looked at the pictures of those two men, I found that each one had on his uniform a swastika. Table three the same thing. So with tables four, twelve and fourteen. In table twenty-three the man had a swastika, but the woman did not. In table twenty-four two of them had the swastika on. In tables thirty-one and thirty-two, which showed four people, three out of four had it. In table thirty-four each of them had it. In tables forty-seven and forty-eight, showing four uniforms, three out of four had it. So without going through the long list I find that on all of these uniforms, with the exception of overcoats or capes, that there is one common factor -- that the distinctive thing which stands out, whatever the type of the uniform, is the swastika.

Now, it was brought out in evidence that this arm band of the O. D. has at its very top a swastika. The uniforms that are presented in that book are different. Each varies from the other and each of them varies from the precise form of uniform of the O.D. such as was worn at Camp Nordland, but each one of them bears the common factor of the swastika.

In exhibit S-4, in this picture of George Washington, in this pulpit right in the central prominent part you find engraved there or cut in stone a swastika. Each of the participants carrying the American flag also carried a swastika on his arm band; and each

one of them carrying the O.D. flags, such as the one of Hudson County, has on his arm band a swastika, and even on the flag itself there is a swastika.

Now, if I see the hammer and the sickle, I think of Russia. If I see a bunch of fagots and the hatchets, I think of Italy. If I see the swastika, I do not think about Indians, I think about Germany. If I saw soldiers or sailors or marines of our own, they would all have on different uniforms and they would all look entirely different. Their uniforms may be distinctly different but they may have a common factor. If I find on their arm bands the stars and stripes, then I know at once they are from the United States of America and it would not make any difference whether they were on foot, on horseback, on a tank, or on a gun boat. Then I know that they pull together. So with the swastika. That's where the similarity comes in.

Again, the statute says an "imitation" of a salute. The salute which was given here this morning in Court was admitted to be the exact salute which is given in Germany and which I saw with my own eyes just about four years ago in the city of Danzig.

I find, therefore, that the statute was violated at Camp Nordland on July 4th as to Sections a and b and therefore, in the exercise of the same discretion by which I granted the special permit, I now and hereby revoke it because of such violation.

This decision is without prejudice to the case on the merits. That is still open to be fought out. All I am doing is withdrawing the special permit to operate without a license. That is revoked forthwith. That is all.

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on May 22, 1939 of a Chevrolet coach and a quantity of alcohol, in the vicinity of and at 119 Broome St., in the City of Newark, County of Essex and State of New Jersey.	ON HEARING CONCLUSIONS AND ORDER

No Appearances.

On May 22, 1939, Police Officers of the City of Newark observed the arrival of James Cuva's Chevrolet coach in the vicinity of 119 Broome Street, and the delivery of a quantity of alcoholic beverages from the vehicle to an apartment house at the Broome Street address. Some of the officers entered the building and found two five-gallon cans and two one-gallon jugs of alcohol in a vacant apartment, and a five-gallon can of alcohol on the roof of the building. Other officers apprehended Philip Galiano, the driver of the vehicle, after he had endeavored to escape.

Since the various cans and jugs in which the alcohol was contained bore no Federal tax stamps or other indication that said alcohol was tax paid, and further, since the motor vehicle was not licensed to transport alcoholic beverages, the officers seized the vehicle and alcohol as unlawful property under the provisions of R.S. Title 33, Chapter 1.

Thereafter the motor vehicle and the alcohol were turned over to this Department and a hearing was duly held to determine whether such articles should be confiscated. No one appeared at the hearing to contest the proceedings.

The absence of Federal tax stamps on the jugs and cans of alcohol, transported in the vehicle, raises a presumption that the alcohol is illicit. Under the statute, illicit alcohol, and the vehicle used in its transportation are subject to confiscation. No cause is here shown why confiscation should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:1-66 and shall be retained for the use of hospitals and State, County and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 5, 1939.

3. MINORS - STATE REGULATIONS DO NOT PROHIBIT PRESENCE OF MINORS ON LICENSED PREMISES - MINORS MAY NOT BE SOLD OR SERVED ALCOHOLIC BEVERAGES.

CONSUMPTION LICENSEES - ALCOHOLIC BEVERAGES MAY BE SOLD BY THE GLASS ONLY FOR CONSUMPTION ON THE LICENSED PREMISES - WITH THE EXCEPTION OF DRAUGHT BEER WHICH MAY BE SOLD BY THE PAIL OR PAPER CARTON TO TAKE HOME, ALL ALCOHOLIC BEVERAGES GOING OFF THE PREMISES MUST BE IN THE ORIGINAL SEALED CONTAINER.

Dear Sir:

I would like some information regarding the following situations:

A party drove his car onto a licensed liquor place. He ordered two beers for two people in the car, who were of age. However, in their car is a person who is not of age. Does this constitute a violation because of the minor in the car?

Also, a car is parked across the street and out of sight. A person from the car who is of age comes in for two beers and walks out with them. Is the licensee liable if the other party in the car is not of age?

Yours truly,
Fred W. Lippner

July 5, 1939

Mr. Fred W. Lippner,
Perth Amboy, N. J.

My dear Mr. Lippner:

Rule 1 of Regulations No. 20 (Pamphlet Rules, page 61), pertaining to minors, provides:

"1. No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years.....or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

As regards your first hypothetical situation, presuming the car to be on the licensed premises, I see no violation. It does not appear from the facts, as stated, that any beer was sold, served or delivered to the minor, or consumed by him on licensed premises. The mere presence of the minor in the car, with two adults drinking beer, is not prohibited. It is permissible to serve adults, notwithstanding they are accompanied by a minor. It is not permissible, under Rule 1, to sell, serve or deliver to, or allow beer to be consumed on the premises by the minor.

As regards your second hypothetical situation, it is all wrong. Licensees have no authority to serve beer or any other alcoholic beverage by the glass for consumption off the premises. Taverns may sell by the glass only for consumption on the premises. All alcoholic beverages going off the premises must be in the original, sealed container with the single exception that draught beer may be sold by the pail or paper carton, to take home. But to sell beer by the glass to be consumed in automobiles standing at the curb or across the street is contrary to the terms of the license and cause for its revocation.

Licensees may very well be held accountable for sales made to adults under circumstances which would reasonably lead one to believe that the beverage was intended for a minor. That is very dangerous business. The only safe course for licensees to follow is to have nothing whatsoever to do with such transactions.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

4. STATE BEVERAGE DISTRIBUTORS - FURNISHING OF EQUIPMENT - NOT PERMISSIBLE TO LOAN COOLERS EITHER TO RETAILERS OR TO CONSUMERS.

STATE BEVERAGE DISTRIBUTORS - HOURS OF SALE - EFFECT OF MUNICIPAL REGULATION OF HOURS ON WHOLESALE AND RETAIL SALES, AND EXTENT APPLICABLE.

Dear Sir:

Would you be so kind as to answer two questions in regards to State Beverage Distributors?

First: Is it possible for a distributor to lend one of his accounts a cooler for the summer season, for outdoor picnics, or must the cooler be delivered with each order?

Second: Must a distributor keep closed on Sunday, according to the rules of the town in which he is located?

Very truly yours,
Berkeley Beverage Co., Inc.

July 5, 1939

Berkeley Beverage Co., Inc.,
Watchung, N. J.

Gentlemen:

(1) It is not clear whether the cooler is to be loaned to retailers or to consumers.

The Act prohibits wholesalers from being directly or indirectly interested in retail establishments or businesses. R. S. 33:1-43. The Regulations Governing Equipment, Signs and Other Advertising Matter (Regulations No. 21, Pamphlet Rules, page 64) forbid wholesalers from directly or indirectly furnishing, delivering, servicing or repairing any fixtures, equipment, signs or other advertising matter to or for retail licensees, except as expressly permitted by the Rules. There is no provision in the Rules for loans of coolers. Tapping accessories, such as rods, taps, hose, pressure regulators, etc. may be furnished, but not in excess of $20.00 worth for each retail premises in any one year. Rule 1(b).

Regulations 20, Rule 20, provides that no retail licensee shall directly or indirectly furnish any gifts or similar inducements with the sale of alcoholic beverages for off-premises consumption, excepting only advertising novelties of nominal value. A state beverage distributor has both wholesale and retail privileges. He is, in part, a retail licensee. Hence, in retail sales he is governed by this rule. A cooler is not an advertising novelty of nominal value. It follows that the furnishing of coolers to consumers is prohibited by the rule.

It is not permissible for state beverage distributors to lend coolers either to retailers or to consumers.

(2) Whether or not a state beverage distributor must keep closed on Sunday, according to the rules of the municipality in which he is located, depends entirely on the provisions of those rules and the manner of enactment. See by way of illustration Re Buck, Bulletin 309, Item 1; Re Kotok Beverage, Inc., Bulletin 260, Item 15, and the items therein cited. According to my records, the hours regulation of the Borough of Watchung, in resolution adopted by the Council on November 10, 1938, provides:

> ".....that the sale of beers, wines or other liquors for public consumption either on or off the licensed premises shall be and it hereby is prohibited during the following hours:
>
> "From 2:00 o'clock A.M. to 8:00 o'clock A.M. prevailing time, Monday to Saturday inclusive.
>
> "From 2:00 o'clock A.M. to 12:00 o'clock noon prevailing time on Sunday."

The regulation does not require that any premises shall be closed. It declares merely that during certain hours sales are prohibited. That means all retail sales. It must be obeyed by you as a state beverage distributor, so far as applicable. Hence, you may not sell to consumers in the Borough of Watchung during these hours. It has no effect, however, upon wholesale sales

and, therefore, does not prevent sales to retailers, or sales to consumers during these hours in other municipalities than the Borough of Watchung provided such sales are permissible under the regulations of the other municipality.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

5. DISCIPLINARY PROCEEDINGS - GAMBLING - PAY-OFF ON BAGATELLE MACHINE.

In the Matter of Disciplinary Proceedings against

ANTHONY FABIANO,
T/a Blue Bird Tavern,
112 Orange St.,
Newark, N. J.,

Holder of Plenary Retail Consumption License C-341, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Mario V. Farco, Esq., Attorney for Licensee.
Richard E. Silberman, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The licensee has pleaded guilty to the charge of allowing cash awards to be paid to persons obtaining winning scores on a bagatelle machine in violation of Rule 7 of State Regulations 20.

The usual penalty for this violation is five days.

By entering this plea in ample time before the day fixed for hearing, the Department has been saved the time and expense of proving its case. The license will, therefore, be suspended for three (3) days instead of five (5) days.

Subsequent to the institution of these proceedings, the above mentioned license has expired and has been renewed by the issuance of Plenary Retail Consumption License C-209.

Accordingly, it is, on this 5th day of July, 1939,

ORDERED, that Plenary Retail Consumption License C-209, heretofore issued to Anthony Fabiano, T/a Blue Bird Tavern, by the Municipal Board of Alcoholic Beverage Control of the City of Newark, be and the same is hereby suspended for a period of three (3) days, effective July 8, 1939 at 3:00 A.M. (Daylight Saving Time).

D. FREDERICK BURNETT,
Commissioner.

6. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure of a number of still parts at premises occupied by Leola Moore, located on Park Avenue, New Brunswick Highlands, in the Township of Piscataway, County of Middlesex and State of New Jersey.

On Hearing
CONCLUSIONS and ORDER

No Appearances.

Investigators of this Department seized, as unlawful property under the provisions of R. S. Title 33, Chapter 2, a number of unregistered still parts, consisting of a copper cooker and two coolers with copper coils, which they found in Leola Moore's home on Park Avenue, New Brunswick Highlands, Piscataway Township.

At a hearing duly held to determine whether the still parts should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, unregistered still parts are subject to confiscation and in addition a padlocking penalty may be imposed upon the premises in or upon which they are found. No cause is here shown why confiscation and padlocking should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

It is the Commissioner's further order that the dwelling occupied by Leola Moore on Park Avenue, New Brunswick Highlands, Piscataway Township, in the County of Middlesex and State of New Jersey, being the building in which the unregistered still parts were found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing 5th day of August, 1939, and terminating the 5th day of February, 1940.

Dated: July 5, 1939.

D. FREDERICK BURNETT,
Commissioner.

7. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK ORDERED.

In the Matter of the Seizure, on May 26, 1939, of a still on a farm occupied by Matthew Smith, located on the Evesham Road, near Hollywood Tabernacle Road, in the Township of Delaware, County of Camden and State of New Jersey.	On Hearing CONCLUSIONS and ORDER

No Appearances.

On May 26, 1939, investigators of this Department discovered an unregistered alcohol distillery being operated in a dwelling occupied by Matthew Smith on a farm located on Evesham Road, near Hollywood Tabernacle Road, in the Township of Delaware. They seized the still equipment, appurtenant paraphernalia, and a quantity of illicit alcohol (described in Schedule "A" annexed hereto) as unlawful property under the provisions of R.S.Title 33, Chapter 2.

At a hearing duly held to determine whether the seized articles should be confiscated and the premises padlocked, no one appeared to contest the proceedings.

Under the statute, an unregistered still and articles used or adaptable for use in connection therewith are subject to confiscation and, in addition, a padlocking penalty may be imposed upon the premises in or upon which such still is found. No cause is here shown why confiscation and padlocking should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R.S.Sec.33:2-5, and shall be retained for the use of hospital and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

It is further ordered that premises occupied by Matthew Smith located, on Evesham Road, near Hollywood Tabernacle Road, in the Township of Delaware, County of Camden and State of New Jersey, including all the buildings erected thereon, being the premises on which the illicit still was found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 5th day of August, 1939, and terminating the 5th day of February, 1940

Dated: July 5, 1939.

D. FREDERICK BURNETT,
Commissioner.

SCHEDULE "A"

1 - copper cooler
1 - copper cooker
1 - copper gooseneck
1 - set copper coils
1 - copper preheater
1 - cast iron stove base
2 - steel drums
19 - 50 gallon barrels with mash
17 - gallons alcoholic beverages
Miscellaneous personal property

8. APPELLATE DECISIONS - CONEY v. WAY.

VALERIA W. CONEY,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS
HONORABLE PALMER M. WAY, JUDGE OF THE COURT OF COMMON PLEAS IN AND FOR CAPE MAY COUNTY, and ISSUING AUTHORITY,)
Respondent)

Robert Bright, Esq. and Powell and Parker, Esqs., by Harold T. Parker, Esq., Attorneys for Appellant.
John E. Boswell, Esq., Attorney for Objectors.
No appearance for Respondent.

BY THE COMMISSIONER:

Appellant appeals from denial of a plenary retail consumption license for premises located at Roosevelt Boulevard and 34th Street, Marmora, Upper Township, Cape May County.

Appellant has held a plenary retail distribution license for the premises in question since April 1, 1938. She plans to alter her building and there to operate a restaurant, for which she seeks the present license.

The application was filed on February 15, 1939, denied on March 1, 1939 and hearing on the appeal was held on May 12, 1939.

It is unnecessary to consider the merits of the original objections because the statute hereinafter mentioned is dispositive of the case.

P. L. 1939, Chapter 61, approved May 22, 1939 and effective immediately provides:

> "1. No new plenary retail consumption license shall be issued within any municipality situate within a county of the sixth class unless and until the ratio of such licenses issued and outstanding to the population within a municipality shall be less than one such license to every five hundred persons resident within said municipality as determined by the last preceding Federal census."

The record shows that four plenary retail consumption licenses have been issued and are now outstanding in Upper Township. While the evidence given at the hearing on appeal shows that the estimated population of Upper Township is now 3,500, the population of said Township according to the United States census for the year 1930 was 1,657. The ratio of plenary retail consumption licenses to the population in Upper Township is, therefore, more than one to every five hundred persons residing within said municipality as determined by the last preceding Federal census. Hence, the issuance of the license as applied for is prohibited by the statute.

The fact that the application was made and the license denied before the statute became effective is immaterial. The statute forbids the issuance of a license, and there is no clause to save pending applications. The question is, not what might have been done, but, rather, whether the license may be issued now. Cf. Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1. The statute forbids the issuance of the license applied for under the circumstances of this case, and that is dispositive of the appeal herein. Re Sanders Cohen, Bulletin 325, Item 9.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 5, 1939.

9. APPELLATE DECISIONS - BARKEY v. PARSIPPANY-TROY HILLS.

ANDREW BARKEY,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF PARSIPPANY-TROY HILLS TOWNSHIP,
Respondent
- - - - - - - - - - - - - - - - - -
JAMES MAGNOTTA and JOSEPH PASCARELLI,
Appellants,
-vs-
TOWNSHIP COMMITTEE OF PARSIPPANY-TROY HILLS TOWNSHIP,
Respondent
- - - - - - - - - - - - - - - - - -

ON APPEAL
CONCLUSIONS

Philip D. Elliot, Esq., Attorney for Appellants.
John H. Grossman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

These appeals were consolidated for hearing and determination because the issue in both cases is the validity of an ordinance hereafter considered.

Appellant Andrew Barkey appeals from the denial of a plenary retail consumption license for premises located on Halsey Street about five hundred (500) feet from Chesterfield Road, in Lake Parsippany, in the Township of Parsippany-Troy Hills.

Appellants James Magnotta and Joseph Pascarelli, who own the above described premises, appeal from the denial of said license to Andrew Barkey.

On June 28, 1937, the Township Committee of the Township of Parsippany-Troy Hills adopted an ordinance to Regulate the Licensing for Sale and Sale of Alcoholic Beverages. Section 5 thereof provided:

> "No Plenary Retail Consumption License shall hereafter be issued within fifteen hundred (1500) feet of each other, except as follows:
>
> "(a) Plenary Retail Consumption Licenses presently outstanding, may be renewed.
>
> "(b) Plenary Retail Consumption Licenses presently outstanding, may be transferred to another person and renewed by the transferee.
>
> "(c) Premises presently licensed under Plenary Retail Consumption License, may be relicensed, in the event that the license issued for such premises shall expire, be revoked or surrendered, provided application is made within three months of such expiration, revocation or surrender."

Subdivision "c" of Section 5 of said ordinance has since been amended by inserting the words "surrendered or transferred" instead of the words "or surrendered", and adding the words "or transfer", but otherwise Section 5 of said ordinance remains in full force and effect.

It has been stipulated by and between the attorneys in this case that an outstanding consumption license which had been issued for the premises in question was surrendered to the Township Committee on October 10, 1938.

In passing it should be noted that, according to the records of this Department, the Falkenberg license was surrendered by Nathan Robins, Receiver for Irving Falkenberg, bankrupt, to the Township Committee which, on October 24, 1938, adopted a resolution accepting the surrender, cancelling the license and ordering refund to said receiver. There is grave question as to the legal right of a Receiver in Bankruptcy to surrender a license unless the licensee consents to such action or the issuing authority first extends the license to the Receiver. Re Dallavalle, Bulletin 312, Item 7; Re Ewing, Bulletin 312, Item 13; Re Hausman, Bulletin 324, Item 10. However, the stipulation admits the fact that the Falkenberg license was surrendered to the Township Committee on October 10, 1938 and raises no question of its legal sufficiency. It is, therefore, not in issue.

It is further stipulated that the application of Andrew Barkey was not filed until March 2, 1939, or more than three months after the surrender; that the premises in question are within four hundred (400) feet of another place licensed for on-premises consumption.

Hence, applying the terms of the ordinance and so long as it remains unaltered, no new consumption license may be issued

for the premises in question. Hudson Bergen County Liquor Stores, Inc. v. Loris and West New York, Bulletin 254, Item 10; Atlantic City Licensed Beverage Association v. Adelman, Bulletin 296, Item 6.

Appellants, however, have the right to test the reasonableness of said ordinance on appeal.

The real issue, therefore, on which this case was fought out, is whether this ordinance is unreasonable in itself or as applied to appellants.

As to the ordinance itself: Ordinarily a policy designed to avoid congestion of taverns is reasonable. Re Lee, Bulletin 232, Item 8, and cases therein cited. In the absence of evidence to the contrary, the provision that no new plenary retail consumption license may thereafter be issued within fifteen hundred feet of an existing place holding a similar license appears to be a reasonable regulation. The three month period which subdivision (c) of Section 5 allows to landlords within which they may obtain a new tenant after a license has expired or been revoked, surrendered or transferred, would also appear in and of itself to be reasonable. Some such time limit should be established, and three months would appear to be amply reasonable in the ordinary case. Thus, for example, I tentatively approved a period of fifteen days of grace for those seeking renewals of licenses, beyond which date all applications would be considered as applications for new licenses. Re Bayonne, Bulletin 216, Item 3. On the evidence adduced, I find that the present ordinance is reasonable in itself.

As to whether said ordinance is unreasonable and confiscatory as applied to appellants: Appellant James Magnotta testified that these premises were built for tavern purposes; that appellant Joseph Pascarelli held a consumption license therein from 1937 to February 1938, at which time his license was transferred to Irving Falkenberg; that Falkenberg renewed his license in July 1938, but later went into bankruptcy; that, on October 10, 1938, the Falkenberg license was surrendered to the Township Committee by his Trustee (actually, as aforesaid, by his Receiver) in Bankruptcy without any notification thereof being given to Magnotta, who claims that, in January 1939, he heard for the first time that the license had been so surrendered and that he received this information from a real estate agent during the course of his negotiations with appellant Andrew Barkey. There is, however, no provision in the ordinance requiring that notice of surrender of a license be given by the Township Committee to the owner of the property. The owner is not, therefore, legally entitled to actual notice of said surrender. If it be argued that such owner is equitably entitled to some type of notice of said surrender before the three month period shall begin to run, I am, without conceding the point, satisfied that Magnotta's knowledge of Falkenberg's bankruptcy, which he acquired prior to November 10, 1938, was constructive notice to him that, at that time, the license might have been or thereafter might be transferred or surrendered. Yet he did nothing for over three months. The fact that a landlord lost a tenant is indeed a misfortune but that may happen to any landlord. The moment the landlord learned that his tenant was in financial difficulties - in fact, a bankrupt - it behooved him to take action lest the local ordinance bar him from getting another tenant with a liquor license. Under the circumstances, I find the ordinance reasonable as applied to appellant. No question of confiscation is involved herein because no one is entitled to a license or entitled to have his premises licensed as a matter of right.

This case works a hardship, especially in view of the fact that Andrew Barkey is qualified, and that a vacancy exists in the ordinance limiting the number of licenses. However, the policy of spreading consumption licenses for the general welfare of the community must prevail over the private interests of the appellants herein.

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 6, 1939.

10. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK DENIED.

In the Matter of the Seizure of a still at 516 Robinson Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey.)

ON HEARING
CONCLUSIONS AND ORDER

Appearances:

Henry Taub, Pro Se.

Investigators of this Department discovered an unregistered alcohol still in a dwelling at 516 Robinson Avenue, Atlantic City. The still equipment, and a quantity of mash fit for the distillation of alcoholic beverages (described in Schedule "A" annexed hereto), were seized as unlawful property under the provisions of R.S. Title 33, Chapter 2.

A hearing was duly held to determine whether the seized articles should be confiscated and the premises padlocked. Henry Taub, the owner of the realty, sought to avoid padlocking of the premises and his affidavits were accepted in lieu of his personal appearance at the hearing. Forfeiture of the seized articles was not contested.

Under the statute, an unregistered still and articles used or adaptable for use in connection therewith are subject to confiscation and, in addition, a padlocking penalty may be imposed upon the premises in or upon which the still is found. No cause is here shown why confiscation should not result in the instant case, but the Commissioner is satisfied from the proof presented that the premises should not be padlocked.

Henry Taub's affidavits set forth, in effect, that on December 28, 1938, he rented the premises to Bessie Taylor for residential purposes; that he visited the premises on a number of occasions to collect the rent, but did not observe any activities to indicate the presence of the still; and that he had no knowledge of its presence. After the hearing, Henry Taub advised that he had evicted Bessie Taylor from the premises.

No evidence has been presented to implicate Henry Taub in the illicit still activities. In view of the foregoing, good cause appears why the padlocking penalty should not be imposed.

Accordingly, it is the Commissioner's determination and order that the seized property constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, and shall be retained for the use of hospitals and State, County and municipal institutions, or may be destroyed in whole or in part at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: July 7, 1939

SCHEDULE "A"

1 - 25 gallon copper cooker
1 - 5 gallon iron cooler with copper coil
1 - gas burner
1 - receiving tank
4 - 5 gallon containers (empty)
1 - 5 gallon wooden filter
13 - 50 gallon barrels with mash
Miscellaneous personal property

11. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure of)
25 - 5 gallon cans of alcohol)
at premises owned by Elizabeth) ON HEARING
Jiannotti, located on West) CONCLUSIONS AND ORDER
Boulevard, in the Township of)
Franklin, County of Gloucester)
and State of New Jersey.)

No Appearances.

On April 4th, 1939, New Jersey State Troopers discovered twenty-five five-gallon cans of alcohol in a barn on Elizabeth Jiannotti's farm located on West Boulevard, in the Township of Franklin. Since the cans bore no Federal tax stamps, or other indication that the alcohol was tax paid, they seized such alcohol as unlawful property under the provisions of R. S. Title 33, Chapter 1.

Thereafter the alcohol was turned over to this Department and a sample analyzed by the department's chemist, who found it fit for beverage purposes, having an alcoholic content of 44.55% by volume.

At a hearing duly held to determine whether the alcohol should be confiscated, no one appeared to contest the proceedings.

The absence of Federal tax stamps on the cans raises a presumption that the alcohol is illicit. Under the statute, illicit alcohol is subject to confiscation and no cause is here shown why confiscation should not result in the instant case.

Accordingly, it is the Commissioner's determination and order that the alcohol constitutes unlawful property, is forfeited in accordance with the provisions of R. S. Sec. 33:1-66, and shall

be retained for the use of hospitals and State, county and municipal institutions or may be destroyed in whole or in part at the direction of the Commissioner.

Dated: July 7, 1939

D. FREDERICK BURNETT,
Commissioner.

12. APPLICATION FOR AGE, RESIDENCE OR CITIZENSHIP PERMIT - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

July 7, 1939

Case No. 282

Applicant, not being a resident of New Jersey for five years last past, applied for permit to be allowed to work, despite his lack of five years' residence, as a bartender for a liquor licensee in this State. Hearing was held to determine whether he was disqualified from obtaining such permit by reason of conviction of a crime involving moral turpitude. R. S. 33:1-25, 26.

Applicant was, on his plea of non vult, convicted in August 1937 of having committed bigamy in New Jersey. In penalty, he was sentenced to jail for one to one and one-half years, and served nine months of that term, being then released on parole.

Applicant testified that he was born in October 1886; that he married in 1909 and had five children of this marriage; that he lived with his wife in Pennsylvania until May 1935 when, because of incompatibility, he left her; that thereafter, in January 1936, he met a thirty-eight year old widow in New Jersey, represented himself to her as being single, went through the ceremony of marriage with her in October of that year, and lived with her as man and wife; that the woman first learned that the "marriage" was bigamous about three months thereafter; that she, though at first advising that the bigamy be kept secret, later threatened to tell the police; that, because of such threats and being afraid of getting in "hot water", he left her in March 1937. He admits that, when "marrying" the widow, he knew his real wife was still living.

Where a married man fraudulently induces an innocent woman into a bigamous "marriage" with him, the element of moral turpitude is present. It was so held in Whitty v. Weedin, 68 Fed. (2d) 127 (CCA 9, 1933).

Since the crime of bigamy, of which applicant was convicted in 1937, hence involves moral turpitude, it is unnecessary here to determine whether the crime of passing worthless checks, of which he was also apparently convicted in August 1937, involves that same element.

It is recommended that applicant be, by reason of having been convicted of a crime involving moral turpitude, declared disqualified from holding a liquor license or working for a liquor licensee in this State, and that his application for permit, therefore, be denied.

Nathan Davis,
Attorney-in-Chief.

Approved:

D. Frederick Burnett

Commissioner.