

Commissioner Hock  
Sent to Regular Mailing List

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

BULLETIN 760

MAY 1, 1947.

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

BULLETIN 760

MAY 1, 1947.

1. LICENSE CERTIFICATE - DISPLAY OF ON LICENSED PREMISES - REGULATIONS  
NO. 20, RULE 16 PROMULGATED.

For good and obvious reasons it is important that all retail license certificates be conspicuously displayed on the licensed premises. A number of New Jersey municipalities have included in their alcoholic beverage regulations a requirement that retail licensees post their license certificates. In thirty-eight of our states such posting is required by law or by State regulations. Heretofore it was not deemed necessary to have in New Jersey a state-wide regulation on the subject since retailers, generally, made a practice of prominently displaying their license certificates so that all persons coming upon the licensed premises might readily see that the place was duly licensed and in whose name or names. Recently, however, certain retailers, becoming careless in this regard, have failed altogether to keep their licenses posted or have posted them in an obscure place where they could be seen and read either not at all or only with great difficulty. Accordingly, the following Rule 16 of State Regulations No. 20 is hereby promulgated, effective May 15, 1947:

"REGULATIONS NO. 20

"Rule 16. Each retail licensee shall cause the current license to be at all times conspicuously displayed on the licensed premises in such plain view as to be easily read by all persons visiting such premises."

Violation of the foregoing rule shall be cause for suspension or revocation of the license.

Dated: April 28, 1947.

ERWIN B. HOCK  
Commissioner.

2. TAX - NEW STATE TAX INCREASE AND ITS APPLICATION TO MINIMUM RESALE  
PRICES - RULING AS TO PRICE-ADVERTISING MODIFIED.

A review of the informal lists of wholesale prices filed by wholesalers with the Department to become effective on May 1st reveals that in most instances, the full profit on the new State tax increase has been rescinded. Manifestly, it would be inconsistent to continue to compel retailers who price-advertise brands in newspapers, periodicals or circulars to add a profit to the State tax increase when retailers are not charged the full markup on the tax by the wholesalers.

Accordingly, my ruling of March 21, 1947, wherein retailers were prohibited from price-advertising brands listed in Fair Trade unless such advertised prices included the new State tax increase plus markup, is herewith modified, effective May 1st, to permit retailers to price-advertise any brand listed in Fair Trade pamphlets at the listed price plus the new State tax increase, with or without a profit markup on the tax.

The modified ruling will remain in full force and effect until the effective date of the next complete Fair Trade publication on June 3, 1947.

ERWIN B. HOCK  
Commissioner.

Dated: April 28, 1947.

3. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )

ARCHIE A. McNEW )  
 T/a ARCHIE'S SEAFOOD TAVERN )  
 568 North Broadway )  
 Gloucester City, N. J., )

CONCLUSIONS  
 AND ORDER

Holder of Plenary Retail Consump- )  
 tion License C-8 issued by the )  
 Common Council of the City of )  
 Gloucester City. )  
 - - - - - )

Archie A. McNew, Defendant-licensee, Pro Se.  
 William F. Wood, Esq., appearing for Department of Alcoholic  
 Beverage Control.

BY THE COMMISSIONER:

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

On January 24, 1947, an investigator of the State Department of Alcoholic Beverage Control seized one 4/5 quart bottle labeled "Gold Bar Extra Quality Martin's Original V.V.O. Brand Special Liqueur Blended Scotch Whisky", one 4/5 quart bottle labeled "Highland Queen Grand Liqueur Blended Scotch Whisky", one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky", and one 4/5 quart bottle labeled "Black & White Blended Scotch Whisky", when his preliminary field tests disclosed that the contents of said four bottles were not genuine as labeled. Subsequent analysis by the Department's chemist disclosed that said bottles had been refilled, or partially refilled, with an alcoholic beverage other than described on the labels of the respective bottles.

The licensee claims that he did not personally participate in the illegal refilling and had no knowledge thereof. This, however, is no defense. The mere possession is sufficient to warrant the charge. Cf. Cedar Restaurant and Cafe Co. v. Hock, 135 N.J.L. 156.

The licensee has no prior adjudicated record. I shall suspend the license for the minimum period indicated in four-bottle cases -- twenty days -- and remit five days because of the plea (Re Hubbard, Bulletin 753, Item 6), leaving a net suspension of fifteen days.

Accordingly, it is, on this 21st day of April, 1947,

ORDERED that Plenary Retail Consumption License C-8, issued by the Common Council of the City of Gloucester City to Archie A. McNew, t/a Archie's Seafood Tavern, for premises 568 North Broadway, Gloucester City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. April 28, 1947, and terminating at 2:00 a.m. May 13, 1947.

ERWIN B. HOCK  
 Commissioner.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR  
TRADE MINIMUM - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
Proceedings against )

CELIA MININSOHN )  
T/a LAKEWOOD LIQUOR STORE )  
129 East Fourth Street )  
Lakewood, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Distri- )  
bution License D-10 issued by the )  
Township Committee of the Township )  
of Lakewood. )  
----- )

Harold Feinberg, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge of selling alcoholic bev-  
erages below the established Fair Trade price, in violation of Rule 6  
of State Regulations No. 30.

On March 12, 1947, an investigator of the Department of Alco-  
holic Beverage Control purchased at defendant's premises a 4/5 quart  
bottle of Brugal Rum for \$3.50. The minimum retail price of said  
item as established in Bulletin 751, effective March 3, 1947, was  
\$3.92.

Defendant has no previous adjudicated record. Where a licensee  
has no prior adjudicated record and the violation does not appear to  
be an aggravated one, a minimum suspension of the license for a  
period of ten days is imposed. Re Brotman, Bulletin 741, Item 7. I  
shall suspend defendant's license for ten days, less five days'  
remission for the plea, making a net suspension of five days.

Accordingly, it is, on this 22nd day of April, 1947,

ORDERED that Plenary Retail Distribution License D-10, issued  
by the Township Committee of the Township of Lakewood to Celia  
Mininsohn, t/a Lakewood Liquor Store, for premises 129 East Fourth  
Street, Lakewood, be and the same is hereby suspended for five days;  
commencing at 2:00 a.m. April 28, 1947, and terminating at 2:00 a.m.  
May 3, 1947.

ERWIN B. HOCK  
Commissioner.

5. DISCIPLINARY PROCEEDINGS - "FRONT" - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - GAMBLING AND GAMBLING DEVICES ON LICENSED PREMISES - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH PROVISION THAT RENEWAL SHALL NOT BECOME OPERATIVE UNTIL SUSPENSION OF 100 DAYS HAS BEEN SERVED.

In the Matter of Disciplinary  
Proceedings against

ROSE VIRGINIA PIRONE  
4704 Park Avenue  
Weehawken, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump-  
tion License C-15 issued by the  
Township Committee of the Township  
of Weehawken.

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Morris Rosenberg, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) that she fraudulently concealed the interest of Frank Pirone in the licensed business, in violation of R. S. 33:1-25; (2) that she aided and abetted the said Frank Pirone (a non-licensee) to exercise the rights and privileges of her license, in violation of R. S. 33:1-52; and (3) that she allowed, permitted and suffered gambling and gambling devices on her licensed premises, in violation of Rule 7 of State Regulations No. 20.

From the evidence before me I conclude that Frank Pirone was and is the real owner of the business operated under the license held by his wife, Rose Virginia Pirone. There is a claim that the actual reason for the subterfuge was because of an alleged rule of Frank's employer that would prevent him from operating a tavern while so employed. However, it appears that Frank is disqualified from holding a liquor license in New Jersey because of his conviction of a crime involving moral turpitude. See R. S. 33:1-25, which provides in part: "No retail license shall be issued....to any person who has been convicted of a crime involving moral turpitude."

As to the third charge: There can be no doubt that gambling was permitted on the licensed premises on each of the three days alleged in the charge. In fact, Frank Pirone participated in at least one of the games of poker. As a further element of the "gambling" permitted on the licensed premises, the defendant had installed in the premises a penny game of chance in which the very occasional winner was "paid off" with a drink "on the house".

It is clear that defendant is guilty of all the charges.

From the information before me it appears that the "front" concealed the interest of a person disqualified by reason of a criminal record and permitted the operation of a licensed business by a person so disqualified. It is obvious that Frank Pirone benefited directly by reason of the violations of the law described in the first two charges and actually participated in the violation described in the third charge. He obviously cannot be held to have been a law-abiding person during the last five years and his disqualification cannot at this time be removed. R. S. 33:1-31.2. See Re Case No. 255, Bulletin 597, Item 7.

The minimum penalty in "front" cases where the real party in interest is disqualified because of a conviction of crime involving moral turpitude is ninety days. Re Schwarck and Figone, Bulletin 630, Item 13. In the instant case, however, we must also consider the "gambling" charge. The license will be suspended for an additional period of ten days (fifteen days, less five for the plea) because of the violations set forth in charge (3).

I shall, under all the circumstances, suspend the license for a period of one hundred days. However, as there is not enough time left in the current licensing period for the full service of this penalty, I shall suspend the license for the balance of its term and order that any license issued in renewal of said license shall not become operative until the full period of suspension is served.

Accordingly, it is, on this 22nd day of April, 1947,

ORDERED that Plenary Retail Consumption License C-15, issued by the Township Committee of the Township of Weehawken to Rose Virginia Pirone, for premises 4704 Park Avenue, Weehawken, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. April 28, 1947; and it is further

ORDERED that, if a transfer of said license is effected to a duly qualified person prior to June 30, 1947, such transferee may apply for a renewal thereof prior to July 30, 1947, but the renewed license, if and when issued to said transferee, shall remain under suspension until 2:00 a.m. August 6, 1947.

ERWIN B. HOCK  
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGE  
TRANSPORTED IN MOTOR VEHICLE - LIQUOR AND CAR ORDERED FORFEITED.

In the Matter of the Seizure on	)	Case No. 7098
February 19, 1947, of a gallon	)	
jug of alcohol and a Chevrolet	)	
coupe in the vicinity of	)	ON HEARING
841 Bridge Avenue, in the City of	)	CONCLUSIONS AND ORDER
Camden, County of Camden and State	)	
of New Jersey.	)	

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

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a gallon jug of alcohol and a Chevrolet coupe, seized on February 19, 1947 in the vicinity of 841 Bridge Avenue, Camden, New Jersey, constitute unlawful property and should be forfeited.

In the early morning hours of February 19, 1947, Camden police authorities notified an ABC agent that they had information that Lawrence Hall, a repeated violator of the Alcoholic Beverage Law, was about to obtain alcoholic beverages and transport them to 841 Bridge Avenue, Camden, New Jersey.

Accordingly, a Camden police officer and the ABC agent stationed themselves in the vicinity of the above address and shortly thereafter the coupe, owned and driven by Hall, arrived there. In the car the officers found a gallon jug of alcohol, without tax stamps or any other indication of tax payment.

The jug of alcohol and the coupe were seized by the ABC agent, and Hall was arrested on a charge of possessing and transporting illicit alcoholic beverages. Hall, who was convicted in November 1940 and July 1946 of violating the liquor laws and fined \$100.00 on each occasion, has since pleaded guilty to the charges in the instant case and was fined \$200.00 and sentenced to imprisonment for six months.

The alcohol was analyzed by the Department's chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcohol content of 44.50% by volume. The alcohol is prima facie illicit because of the absence of tax stamps or other indicia of tax payment on the jug. R. S. 33:1-1(i), R.S. 33:1-88.

Illicit alcohol and the vehicle in which it is transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, no one appeared to contest forfeiture of the alcohol and Chevrolet coupe.

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

ERWIN B. HOCK  
Commissioner.

Dated: April 22, 1947.

SCHEDULE "A"

- 1 - gallon jug of alcohol
- 1 - Chevrolet coupe, N. J. 1946  
registration CK 833, Serial #2Gall  
6696, Engine #149185

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FURNISHINGS AND EQUIPMENT IN RESTAURANT SPEAKEASY ORDERED FORFEITED - SPEAKEASY OPERATOR'S APPLICATION FOR RETURN OF RADIO DENIED - JUKE BOX AND COIN-OPERATED GAME RETURNED TO OWNER WHO ESTABLISHED HIS GOOD FAITH AND ABSENCE OF KNOWLEDGE OF CHARACTER OF ESTABLISHMENT.

In the Matter of the Seizure on ) Case No. 7088  
January 10, 1947, of a quantity )  
of beer, whiskey and soda, a )  
music machine and other furnish- )  
ings and fixtures at 846 Valley ) ON HEARING  
Street, Vaux Hall, in the Town- ) CONCLUSIONS AND ORDER  
ship of Union, County of Union )  
and State of New Jersey. )  
- - - - - )

J. Leroy Jordan, Esq., Attorney for Elizabeth Rhodes.  
Joseph Fresolone, Pro Se.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic  
Beverage Control.

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of beer, whiskey and soda, a music machine, and other furnishings and fixtures, described in a schedule attached hereto, seized on January 10, 1947 at 846 Valley Street, Vaux Hall, Union Township, New Jersey, constitute unlawful property and should be forfeited.

On January 8, 1947, an ABC agent purchased beer and a sandwich from William Rhodes and Elizabeth Rhodes at the above address. On January 10, 1947 the agent returned and again purchased whiskey and beer.

William Rhodes and Elizabeth Rhodes did not hold any license authorizing either of them to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

ABC agents obtained signed statements from William Rhodes and Elizabeth Rhodes in which they acknowledged the aforesaid sales of alcoholic beverages to the ABC agent, and that they had sold alcoholic beverages at the premises to other persons.

William Rhodes and Elizabeth Rhodes were arrested on charges of selling alcoholic beverages without a license and possession of alcoholic beverages with intent to sell the same unlawfully. The ABC agents seized the beer, whiskey and soda and the furnishings and equipment in the place.

The evidence warrants the presumption that the seized alcoholic beverages were intended for unlawful sale and hence are illicit. R. S. 33:1-1(i). The illicit alcoholic beverages and the other personal property seized therewith in the premises constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2 and R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Joseph Fresolone appeared and sought return of the music machine and a Marvel "pop-up" game. Elizabeth Rhodes also appeared with counsel, who at first requested the return of various items, but ultimately limited his application to return of a radio which had been seized.



Property subject to forfeiture for violation of the Alcoholic Beverage Law may be returned only to an innocent person. R. S. 33:1-66(f). It is self-evident that one who participates in the operation of a speakeasy cannot obtain return of any property seized in such speakeasy. This eliminates any possibility of Mrs. Rhodes personally obtaining return of the radio.

However, Mrs. Rhodes seeks to claim that her sister, Emma Washington, is the owner of the radio and left it with her in 1939, and that she, Mrs. Rhodes, has kept it ever since. Mrs. Rhodes says that her sister is not aware that the radio was seized, and has no knowledge that Mrs. Rhodes is seeking to recover the machine on her behalf.

The application for the return of the radio must be denied because the application is not presented directly by Emma Washington. Further reason for such denial is that, even if the radio was at one time owned by Emma Washington, the long continued possession of the radio by Mrs. Rhodes demonstrates almost conclusively that Emma Washington has no further interest therein and that forfeiture of the radio seemingly will not impose any undue hardship upon her.

Joseph Fresolone, who is in the business of placing music and other machines on various locations on a profit-sharing basis, claims that he placed the machines in question in Mrs. Rhodes' restaurant in the ordinary course of business, and that he did not know or have any reason to suspect that it was actually a speakeasy.

Under R. S. 33:1-66(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 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.

Although outwardly a dwelling, it appears that the place was actually a small and unpretentious restaurant, equipped with a number of tables and chairs in one room, with the music machine, "pop-up" game, and a table in another room and a sign on the exterior, indicating that chicken and barbecue sandwiches were served there.

Mr. Fresolone's place of business is in the immediate vicinity of Mrs. Rhodes' establishment. He testified that Mrs. Rhodes came to his place of business, selected the music machine in question, and asked him to install it in her restaurant. The music machine was there for about a month, and the "pop-up" game for about a week. When visiting the place, from time to time he observed persons eating, but did not at any time see any alcoholic beverages being served to them or in the place. He did not investigate the character or background of Mrs. Rhodes because she told him that she was operating a restaurant and this was confirmed by what he observed.

There was nothing in the appearance of the place to lead a reasonably prudent person to suspect that speakeasy activities were being carried on there. Fresolone's failure to inquire as to Mrs. Rhodes' reputation or background does not bar him from obtaining return of the machine because even if he had made inquiry, it appears that she had no record or reputation for unlawful alcoholic beverage activities. See Seizure Case 6927, Bulletin 697, Item 4. Whether or not Mr. Rhodes has any such record or reputation is immaterial since the evidence indicates that Joseph Fresolone dealt solely with Mrs. Rhodes when placing the machine in the restaurant.

I therefore find that Joseph Fresolone acted in good faith and did not know, or have any reason to suspect that the music and the "pop-up" machines were in a speakeasy. Such machines will therefore be returned to him upon payment of the costs of their seizure and storage.

Cf. Seizure Case 6880, Bulletin 713, Item 8; Seizure Case 6975, Bulletin 726, Item 10; Seizure Case 7041, Bulletin 745, Item 1.

Accordingly, it is DETERMINED and ORDERED that if on or before the 2nd day of May, 1947, Joseph Fresolone pays the costs of seizure and storage of the music and the "pop-up" machines, they will be returned to him; and it is further

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

Dated: April 22, 1947.

ERWIN B. HOCK  
Commissioner.

SCHEDULE "A"

- 18 - bottles beer
- 1 - bottle whiskey
- 44 - bottles Pepsi Cola
- 1 - music box (Wurlitzer #653007) and coins therein
- 1 - Marvel pop-up game
- 4 - tables and covers
- 1 - Admiral radio
- 7 - chairs
- 3 - lamps
- 1 - glass top table

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FURNISHINGS AND EQUIPMENT IN RESTAURANT SPEAKEASY ORDERED FORFEITED - RETURN OF JUKE BOX DENIED FOR FAILURE OF OWNER TO INVESTIGATE SPEAKEASY OPERATOR WITH CRIMINAL RECORD.

In the Matter of the Seizure on ) Case No. 7044  
September 14, 1946 of a quantity )  
of alcoholic and other beverages )  
and merchandise, a music box, two )  
vending machines, and other fix- ) ON HEARING  
tures, furnishings and personal ) CONCLUSIONS AND ORDER  
property, at 139 Water Street, in )  
the Borough of Swedesboro, County )  
of Gloucester and State of New )  
Jersey. )

----- )  
Joseph Spampinato and William J. Caracciolo, t/a J. B. Amusement )  
Company, Pro Se. )  
Harry Castelbaum, Esq., appearing for the State Department of )  
Alcoholic Beverage Control. )

BY THE COMMISSIONER:

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages and items including a music box, two vending machines, and other fixtures, furnishings and personal property, described in a schedule attached hereto, seized on September 14, 1946, at 139 Water Street, Swedesboro, New Jersey, constitute unlawful property and should be forfeited.

It appears that on the aforementioned date two ABC agents entered John Webster's small restaurant at the above address. A patron was

seated at a table with a drink which the agents suspected to be whiskey. One of the agents seized what was left of the drink (which chemical analysis later disclosed actually to be whiskey). The patron told the agent that he had purchased four glasses of whiskey, poured from a bottle labelled "Roamer Blended Whiskey", from Virginia Webster, wife of John Webster, and that these drinks were for himself and three companions.

Virginia Webster left the place as the agents entered. John Webster was behind the counter, and appeared to be pouring something on the floor. While one agent accosted the patron, the other agent went behind the counter and found an empty bottle, labelled "Roamer Blended Whiskey", lying on its side on the floor, and a pool of liquid nearby. The agent salvaged some of this liquid by using a rag. Webster told the agent that the whiskey was for his own use and that he did not have any more in the restaurant.

Webster, at the agent's request, contacted his wife and had her return to the restaurant. The agents then obtained signed statements from the patron and one of his companions, giving the details of the sale and service to them of the drinks of whiskey, and also obtained a signed statement from Virginia Webster acknowledging that she had sold and served the whiskey. According to her statement, she was helping out in the restaurant, as she sometimes does.

John Webster and Virginia Webster did not hold any license authorizing either of them to sell or serve alcoholic beverages, and the premises were not licensed for the sale of alcoholic beverages.

The agents seized the empty whiskey bottle, the small quantity of whiskey aforesaid, and the merchandise and equipment in the place.

Virginia Webster was arrested on a charge of unlawful sale of alcoholic beverages and possession of illicit alcoholic beverages, and has since pleaded non vult in the Special Sessions Court of Gloucester County and was fined \$100.00.

Webster apparently is not dismayed or dissuaded from operating a speakeasy by repeated forfeitures of his property and convictions in criminal court for that offense. He was arrested and convicted in Gloucester County in 1931, 1941, 1944, 1945 and on October 31, 1946 for operating a speakeasy. He was fined \$100.00 on the first three occasions, \$250.00 on the fourth and \$500.00 on the last occasion. The last three convictions were for violations committed at the restaurant here involved. Indeed, a startling demonstration of Webster's disdain for the law is evidenced by the fact that his wife was unlawfully selling alcoholic beverages four days after his appearance at the Department at the seizure hearing concerning the seizure at his restaurant on July 26, 1946.

In view of Webster's prior record and his wife's admissions, it is clear that any alcoholic beverage found on the premises was intended for sale and, hence, is illicit. R. S. 33:1-1(i). The fact that there was only one bottle of whiskey on hand and that the agents were only able to seize a very small amount, does not lessen the aggravated nature of the case. Whatever whiskey the agents seized is illicit and, together with the other personal property seized in the restaurant, constitutes unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, Joseph Spampinato and William J. Caracciolo appeared and sought return of the music machine. No one appeared to oppose forfeiture of the balance of the seized property.

It has been pointed out repeatedly that, in seizure proceedings, a music machine in a speakeasy on a profit-sharing basis will not be returned to its owner unless he has established to my satisfaction, pursuant to R. S. 33:1-66(f), that he acted in good faith and did not know or have any reason to suspect that it was a speakeasy. Seizure Case 7014, Bulletin 735, Item 8; Seizure Case 7010, Bulletin 734, Item 1, and cases cited therein.

Where, as here, the owner of the establishment has such an unsavory record for liquor law violations, the owner of the music machine must present convincing evidence that he made an earnest effort to determine the background and activities of the person with whom he placed the machine on a profit-sharing basis and did not discover such record.

The claimants confess that they did not make any such inquiry. Following what they say is their practice, one of the partners walked in, took a look at Webster's restaurant, decided that it appeared likely that a machine would bring in a good income, and placed the machine there. They did not even take the trouble to obtain Webster's name. This is not the conduct of a reasonably prudent person and compels denial of their application for return of the machine.

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

Dated: April 23, 1947.

ERWIN B. HOCK  
Commissioner.

#### SCHEDULE "A"

- 2 - bottles containing whiskey
- 1 - empty whiskey bottle
- 77 - empty beer bottles
- 13 - empty whiskey glasses
- 168 - bottles of soda
- 1 - cigarette vending machine, U-Need-A-Pak Products Corp., Serial #4570, and currency therein
- 1 - Wurlitzer juke box, Serial #A-38865-A, Model 616, and currency therein
- 1 - chewing gum vending machine and currency therein
- 17 - wooden chairs
- 6 - wooden tables
- 35 - boxes of salt
- 68 - packages of cakes and candies
- 47 - packages of chewing tobacco
- 107 - cigars
- 55 - packages of smoking tobacco
- miscellaneous personal property

## 9. APPELLATE DECISIONS - LEPPERT v. NEW BRUNSWICK AND BOB'S TAVERN, INC.

BURELL LEPPERT, MARGARET LEPPERT )  
and ANNA LEPPERT, )

Appellants, )

-vs- )

ON APPEAL  
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE CITY )  
OF NEW BRUNSWICK and BOB'S TAVERN, )  
INC. (a corp.), trading as BOB'S )  
TAVERN, )

Respondents )

----- )  
Strong & Strong, Esqs., by John VR. Strong, Esq., Attorneys for )  
Appellants.

Paul W. Ewing, Esq., Attorney for Respondent Board of Commissioners.  
Samuel G. Cohen, Esq., Attorney for Respondent Bob's Tavern, Inc.

BY THE COMMISSIONER:

This is an appeal from the transfer of a license formerly held by George F. Leppert, extended to Carol Leppert, administratrix of his estate, renewed by her and transferred by respondent Board of Commissioners to respondent Bob's Tavern, Inc.

The real objection to the transfer would seem to be based upon the premise that the objectors (appellants herein) are the owners of the real estate wherein the licensed premises are located and that Bob's Tavern, Inc. has no right of possession.

George F. Leppert first secured his license for the premises in question several years ago. He renewed it annually and died June 4, 1946. On June 11, 1946, this license was extended by respondent Board of Commissioners to Carol Leppert, administratrix of the Estate of George F. Leppert. On June 28th a renewal license for the present fiscal year was issued to Carol Leppert. By inadvertence she was not named as administratrix in the said renewal. However, no objection was made to the renewal of the license, and the testimony herein discloses that the improper issuance was a mistake of an employee in the office of the then Acting Clerk of the respondent Board of Commissioners. This technical objection, raised here for the first time, cannot be used to prevent substantial justice. There was apparently no fraud, nor attempted fraud, and it seems obvious that the technically improper issuance was a pure error. The records of the local issuing authority should be corrected to show that the license was renewed to Carol Leppert, administratrix of the Estate of George F. Leppert.

One other technical objection has been advanced. The transfer was actually granted and the transfer noted on the license certificate one day after the final advertisement. The action is technically contrary to the special ruling heretofore made in Re Novack, Bulletin 174, Item 6, where the late Commissioner Burnett ruled:

"Henceforth, therefore, the rule will be that in all cases where a license issuing authority determines in advance of completion of advertising (but after appropriate investigation, of course), to issue or to transfer a license, the resolution after expressing such determination shall be made subject to a special condition worded (in case of a new or renewal license) substantially as follows: 'Subject to the special condition that the advertising of notice of intention be completed and proof of publication submitted, provided,

however, that such license shall not be actually issued until two whole days shall have elapsed after the second publication of notice of intention, not counting the day on which such publication may be made, and, further provided, that if within such period, or at any time before the license is actually issued, an objection or a protest shall be filed against the issuance of such license, the license shall not be issued until the further determination of this board or governing body."

No such condition was provided herein. However, no actual written objection was filed by the appellants, or by anyone else for that matter, until after the two-day waiting period had expired. A strict application of the ruling made in Re Novack, supra, would not cancel the license and would only in its practical effect require a new application for transfer and new action thereon by the City Commissioners. In view of the result reached herein on the substantial reason for objection to the transfer, I see no purpose in a strict application of the said rule in the instant case. Cf. Mossman v. Irvington et al., Bulletin 715, Item 1.

Appellants have had their day in court. The trial of the appeal was a trial de novo (State Regulations No. 15, Rule 6) and, if their real objection has any merit, such reason can and will be fully considered here.

There is no dispute that at least the legal title to the real estate containing the licensed premises was held by George F. Leppert from October 1, 1926 to the date of his death. George F. Leppert died intestate, survived by his wife Carol, and an infant son George F. Leppert, Jr. Legal title to the real estate would descend to the infant son, subject to the widow's dower.

Subsequently, and prior to October 22, 1946, Mrs. Leppert, as administratrix of the Estate of George F. Leppert, deceased, individually, and as the mother and natural guardian of her infant son, agreed to sell the real estate involved herein to respondent Bob's Tavern, Inc.

Appellants are disputing the title to the premises and have filed their bill in the New Jersey Court of Chancery seeking to have that Court determine that they are the beneficial owners of the real estate. That, apparently, is the remedy they will have to pursue.

As to possession of the licensed premises, the licensed premises are described as "all of cellar and store" of 128 Remsen Avenue. George F. Leppert had possession during his lifetime of at least that part of the building used in connection with the licensed business. His possession was continued by his administratrix who, after the license was extended and renewed, operated the licensed business for about four months until the license was transferred to Bob's Tavern, Inc. on October 22, 1946. Respondent Bob's Tavern, Inc. is apparently in physical possession of the premises, at least to the extent that the premises are licensed and described in the application for transfer. Appellants' possession, by what right we cannot here determine, seems limited to the balance of the building. The possession of Bob's Tavern, Inc. would seem to be in accordance with the agreement between it and Mrs. Leppert, administratrix. She has filed a bill seeking permission of the Court of Chancery to sell her infant son's interest in the real estate pursuant to the terms and provisions of said agreement. Thus the respondent Bob's Tavern, Inc. would seem to be in possession under what is apparently the legal and dominant title, or at least actually in physical possession of that part thereof comprising the licensed premises.

It is not the province of the local issuing authority to determine questions of title to real estate, nor has the Legislature

delegated any such power either to a local issuing authority or to the State Commissioner of Alcoholic Beverage Control. Both the local issuing authority and the Commissioner can consider only the apparent possession, or the apparent right to possession, based upon the actual possession or upon an instrument apparently on its face sufficient. Cf. Rittenger v. Bordentown, Bulletin 547, Item 10.

The action of respondent Board of Commissioners is affirmed.

Accordingly, it is, on this 22nd day of April, 1947,

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

ERWIN B. HOCK  
Commissioner.

10. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FURNISHINGS AND EQUIPMENT IN SPEAKEASY ORDERED FORFEITED - APPLICANT FOR RETURN OF JUKE BOX FAILED TO ESTABLISH GOOD FAITH - RETURN THEREOF DENIED.

In the Matter of the Seizure )  
on November 30, 1946, of a )  
quantity of alcoholic and other )  
beverages, merchandise, furniture )  
and fixtures at premises occupied )  
by George L. Bland, located on )  
Chestnut Road, in 80 Acres, Borough )  
of Glassboro, County of Gloucester )  
and State of New Jersey. )  
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Case No. 7076

ON HEARING  
CONCLUSIONS AND ORDER

Frank M. Lario, Esq., Attorney for Emma Medes, t/a Phonomatic Company.  
Harry Castelbaum, Esq., appearing for the Department of Alcoholic  
Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, merchandise, a music box, furnishings and fixtures, described in a schedule attached hereto, seized on November 30, 1946, at premises occupied by George L. Bland on Chestnut Road, Glassboro, New Jersey, constitute unlawful property and should be forfeited.

It appears that about 9:30 p.m. on the date in question, an ABC agent, checking a complaint that speakeasy activities were being carried on there, entered the above premises and purchased from George L. Bland drinks of beer and gin for himself and two companions. Shortly thereafter, by prearrangement, another ABC agent entered the premises.

Bland did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

The agents disclosed their identity, seized Bland's stock of alcoholic and other beverages and the merchandise, furniture, fixtures and equipment in the premises, and arrested Bland on charges of unlawful sale and possession of alcoholic beverages. Bland has since pleaded guilty to those charges in the Special Sessions Court of Gloucester County and was fined \$100.00.

The unlawful sale was made, and the property was seized, in a five-room frame dwelling located on a dirt road about one-half mile



from the nearest main highway. There was no sign on the exterior that any commercial activities were being carried on in the building. In one large room there were booths containing rough plank seats and tables, and the music box. In another large room there were more booths, a counter behind which there was a stock of candy, crackers, cigars and cigarettes, and a bar with a beer cooler and beer taps.

The evidence establishes that the seized alcoholic beverages were intended for unlawful sale and, hence, are illicit. R. S. 33:1-1(i). The illicit alcoholic beverages, and the other personal property seized therewith in the building, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, counsel entered an appearance for Emma Medes, t/a Phonomatic Music Company, and sought return of the music box. No one opposed forfeiture of the balance of the seized property.

My authority to return property subject to forfeiture is limited to relief of innocent persons. A claimant must establish to my satisfaction that he acted in good faith and did not know or have any reason to suspect that his property was in a speakeasy. R. S. 33:1-66(f), Seizure Case 7044, and cases cited therein.

It is clear that the bar, with the beer coil and beer taps readily visible, would indicate to anyone in the place that alcoholic beverages were being sold there or at least cause him to suspect that fact. Whether or not Bland had a record or reputation for violating the liquor laws is therefore immaterial.

Robert L. Medes, son of Emma Medes, testified that he helped to place the machine in Bland's premises in 1941 or 1942, and went there to service the machine about once a month, with the exception of the period between June 1944 and November 1945, when he was in the Army; that his last visit was on November 1, 1946.

Since knowledge that it was a speakeasy would eliminate any possibility of obtaining return of the machine, Medes naturally would be reluctant to admit that he knew that the bar was there. On the other hand, it would be absurd for him to say that he closed his eyes every time he visited Bland's premises. Seemingly, therefore, he had no other alternative than to claim, as he did, that on all of his visits to Bland's establishment during the past four or five years, the connecting door between the rooms was always locked and hence he did not, at any time, see the bar.

This is a most improbable story which I cannot conscientiously accept, especially in view of the fact that when the ABC agent entered the premises, the connecting door was open and the bar visible.

A further reason for not accepting Medes' testimony at face value is because there is a sharp conflict between Medes and the ABC agent as to the articles in the room where the music machine was located. Medes said that he thought it was a place for young children; a jitterbug place; that when he was there usually about 10:00 or 11:00 o'clock in the morning, he saw a few children there and that there was candy and soda in this room being sold to the children. The ABC agent testified that the barroom was the only place where he observed any merchandise or foodstuffs.



For the reasons herein set forth, I am not convinced by the evidence presented that the owner of the music machine acted in good faith and did not know or have any reason to suspect that her machine was in a speakeasy. I am therefore compelled to deny the application for return of such machine.

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 State Commissioner of Alcoholic Beverage Control.

ERWIN B. HOCK  
Commissioner.

Dated: April 25, 1947.

SCHEDULE "A"

- 102 - bottles of beer
- 3 - bottles of other alcoholic beverages
- 13 - bottles of soda
- 52 - empty beer bottles
- 144 - empty soda bottles
- 69 - packages of cigarettes, tobacco, etc.
- 1 - coil box
- 1 - ice box
- 1 - bar
- 56 - empty glasses
- 1 - show case
- 1 - Wurlitzer music box, Model 616-A,  
Serial No. 210723, and currency therein

11. STATE LICENSES - NEW APPLICATIONS FILED.

Henry Mayer and Frank Vilord  
5 Pleasant Ave.  
Suffern, New York.

Application for Transportation License filed April 24, 1947.

Lawrence R. Liberi and Edward J. Stone  
300 Arch St.  
Palmyra, N. J.

Application for State Beverage Distributor's License filed  
April 29, 1947.

*Erwin B. Hock*  
Commissioner.