

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

BULLETIN 739

DECEMBER 3, 1946.

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

BULLETIN 739

DECEMBER 3, 1946.

1. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS (SUNDAY), IN VIOLATION OF MUNICIPAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES TO NON-MEMBERS - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

FIRST WARD DEMOCRAT CLUB)
207-209-211 Hudson Street)
Gloucester City, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Club License CB-173,)
issued by the State Department)
of Alcoholic Beverage Control.)

Defendant-licensee, by William J. Conroy, President.
Gaylord R. Hawkins, Esq., appearing for Department of Alcoholic
Beverage Control.

The defendant pleaded non vult to charges alleging that (1) on October 20, 1946, at about 11:40 a.m., it sold, served and delivered alcoholic beverages, in violation of an ordinance adopted by the Common Council of the City of Gloucester City which prohibits any such activity between 2:00 a.m. and 3:00 p.m. on Sundays; and (2) at the same time it sold alcoholic beverages to persons other than club members and their bona fide guests, in violation of Rule 8 of State Regulations No. 7 and R. S. 33:1-2.

The report of the investigation herein discloses that on Sunday, October 20, 1946, at about 11:35 a.m., two investigators of the State Department of Alcoholic Beverage Control entered the barroom of defendant's premises. Both agents purchased alcoholic beverages which were served by a member of the Club who was then acting as bartender. Neither of the investigators was a member or a guest of a member of the defendant Club. At least twelve other persons in the barroom at that time were drinking alcoholic beverages.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for the usual minimum period of fifteen days for the unlawful sale on Sunday (cf. Madison Lodge B.P.O.E., Bulletin 623, Item 14) and for a further period of fifteen days for the sales to non-members (cf. Penns Grove Lodge, Bulletin 615, Item 2). Five days will be remitted for the plea, making a net suspension of twenty-five days.

Accordingly, it is, on this 20th day of November, 1946,

ORDERED that Club License CB-173, issued by the State Department of Alcoholic Beverage Control to First Ward Democrat Club, for premises 207-209-211 Hudson Street, Gloucester City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. November 29, 1946, and terminating at 2:00 a.m. December 24, 1946.

ERWIN B. HOCK
Deputy Commissioner.

2. APPELLATE DECISIONS - THE RACCOON CLUB v. SWEDESBORO.

THE RACCOON CLUB,)	
Appellant,)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE)	
BOROUGH OF SWEDESBORO,)	
Respondent)	
-----)	

Lynwood Lord, Esq., Attorney for Appellant.
Hendrickson & Wick, Esqs., by Robert C. Hendrickson, Esq.,
Attorneys for Respondent.

This is an appeal from the denial of appellant's application for a club license for premises located on the southeast side of Chestnut Street, Borough of Swedesboro.

As stated in its Answer, the Borough Council denied the appellant's application "on the grounds that it was against public opinion as evidenced by petitions filed by residents of the Borough, opposing the issuance of any additional liquor licenses of any type, at the time of the public hearing of the.....application of appellant, and based on the opinions of the various members of the Borough Council from their contacts with the citizens of the community."

It appears from the minutes of the meeting of the Borough Council that the application for the club license was denied by a vote of three to two. Petitions were presented, one in favor of the issuance of the club license containing the names of approximately four hundred citizens of the Borough, and the other containing approximately three hundred names of residents of Swedesboro, requesting the respondent Borough Council to amend its ordinance so that the issuance of a club license would not be permitted in the Borough. The number of names on any set of petitions is not a controlling factor. Re Powell, Bulletin 59, Item 15. The weight to be accorded to petitions for or against issuance of a license is entirely within the discretion of the issuing authority. Lindstrom v. Delaware Township, Bulletin 586, Item 3. It does appear that there is a strong sentiment in the Borough against the issuance of any club license but I find that it is unnecessary to decide whether the reason assigned for denial by respondent was sufficient because it appears that appellant is not qualified to hold a club license for the reason hereinafter set forth.

It is conceded by the respondent that the appellant is a bona fide club and that it has been in existence for a period of approximately ten years. The record before me indicates, however, that the appellant was not in continuous possession of a clubhouse or club quarters for a period of at least three years continuously immediately prior to the submission of its application for a license as required by Rule 4 of State Regulations No. 7. Thus, it appears that the respondent was without jurisdiction to grant appellant's application for a club license. Hence the action of respondent is affirmed.

Accordingly, it is, on this 20th day of November, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

3. 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)

OVER-LOOK HOTEL, INC.)
Portland Road & Highland Ave.)
Highlands, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-23 issued by the)
Borough Council of the Borough)
of Highlands.)
-----)

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

Defendant, through its attorney, pleads non vult to a charge alleging that, from June 12, 1946 until August 20, 1946, it exercised the rights and privileges of a plenary retail consumption license then being held by Walter Andersen for premises on Portland Road and Highland Avenue, Highlands, in violation of R. S. 33:1-26.

This is not the usual type of "front" situation. The departmental file in the instant case discloses that on May 21, 1946, one Walter Andersen filed an application for a plenary retail consumption license for the premises in question with the local issuing authority. At the time the application was filed the defendant had been incorporated for the purpose of operating the licensed premises but no stock was issued to the various stockholders until June 11, 1946. However, it appears that from the outset the entire business was conducted in the name of the corporation although the liquor license had been applied for and retained in the name of the said Walter Andersen. Receipts from the business were deposited in two bank accounts in the corporate name and the bills incurred in the operation of said business were either paid by cash or by checks drawn on these accounts. The title to the hotel building and grounds is in the name of the corporation, the deed therefor being received from the former owner on June 11, 1946. It appears that three shareholders, including Andersen, invested equal amounts in the business and that each holds thirty-three shares of stock.

The reason given for originally taking the license out in Andersen's name is that the parties were anxious to open for business at the beginning for the summer season and at that time it was not convenient to secure the license in the corporation's name since its finances had not been straightened out.

The illegal situation has been corrected and the license has been transferred to the corporate name. Nevertheless, there was a violation of the Alcoholic Beverage Law which warrants a suspension of defendant's license. I shall, therefore, suspend defendant's license for a period of ten days because of the violation set forth in this case. Re Naderay, Bulletin 733, Item 8.

The records of this Department indicate that defendant's premises are now closed and will remain closed until some time in the Spring. Thus no effective suspension can be imposed at the present time. The starting date of the suspension herein will be postponed until my further order after the licensed premises shall have reopened for business in the Spring of 1947.

Accordingly, it is, on this 20th day of November, 1946,

ORDERED that Plenary Retail Consumption License C-23, issued by the Borough Council of the Borough of Highlands to Over-Look Hotel, Inc., for premises at Portland Road and Highland Avenue, Highlands, be and the same is hereby suspended for ten (10) days, the time to be fixed by subsequent order.

ERWIN B. HOCK
Deputy Commissioner.

4. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING EFFECTIVE DATE OF SUSPENSION (SEE BULLETIN 738, ITEM 4).

In the Matter of Disciplinary
Proceedings against)

BRUNO M. BONTEMPI)
6900 Bergenline Avenue)
Guttenberg, N. J.,)

O R D E R

Holder of Plenary Retail Consump-)
tion License C-30, issued by the)
Mayor and Board of Council of the)
Town of Guttenberg, and transferred)
during the pendency of these)
proceedings to)

BRUNO M. BONTEMPI and)
EDA BONTEMPI)

for the same premises.)
-----)

Vanderbach & Vanderbach, Esqs., by Harry W. Vanderbach, Esq.,
Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic
Beverage Control.

This matter being opened to me by Harry W. Vanderbach, Esq.,
appearing for the attorneys for the defendant, and it appearing that
the suspension heretofore imposed by order dated November 14, 1946
is consistent with the violation; and

It further appearing that said suspension will impose additional
hardships and additionally penalize the defendant because of the
fact that the said suspension requires closing of the licensed busi-
ness during the coming holiday season, and there being no desire to
impose such additional hardships or additionally penalize the defend-
ant herein, but rather a desire to provide penalties that will be
commensurate with the violations involved, and considering the nature
of the violation herein and all the facts and circumstances thereof,

It is, on this 21st day of November, 1946,

ORDERED that the sixty-five-day suspension of the license here-
tofore imposed herein shall, in lieu of the period originally fixed,
commence at 3:00 a.m. January 2, 1947, and terminate at 3:00 a.m.
March 8, 1947.

ERWIN B. HOCK
Deputy Commissioner.

5. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST - APPLICATION TO LIFT GRANTED ON REHEARING.

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

CONCLUSIONS
AND ORDER

Case No. 544.
-----)

On December 23, 1940, petitioner filed a petition seeking removal of his disqualification resulting from a conviction of crime involving moral turpitude. On January 29, 1941, petitioner's counsel requested that the petition be withdrawn without prejudice. The underlying reason for such a request was because of certain information secured in another proceeding wherein it developed, among other things, that petitioner was an officer of a corporate licensee and had been engaged in the conduct of the licensee's business despite the fact that he had been convicted of crimes involving moral turpitude. Re Club Murray Corp., Bulletin 452, Item 3.

The petition was permitted to be withdrawn but petitioner was advised by the Department that he was disqualified from holding a liquor license or working for a licensee until such time as this Department had ruled otherwise. More than five years have elapsed since the withdrawal of the first petition.

The record of the petitioner was fully set forth in Re Club Murray Corp., *supra*, and it was there held that the petitioner had been convicted of crimes involving moral turpitude. Petitioner's criminal record, however, is clear since June 16, 1930, on which date he was resentenced for violation of his probation and sentenced to twelve months in Essex County Penitentiary. This sentence was later reduced to six months and immediately thereafter the petitioner was placed on three years' probation, from which he was discharged in 1933. Since that time there is no record of any further conviction.

Witnesses produced at the hearing on the present petition testified that they have known the petitioner for periods ranging from five to thirty-five years, and that for the past five years he has been honest and law-abiding. The Clerk of a local Police Court testified that petitioner has been a resident of that municipality for the past ten years and that at no time since he became a resident of that community has he been in any difficulty.

Petitioner testified that for the past five years he has been employed as a salesman and also operated a candy store until June, 1946, when he was compelled to dispose of the same because of his health. He states he underwent an operation at that time and is now sufficiently recovered to be employed. His desire in the instant proceedings is to have the disqualification removed so that he may seek employment with a licensee or acquire a business in case the opportunity presents itself.

It is now more than five years since misstatements were made by petitioner in connection with a liquor license in which he was interested. Re Club Murray Corp., *supra*. During that period the petitioner has conducted himself in a law-abiding manner, and I am of the opinion that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 21st day of November, 1946,

ORDERED that the petitioner's statutory disqualification because of the convictions described in Bulletin 452, Item 3, be and the same is hereby lifted, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK
Deputy Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - PROPERTY OF SOCIAL ORGANIZATION ON PREMISES FOR ONE-DAY AFFAIR RETURNED.

In the Matter of the Seizure	)	Case No. 7046
on September 14, 1946, of a)	
quantity of alcoholic and other)	
beverages, fixtures and furnishings	)	ON HEARING
and other personal property at the	)	CONCLUSIONS AND ORDER
Marconi Social Club, located on)	
Cleveland Avenue, corner Bohnert)	
Place, Borough of Waldwick, County)	
of Bergen and State of New Jersey.)	

Herman G. Honig, Esq., Attorney for Mrs. Quintino Baldi and
Mrs. Pia Milano.
Harry Castelbaum, Esq., appearing for the State 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, fixtures and furnishings, and other personal property, described in a schedule attached hereto, seized on September 14, 1946 at the Marconi Social Club, located in Waldwick, New Jersey, constitute unlawful property and should be forfeited.

The State Department of Alcoholic Beverage Control received a specific complaint that alcoholic beverages were being sold by the Marconi Social Club, which was not licensed to sell alcoholic beverages. Accordingly, ABC agents visited the premises and purchased alcoholic beverages there on two occasions. On September 14, 1946 ABC agents, on the basis of such unlawful sales, executed a search warrant for the club quarters, located at the corner of Cleveland Avenue and Bohnert Place.

On the day the search warrant was executed, other ABC agents purchased alcoholic beverages at the club quarters. The person who made these sales was arrested and later two other persons who previously had made sales there, were also arrested.

The ABC agents seized a stock of alcoholic and other beverages, cash receipts, furnishings, fixtures, equipment and other personal property which were in the club quarters.

It is clear from the evidence that the seized alcoholic beverages were intended for sale without a license at the club and hence are illicit. R. S. 33:1-1(i). The illicit alcoholic beverages, together with the other beverages, cash receipts, furniture, fixtures, equipment and other personal property seized in the club quarters 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 Mrs. Baldi and Mrs. Milano as representatives of the committee of a social organization which had planned to have an affair at the club quarters on the day following the seizure and had there stored alcoholic beverages and soft drinks, which they now sought to recover.

Two one-half barrels of beer and three bottles of whiskey which were brought to the premises as the seizure was in progress and 12 cases of "Seven Up" soda which were on the premises are the only beverages that apparently are the property of the committee. Forty white mugs are also owned by the committee. These women appeared to be accidentally involved in the seizure in that they were arranging for a celebration at premises where the liquor law was being violated. Fairness dictates that their beverages and beer mugs should be returned.

Accordingly, it is DETERMINED and ORDERED that if on or before the 1st day of December, 1946, either Mrs. Quintino Baldi or Mrs. Pia Milano pays the costs of seizure and storage of the two one-half barrels of beer, three bottles of whiskey, 12 cases of "Seven Up" and 40 beer mugs, they will be returned; 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.

ERWIN B. HOCK
Deputy Commissioner.

Dated: November 22, 1946.

SCHEDULE "A"

65 - bottles of beer
19 - jugs of wine
3 - bottles of other alcoholic beverages
261 - bottles of "Seven Up"
5 - bottles of ginger ale
empty quart bottles and gallon jugs
1 - wooden bar
172 - chairs
5 - tables
1 - desk
1 - piano and stool
1 - Majestic refrigerator
\$9.70 in bills and coins
142 - empty glasses

7. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND JUKE BOX IN SPEAKEASY ORDERED FORFEITED - OWNERSHIP OF JUKE BOX AND CIRCUMSTANCES UNDER WHICH IT WAS PLACED IN SPEAKEASY NOT ADEQUATELY ESTABLISHED - APPLICATION FOR RETURN OF JUKE BOX DENIED.

In the Matter of a Seizure on	)	Case No. 6999
June 23, 1946 of a quantity of)	
beer, wine and other alcoholic)	
beverages, a cash box with currency,	)	ON HEARING
and a Wurlitzer music machine with	)	CONCLUSIONS AND ORDER
currency, at 10 Water Street, in)	
the City of Trenton, County of)	
Mercer and State of New Jersey.)	
-----)		

Sol Kesselman, Esq., Attorney for Trenton Amusement Co.
 Harry Castelbaum, Esq., appearing for State Department of Alcohol
 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 beverages, a music box and a cash box with currency, described in a schedule attached hereto, seized on June 23, 1946 at 10 Water Street, Trenton, New Jersey, constitute unlawful property and should be forfeited.

There is a two-story dwelling at the above address, with three rooms on the first floor and a basement. It was occupied by James Wheeler, who 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.

On June 9, 1946, an ABC agent, investigating a complaint that speakeasy activities were being carried on at the premises, purchased drinks of alcoholic beverages in the basement from James Wheeler. On June 23, 1946, the agent purchased drinks of alcoholic beverages, served to him in a room on the first floor by Bessie Wheeler, wife of James Wheeler. On the latter date, ABC agents executed a search warrant for the premises and found in the basement a table, two ice boxes and a cardboard sign listing the price of beer, ale, wine and whiskey, fastened to the wall. Other patrons were in the premises at the time.

The agents seized a bottle of whiskey and a music box in the dining room on the first floor. In the basement they seized 170 bottles of beer, 19 bottles of wine, 12 bottles of other alcoholic beverages and a cash box containing receipts from the sale of alcoholic beverages.

James Wheeler and Bessie Wheeler were arrested on charges of violating the local ordinance governing the sale of alcoholic beverages, pleaded guilty in the Trenton Police Court, and were fined \$200.00 and \$75.00, respectively. James Wheeler was also held for action of the Mercer County Grand Jury on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell such beverages unlawfully. Bessie Wheeler was held on the charge of aiding and abetting her husband to commit such violations.

The evidence establishes that the seized alcoholic beverages were intended for sale at this speakeasy, and hence are illicit. R. S. 33:1-1(i). These illicit alcoholic beverages, together with the music box and cash receipts of the unlawful enterprise, all of which were seized 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 Trenton Amusement Co., which sought return of the music machine. No one appeared to oppose forfeiture of the alcoholic beverages or cash receipts.

This is the third time that Trenton Amusement Co. has sought to reclaim a music box, seized in a private residence or other unusual location, because of speakeasy activities therein. Seizure Case No. 6898, Bulletin 687, Item 1, and Seizure Case No. 6950, Bulletin 719, Item 6.

The amusement company claims that, at Wheeler's request, on May 1, 1946 it placed a machine in a large garage located at 19 Water Street, upon Wheeler's representation that he intended to conduct weekend "block" dances there, at a fixed monthly rental of \$30.00; that on June 1st an attempt was made to collect the rental for that month but the garage was closed; that then, after considerable difficulty, the company obtained Wheeler's home address (a few doors from the garage), but the company's employees were unable to gain admittance either to the garage or to Wheeler's home.

Whether or not the amusement company placed a music machine in the above garage is immaterial. The fact is that the music machine, seized in the instant case, was found in Wheeler's home and the evidence indicates that this machine did not come from the garage.

Mrs. Wheeler testified that the music box which was seized was in her home in February, 1946; that this machine was still there on May 1st when she returned to her home after being separated from her husband; that it remained there until it was seized; that every Saturday after May 1st a man came to her home, serviced the machine, removed the coins, and gave her husband one-third of the receipts; that the last such occasion was on the Saturday morning when the machine was seized. The machine in her home had a card therein bearing the name Trenton Amusement Co.

Irving Pearl, an employee of the amusement company, admits that he had a conversation with Mrs. Wheeler a few days before the hearing. He claims that when he asked her if she knew that the machine had been taken from the garage she told him that she had been away. She contradicts his story and says that she told him that the machine taken from her home had been there since February, 1946.

Mr. Wheeler's home, where the music box was seized, is a private residence and an unusual location for a music machine rented on a profit-sharing basis. Assuming that such machine is owned by the Trenton Amusement Co., such company has not presented any evidence to establish that it made an investigation of Wheeler's character or background or the activities that were being carried on at his home. Although the company's failure to present any evidence on this score may have been prompted by its claim that the machine alleged to have been placed by it in the garage was removed to Wheeler's home without its knowledge or consent, the record herein indicates otherwise.

Accordingly, the application of the Trenton Amusement Co. for return of the music box is denied.

Accordingly, it is DETERMINED and ORDERED that the seized property, more fully described in Schedule "A" hereinafter set forth, 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.

ERWIN B. HOCK
Deputy Commissioner.

Dated: November 22, 1946.

SCHEDULE "A"

- 170 - bottles of beer
- 19 - bottles of wine
- 13 - bottles of other alcoholic beverages
- 1 - cash box containing \$25.75 in currency
- 1 - Wurlitzer Music Machine Cabinet #1613 containing \$1.65 in currency

8. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - JUKE BOX ORDERED RETURNED TO OWNER WHO ESTABLISHED GOOD FAITH AND ABSENCE OF KNOWLEDGE OF CHARACTER OF ESTABLISHMENT.

In the Matter of the Seizure on) Case No. 7020
 July 20, 1946 of a quantity of)
 beer and whiskey, a music box,)
 and furniture and fixtures at)
 222 South Church Street, in the) ON HEARING
 Borough of Swedesboro, County) CONCLUSIONS AND ORDER
 of Gloucester and State of New)
 Jersey.)
 -----)

Frank M. Lario, Esq., Attorney for Phonomatic Music Company.
 Harry Castelbaum, Esq., appearing for the State 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 beer and whiskey, a music box with currency therein, furniture, fixtures and other personal property, described in a schedule attached hereto, seized on July 20, 1946 at 222 South Church Street, Swedesboro, N. J., constitute unlawful property and should be forfeited.

On the day in question, ABC agents, accompanied by two other persons, investigated a complaint that speakeasy activities were being carried on at the premises in question. The agents' companions entered a small building at the rear of the premises. About fifteen minutes later, when, by prearrangement, one of the agents entered the place, these two persons were seated at a table, each with a bottle of beer. There were also eight other persons in the place drinking beer. Margaret Pollard was identified by the agents' companions as the person who had sold them the beer. According to the agents, Mrs. Pollard immediately acknowledged that such was the fact, and also acknowledged that she had sold beer to three patrons who were then standing at the bar.

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

The agents seized beer, whiskey, empty beer bottles, drinking glasses, counters, one with \$13.22 in the cash drawer, a music box and other furniture, fixtures and equipment which were in this one-room structure, and arrested Margaret Pollard.

The evidence establishes that the seized alcoholic beverages were intended for sale at this speakeasy and hence are illicit. R. S. 33:1-1(i). The illicit alcoholic beverages, together with the music box and currency therein, the cash box and its contents, representing receipts of the unlawful enterprise, and the furniture, fixtures and other personal property, all of which were seized 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 Phonomatic Music Company, which sought return of the music machine. No one appeared to oppose forfeiture of the other seized property.

Under R. S. 33:1-66(f) I have the 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.

Lyman W. Medes or his wife or both operate under the trade name of Phonomatic Music Company. It has been established that the seized music box is owned by that concern.

According to the testimony of Mr. Medes and the clerk, Police Chief and Fire Chief of the borough, who were subpoenaed by the claimant, all agree that Mrs. Pollard, with whom each has been acquainted for a number of years, has conducted a restaurant and candy store in the building for many years, catering to school children and adults; that she has always been regarded in the community as of good character, had no criminal record and was not accused of speakeasy activities until about May, 1946, when a complaint was turned over by the local police to the State Department of Alcoholic Beverage Control, resulting in the seizure in question.

Medes has had music machines in the premises for over eleven years. The music machine which was seized was placed in Mrs. Pollard's establishment in October, 1945. When servicing the various machines, there was nothing visible to indicate that speakeasy activities were being carried on there. The current complaint, which the ABC agents were investigating, was obviously not common knowledge until they made the seizure and arrest.

The music concern has, therefore, established to my satisfaction that it acted with reasonable prudence when placing the machine in Mrs. Pollard's place of business. From what was visible to its employees, it appeared to be a legitimate enterprise and, as above indicated, Mr. Medes had personal knowledge that Mrs. Pollard was considered to be of good character.

The requirement that a claimant for return of property subject to forfeiture establish that he made an adequate investigation has therefore been complied with. Cf. Seizure Case No. 7010, Bulletin 734, Item 1, and seizure cases cited therein.

I am, therefore, satisfied that the music concern acted in faith and did not know or have any reason to suspect that speakeasy activities were being carried on by Mrs. Pollard. The music machine will therefore be returned to the Phonomatic Music Company upon the payment of the cost of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 2nd day of December, 1946, either Lyman W. Medes or his wife, E. A. Medes, trading as Phonomatic Music Company, pays the costs of seizure and storage of the music machine, it will be returned; 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.

ERWIN B. HOCK
Deputy Commissioner.

Dated: November 22, 1946.

SCHEDULE "A"

- 43 - bottles of beer
- 3 - bottles of whiskey
- 25 - empty beer bottles
- 35 - drinking glasses
- 1 - wooden counter with \$13.22 in cash drawers
- 1 - wooden counter
- 1 - Coca Cola cooler
- 3 - tables
- 14 - chairs
- 3 - stools
- 1 - Victor Talking Machine, Model V.V-IX, #2270600
- 12 - Victrola records

9. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - JUKE BOX ORDERED RETURNED TO OWNER WHO ESTABLISHED GOOD FAITH AND ABSENCE OF KNOWLEDGE OF CHARACTER OF ESTABLISHMENT.

In the Matter of the Seizure	)	Case No. 7024
on July 26, 1946 of a quantity of)	
alcoholic and other beverages, a)	
music box, furnishings, fixtures	)	ON HEARING
and other personal property at	)	CONCLUSIONS AND ORDER
139 Water Street, in the Borough)	
of Swedesboro, County of Gloucester)	
and State of New Jersey.)	

-----)
 Frank M. Lario, Esq., Attorney for Phonomatic Music Company.
 Harry Castelbaum, Esq., appearing for the State 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, a music box, a bagatelle machine, a cash register, and furnishings, fixtures and other personal property, described in a schedule attached hereto, seized on July 26, 1946 at 139 Water Street, Swedesboro, New Jersey, constitute unlawful property and should be forfeited.

On the above mentioned date, ABC agents entered John Webster's small restaurant at the above address to check a specific complaint that speakeasy activities were being carried on there. Two men were at the counter, one with a bottle of beer and the other with a bottle of beer and a drink of whiskey. These men told the agents that Alice Johnson had served one of them with two bottles of beer and a drink of whiskey and the other with two drinks of whiskey. They stated that they had paid Alice Johnson for the aforesaid alcoholic beverages. Alice Johnson, who is John Webster's daughter, told the agents that she was employed by her father. She at first denied but later admitted making the above sales of alcoholic beverages.

Alice Johnson and John Webster did not hold any license authorizing either of them to sell alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

The agents seized the alcoholic beverages in the restaurant as well as the furnishings, fixtures and equipment therein, including the various vending and amusement machines. Alice Johnson and John Webster were arrested.

The evidence establishes that the seized alcoholic beverages were intended for sale at this speakeasy and, hence, are illicit. R. S. 33:1-1(i). The illicit alcoholic beverages, together with the vending and amusement machines and currency therein, and the furnishings, fixtures and other personal property, all of which were seized in the restaurant, 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 Phonomatic Music Company, which sought return of the music machine. No one appeared to oppose forfeiture of the other seized property.

Under R. S. 33:1-66(f) I have the 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.

Lyman W. Medes or his wife, or both, operate under the trade name of Phonomatic Music Company. It has been established that the seized music box is owned by that concern.

Alice M. Johnson has been connected with the operation of this restaurant since 1941, at first as sole owner, and in recent years perhaps in partnership with her father. Medes first placed a machine in the restaurant in 1942, and says that at that time various officials of the community told him that Mrs. Johnson was of good character. He had a machine in the restaurant from that time to the date of the seizure, except for a short period in 1945 when the municipality required the removal of all machines pending adoption of a licensing ordinance. In June, 1945, after the adoption of such ordinance, Alice Johnson applied for a music box license, whereupon the local Chief of Police and Fire Chief inspected the place, approved the application, and the municipal officials granted such license. Thereupon Medes placed the machine in question in the restaurant. Alice Johnson obtained a renewal of this license in January, 1946.

Medes became acquainted with Alice Johnson and her father through his visits to the restaurant. He claims that on these visits he did not observe anything to cause him to suspect that speakeasy activities were being carried on there.

Actually, John Webster was convicted once in 1944 and once in 1945 for violations of the liquor laws at this restaurant. He was also convicted once during Prohibition and again in 1941 of violating the liquor laws. In addition, there is testimony to the effect that Alice Johnson was arrested by the local police on two occasions, once in 1944 and the other time in 1945, on a disorderly house charge, the basis of which was prohibited liquor activities. It is not clear whether she was convicted of these charges.

Mr. Medes appears to have made an adequate investigation in 1942 when placing a music machine at the premises. It was a restaurant to all outward appearance. There is nothing to indicate that any facts came to his attention between 1942 and 1945, when he replaced a machine with the one which was seized, which should have impelled him to recheck the character of the place or of Alice Johnson, with whom he appears to have dealt. Indeed the inspection of the premises by the local officials in connection with Mrs. Johnson's application for a music box license, and the action of the municipal officials in granting such license, while limited in scope and not necessarily vouching for the law-abiding character of the establishment in so far as the liquor laws were concerned, nevertheless could well have been mistaken by a reasonably prudent person as having such effect.

Under such circumstances, it would seem somewhat unfair to hold the music concern chargeable with knowledge of the alleged records of Alice Johnson or John Webster on the assumption that, if Medes had disregarded the action of the local officials and his personal observations at the premises, and had renewed his inquiry as to the character of the place or of the persons mentioned, he probably would have discovered that Alice Johnson and her father had a record for violating the liquor laws.

I am, therefore, satisfied that the music concern acted in good faith and did not know or have any reason to suspect that speakeasy activities were being carried on at the restaurant in question. The music machine will, therefore, be returned to the Phonomatic Music Company upon the payment of the cost of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 2nd day of December, 1946, either Lyman W. Medes or his wife, E. A. Medes, trading as Phonomatic Music Company, pays the costs of seizure and storage of the music machine, it will be returned; and it is further

DETERMINED and ORDERED that the balance of the seized property, more fully described in Schedule "A" attached hereto, 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
Deputy Commissioner.

Dated: November 22, 1946.

SCHEDULE "A"

- 237 - bottles of beer
- 4 - bottles of other alcoholic beverages
- 539 - bottles of soda
- 87 - empty beer bottles
- 828 - empty soda bottles
- 2 - Coca Cola cooler boxes
- 1 - National Cash Register #3967061 (3-1) IC
with \$3.52 in currency
- 1 - small electric clock - General Electric -
Model 4H 86
- 1 - chewing gum vending machine with currency
therein
- 1 - Westinghouse Electric Fan #1177151-E
- 1 - Westinghouse Electric Fan #2197876,
style 321347
- 1 - wooden counter
- 1 - wooden table
- 5 - wooden tables
- 15 - wooden chairs
- 2 - show cases
- 1 - Genco bagatelle machine with currency
therein
- 308 - packages of tobacco
a quantity of cigars, candy, foodstuffs
and sundries and miscellaneous personal
property

10. APPELLATE DECISIONS - KIELEY v. WEST MILFORD TOWNSHIP.

HAROLD G. KIELEY,)

Appellant,)

-vs-)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF WEST MILFORD,)Respondent)
-----ON APPEAL
CONCLUSIONS AND ORDER

Louis P. Bertoni, Esq., Attorney for Appellant.

Louis Wallisch, Jr., Esq., Attorney for Respondent.

William C. Egan, Esq., Attorney for New Jersey Tavern Association.

This is an appeal from the action of the respondent in denying appellant's application for a transfer of his plenary retail consumption license, issued for the 1945-46 fiscal year, from premises on Storms Island to premises at Jersey Avenue (State Line Boat Company, Inc. building), and from its action in denying appellant's application for renewal of his license at the latter premises for the 1946-47 fiscal year.

Appellant obtained his license for the 1945-46 fiscal year for premises on Storms Island, located near the easterly shore of Greenwood Lake. Appellant's lease on said premises expired in October, 1945, and was not renewed for the reason, as stated by the appellant, that the owner of the island desired to dispose of the entire island on terms which were excessive so far as the appellant was concerned. Appellant apparently vacated the originally licensed premises at the expiration of his lease. He then attempted to transfer his license to premises located on the mainland near the easterly shore of the lake. This application was denied. No appeal was taken therefrom. The appellant thereafter attempted to dispose of his license -- first to Frank Zimmerman and John Franco and, later, before the respondent had acted on the Franco and Zimmerman application, to one Fritz Seufert. Both applications for transfer came on for hearing at the same meeting of the respondent committee. At the request of counsel for Seufert, his application was dismissed, after which a hearing was held on the application of Franco and Zimmerman. This application was denied and no appeal was taken from said denial.

Appellant thereupon, on or about June 21, 1946, filed the applications for transfer and renewal which are the subject matter of the within appeal. It is to be noted that these applications cover the same premises to which Franco and Zimmerman had previously sought to transfer the license.

Respondent denied appellant's applications for the following reasons:

- (a) Building is not satisfactory;
- (b) There is no need for a license;
- (c) There was bad faith on the part of appellant, because appellant tried to sell his license prior to his application; and
- (d) Appellant stated to the Township Committee that in the beginning he would be at the licensed premises week-ends only.

Reasons (c) and (d) are not sufficient to sustain respondent's action in denying appellant's application. It is true that appellant sought to have his license transferred to other persons as set forth hereinabove, but there is no evidence that he acted in bad faith. The fact that appellant would be at the licensed premises at week-ends only, even if true, would scarcely be a sufficient reason to sustain respondent's action. Moreover, appellant testified herein that he intended to devote his whole time to the business.

After a careful consideration of the testimony, however, I conclude that the action of respondent should be sustained for reasons (a) and (b) set forth above. The testimony indicates that the proposed licensed premises at Jersey Avenue are located in one corner of a "Quonset hut". The hut is a large structure, approximately 40 feet by 120 feet, but the proposed licensed premises are only fourteen feet in width by thirty-two feet in depth, separated from the rest of the hut by partitions and having a separate entrance on the Jersey Avenue side. The rest of the hut is either in actual use or will be used for the storage, servicing and possibly the repair of motor boats which use a landing located on the opposite side of the hut which faces Greenwood Lake. Under these circumstances, it cannot be said that the respondent acted improperly in determining the proposed licensed premises unsatisfactory.

As to reason (b), the testimony offered by respondent shows that there are thirty-four outstanding licenses in the municipality; that the premises originally licensed are located on the easterly side of Greenwood Lake where there are no other licensed premises; that the premises to which the transfer is sought are located on the westerly side of Greenwood Lake, where there are already nine licensed premises. While the transfer and renewal of appellant's license would not increase the number of licenses in the Township, it would increase the number of licenses on the westerly side of Greenwood Lake, which section of the Township now appears to be adequately serviced.

For the reasons aforesaid, I conclude that appellant has failed to sustain the burden of establishing that the action of the respondent issuing authority was erroneous and, hence, I shall affirm respondent's action.

Accordingly, it is, on this 26th day of November, 1946,

ORDERED that the action of respondent herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Deputy Commissioner.

11. APPELLATE DECISIONS - DROZDOWSKI v. SAYREVILLE - ORDER TO SHOW
CAUSE WHY LICENSE SHOULD NOT BE EXTENDED PENDING APPEAL - VACATED.

FRANK DROZDOWSKI,)	
Appellant,)	
-vs-	)	ON APPEAL
	)	O R D E R
BOROUGH COUNCIL OF THE BOROUGH)	
OF SAYREVILLE,)	
Respondent)	

Paul C. Kemeny, Esq., Attorney for Appellant.
Francis N. Reps, Esq. and Ralph L. Fusco, Esq., Attorneys for Respondent.

This matter arises on the return of an order to show cause why the term of License C-40, issued by respondent to appellant for the fiscal year 1945-46, should not be extended pending the determination of the herein pending appeal from denial of appellant's application for a similar license for the present fiscal year.

It is admitted that the building now sought to be included in the licensed premises is an entirely new structure, was not in existence at the time the 1945-46 license was granted, and that the building originally licensed under the 1945-46 license is still standing in the rear of the new building. During its term the 1945-46 license was not transferred to include the new structure.

What constitutes the licensed premises depends on the answers made to Question 7 (necessarily read in conjunction with Question 6) of the license application. Re Morris, Bulletin 263, Item 11. Those answers indicate to the issuing authority and law enforcement authorities precisely what building or portion thereof, and what surrounding grounds, if any, are to be licensed and treated as such, which specification is essential to proper control of the licensed business especially since many regulations prohibit certain conduct on "the licensed premises." It thus appears from the respective applications that the 1945-46 license was issued for licensed premises consisting of an existing frame building at 238 McArthur Avenue, Sayreville, excluding the surrounding grounds. Application for the alleged "renewal" for the year 1946-47 sought to license premises consisting of a frame building, with imitation brick siding and brick veneer front facade which, as heretofore indicated, is a new structure, separate and apart from the building previously licensed.

R. S. 33:1-22 authorizes the Commissioner to extend a license pending appeal only where there has been denial of an application for a "renewal" of a license. R. S. 33:1-96, as amended by P.L. 1944, c. 187, defines a "renewal" license as one which, inter alia, "covers the same licensed premises."

In view of the foregoing, no jurisdiction exists in the Commissioner to extend the term of the 1945-46 license pending the determination of the appeal herein.

Accordingly, it is, on this 26th day of November, 1946,

ORDERED that the order to show cause heretofore entered herein be and the same is hereby vacated.

ERWIN B. HOCK
Deputy Commissioner.

12. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1ST TO OCTOBER 31ST 1946
AS REPORTED TO THE COMMISSIONER OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Revoked Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	478	\$ 191,375.88	63	\$ 21,675.00	11	\$ 1,113.49						552	\$ 214,164.37
Bergen	815	283,320.00	286	69,936.35	47	4,899.45	28	\$ 1,280.00	4	\$ 873.75		1180	360,359.55
Burlington	178	63,707.81	23	5,731.46	32	4,020.08	1	25.00				234	73,484.35
Camden	454	215,325.00	72	26,731.55	56	5,563.08			3	561.49		585	248,181.12
Cape May	128	61,900.00	10	3,350.00	12	1,200.00						150	66,450.00
Cumberland	81	30,936.57	12	3,100.00	27	3,560.00						120	37,596.57
Essex	1377	732,494.60	348	174,208.00	80	10,664.25	26	1,269.07				1831	918,635.92
Gloucester	107	30,700.00	11	2,200.00	6	400.00						124	33,300.00
Hudson	1560	677,477.89	289	113,699.00	59	7,348.55	54	2,177.62				1962	800,703.06
Hunterdon	78	20,870.00	2	500.00	4	500.00			1	100.00		85	21,970.00
Mercer	424	181,767.40	45	12,200.00	39	5,150.00			1	101.06		509	199,218.46
Middlesex	618	243,125.00	56	15,126.75	39	2,700.00	4	157.19				717	261,108.94
Monmouth	534	238,480.00	98	32,300.00	25	3,049.59	7	261.16	24	8,608.51	1	687	282,699.26
Morris	311	95,210.88	65	16,300.00	28	2,710.00	1	25.00	7	1,165.41		412	115,411.29
Ocean	182	90,637.77	37	15,010.00	9	891.23						228	106,539.00
Passaic	885	342,043.28	160	44,590.00	31	3,961.37	12	500.00			2	1086	391,094.65
Salem	49	16,300.00	4	550.00	9	775.00						62	17,625.00
Somerset	187	66,387.00	33	7,550.00	11	993.16						231	74,930.16
Sussex	161	31,138.33	12	1,915.00	4	210.00			1	225.00		178	40,488.33
Union	543	276,750.00	136	53,100.00	54	6,325.00	16	800.00	1	375.00		750	337,350.00
Warren	141	38,977.50	16	3,057.50	23	2,392.81	1	200.00	2	188.32		183	44,816.13
TOTALS	9291	\$3,935,924.91	1778	\$622,880.61	606	\$ 68,427.06	150	\$ 6,695.04	44	\$12,198.54	3	11,866	\$4,646,126.16

Respectfully submitted,
Edward K. Leuzarder, Adm. Inspector.

ERWIN B. HOCK, Deputy Commissioner.

13.

ACTIVITY REPORT FOR NOVEMBER, 1946

ARRESTS: Licensees and employees - - - - - 1 Bootleggers - - - - - 17
Total number of persons arrested - - - - - 18

SEIZURES:
Still - 50 gallons and under - - - - - 2
Motor vehicles - Cars - - - - - 3
Trucks - - - - - 1
Brewed Malt beverages - gallons - - - - - 31.19
Distilled alcoholic beverages - gallons - - - - - 176.70
Wine - gallons - - - - - 65.53
Mash - gallons - - - - - 100.00

RETAIL LICENSEES:
Total number of premises inspected - - - - - 950
Total number of premises where alcoholic beverages were gauged - - - - - 710
Total number of bottles gauged - - - - - 10,598
Total number of premises where violations were found - - - - - 156
Total number of violations found - - - - - 168
Type of violations found:
Gambling Devices - - - - - 39 Probable Fronts - - - - - 6
Illicit Liquor - - - - - 28 Improper Beer Taps - - - - - 5
Unqualified Employees - - - - - 26 Price Pamphlet not displayed - 4
Prohibited Signs - - - - - 19 Disposal Permit necessary - 1
Reg. 38 Sign not posted - - - - - 18 Other Violations - - - - - 4
Other Mercantile Business - - - - - 18

STATE LICENSEES:
Premises inspected - - - - - 8
License applications investigated - - - - - 28

COMPLAINTS:
Complaints assigned for investigation - - - - - 362
Complaints investigated, reviewed and closed - - - - - 332
Investigations completed - not closed administratively - - - - - 6
Investigations assigned, not yet completed - - - - - 122

LABORATORY:
Analyses made - - - - - 135
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - - 8
Liquor found to be not genuine as labeled - bottles - - - - - 24

IDENTIFICATION BUREAU:
Criminal fingerprint identifications made - - - - - 29
Persons fingerprinted for non-criminal purposes - - - - - 145
Identification contacts made with other enforcement agencies - - - - - 150
Motor vehicle identifications via N.J. State Police Teletype - - - - - 7

DISCIPLINARY PROCEEDINGS INSTITUTED:
Cases transmitted to municipalities - - - - - 10
Violations involved:
Improperly labeled beer taps - - - - - 3 Gambling (casinos) - - - - - 1
Sale during prohibited hours - - - - - 3 Sale to minors - - - - - 1
Bookmaking - - - - - 1 Unqualified employees - 1
Brawls - - - - - 1
Cases instituted at Department - - - - - 21
Violations involved:
Sale under Fair Trade price - - - - - 6 Hindering investigation - - - - - 1
Illicit liquor - - - - - 4 Improper bottling by retailer - 1
Sale to minors - - - - - 4 Lewdness - - - - - 1
Fraud and front - - - - - 3 Licensee working while drunk - 1
Sale during prohibited hours - - - - - 3 Purchase from improper source - 1
Sale outside scope of license - - - - - 2 Sale contrary to condition in
Business conducted as a nuisance - - - - - 2 permit - - - - - 1
Aiding illegal activity - - - - - 1 Sale to intoxicated persons - 1
Brawls - - - - - 1 Sale to non-members by clubs - 1
Unqualified employees - - - - - 1
Cases brought by municipalities on own initiative and reported to Department - - - - - 4
Violations involved:
Brawls - - - - - 1
Noise - - - - - 1
Sale during prohibited hours - - - - - 1
Sale to minors - - - - - 1

HEARINGS HELD AT DEPARTMENT:
Total number of hearings held - - - - - 29
Appeals - - - - - 1 Tax Revocations - - - - - 2
Disciplinary proceedings - - - - - 18 Application for license - - - - - 1
Eligibility - - - - - 7

PERMITS ISSUED:
Total number of permits issued - - - - - 1388
Employment - - - - - 137
Solicitors - - - - - 81
Social affairs - - - - - 358
Disposal of alcoholic beverages - - - - - 137
Special wine - - - - - 583
Miscellaneous permits - - - - - 92

ERWIN B. ROCK
Deputy Commissioner

14. ELIGIBILITY - FACTS EXAMINED - APPLICANT NOT DISQUALIFIED.

November 26, 1946.

Re: Case No. 593

Applicant seeks a determination as to whether or not he is disqualified from being employed by the holder of an alcoholic beverage license in this State by reason of his conviction of crime, within the meaning of R. S. 33:1-25, 26.

In February, 1933, he was convicted of "possession of slot machine". He was fined \$25.00 and placed on probation for two years. The machine in question, a "bagatelle" game, was installed in a small candy store and was apparently being used to award small candy prizes for high score. While conviction of the crime of "possession of slot machine" may or may not be a conviction of crime involving moral turpitude, Re Ulhich, Bulletin 70, Item 2, I conclude that, in view of the punishment inflicted and because no aggravated circumstances appear, such element was not present in the instant case. Re Geiger, Bulletin 515, Item 7.

In December, 1933, he was found guilty of larceny. While under R. S. 2:145-2, the common law distinction between petty and grand larceny is no longer recognized by name, nevertheless the fundamental distinction is preserved. This section provides that the theft of goods worth less than \$20.00 shall constitute a misdemeanor, whereas the theft of goods worth \$20.00 or more shall constitute a high misdemeanor. It appears in the instant case that since the "goods" involved in the "larceny" was a bundle of newspapers valued at some 63¢, we must hold that the "larceny" herein corresponds to the crime of petty larceny at common law.

Petty larceny is not a crime which per se involves moral turpitude. Whether it involves that element in a particular case depends upon the facts therein. Re Case No. 213, Bulletin 232, Item 6. As a result of the conviction, applicant was originally sentenced to a term of six months. Three weeks later he was recalled and the sentence was suspended and petitioner was placed on probation for five years and fined at the rate of 25¢ per week during said probationary period. Under the facts in this case, I conclude that the element of moral turpitude does not appear to be present.

In 1943, applicant was again arrested on a charge of being a disorderly person. On conviction, he was sentenced to a term of 60 days in the county penitentiary. Ordinarily, the conviction of being a disorderly person is not the conviction of a crime within the purview of the Alcoholic Beverage Law. Re Case No. 131, Bulletin 451, Item 7, and cases cited therein.

Under all the circumstances herein, I believe that applicant is not disqualified, within the meaning of R. S. 33:1-25, 26, by reason of the conviction herein, from being employed by or connected with the holder of an alcoholic beverage license in this State, and that he should be so informed.

Edward F. Hodges
Attorney.

APPROVED:

ERWIN B. HOCK
Deputy Commissioner.

15. LICENSED PREMISES - "RED BALL" MACHINE PERMITTED - BULLETIN 719,
ITEM 3 SUPERSEDED.

November 27, 1946.

Hercules Sales and Distributing Co.
Newark 5, N. J.

Gentlemen:

On July 3, 1946 we sent you a letter, appearing in Re Hercules, Bulletin 719, Item 3, which ruled that a game called "Red Ball", described in the said letter, was barred from licensed premises under State Regulations No. 20, Rule 7, which provides:

"No licensee shall.....allow, permit or suffer....
any machine or device commonly known as a bagatelle or
pin ball machine on or about the licensed premises."

Thereafter, when making a resurvey of the situation, we found that a fair number of licensees, some for years, had been allowing on their licensed premises so-called pool-bagatelle games closely similar in style of play to "Red Ball". While some of these games which we found differ from "Red Ball" in that they are played on a totally flat surface for the entire length of the table, are not coin operated and have no automatic score board, nevertheless these games all have essentially the same method of play which has heretofore been described in Re Hercules, supra.

We have carefully examined the question whether these pool-bagatelles which we have found should be allowed to continue on licensed premises. Because their play is not without a substantial degree of skill and because of their actual usage at many taverns for a substantial time without any abuses appearing, the Department has reached the conclusion that these pool-bagatelles may continue on licensed premises and will not be deemed to fall within the above quoted regulation.

Having reached such a conclusion, we are, in fairness, likewise going to permit the "Red Ball" on licensed premises even though it differs in some respects from the usual pool-bagatelle in that, for example, it is coin operated and has an automatic scoring device.

Hence, Re Hercules, supra, is hereby superseded.

However, with respect to "Red Ball", as well as the usual pool-bagatelle, it must be observed that:

1. The game may not be used in connection with any gambling, nor may it contain any automatic pay-off devices, nor, in the event a charge is being made for the play, may there be any "winning" of free games.

2. All local regulations concerning the game must be complied with.

Should any difficulties arise from the continued presence of these pool-bagatelles on licensed premises, including "Red Ball", the Department fully reserves the right to invoke a ban against them.

Very truly yours,
ERWIN B. HOCK
Deputy Commissioner.

16. FAIR TRADE - NOTICE OF CHANGE IN EFFECTIVE DATE OF NEXT SUPPLEMENTAL PUBLICATION.

November 25, 1946.

Because of unforeseen temporary difficulties in the mechanical preparation and printing of the supplemental Fair Trade publication, the Department announces that the Fair Trade supplement originally scheduled to become effective on December 9, 1946, will become effective on December 16, 1946 instead. The new supplemental pamphlets will be ready for distribution to all retail licensees in time for the new effective date.

Wholesale licensees are requested to instruct their sales personnel to advise retail customers of the change in the effective date of the next supplemental Fair Trade pamphlet.

DEPARTMENT OF ALCOHOLIC
BEVERAGE CONTROL

By: John H. Michelson
Assistant Deputy Commissioner.

17. STATE LICENSES - NEW APPLICATIONS FILED.

Browne-Vintners Co., Inc.

15 Exchange Place, Jersey City, N.J.

Application for Plenary Wholesale License filed November 21, 1946.

Harvey B. Moyer

Lincoln St., Schuylkill Haven, Pa.

Application for Transportation License filed November 25, 1946.

Frank H. Bohlen, t/a Holly Distributors (SBD-83)

Rear 11 South Ave., Mt. Holly, N. J.

Application for additional warehouse at Webster Ave. Cor.

Central Ave., Seaside Heights, N. J., filed November 27, 1946.

Gerard Molinari and Anthony J. D'Avanzo

T/a Modern Transit Co.

76 Harrison St., Belleville, N. J.

Application for Transportation License filed November 27, 1946.

(Transportation License T-40 issued December 3, 1946).

Ervin B. Hock

Deputy Commissioner.