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

BULLETIN 397 APRIL 18, 1940.

1. DISCIPLINARY PROCEEDINGS - SALES OF ALCOHOL IN EXCESS OF THIRTY-TWO OUNCES AND SALES TO MINORS - ALCOHOL PERMIT CANCELLED - DISTRIBUTION LICENSE SUSPENDED 10 DAYS.

In the Matter of Disciplinary Proceedings against

HILDA STRAUS,
110 Morris Street,
Jersey City, N. J.,

Holder of Plenary Retail Distribution License D-15 issued by the Board of Commissioners of the City of Jersey City and Special Permit AL-1 issued by the State Commissioner of Alcoholic Beverage Control.

CONCLUSIONS AND ORDER

Stanton J. MacIntosh, Esq., Attorney for the Department of Alcoholic Beverage Control.
Hilda Straus, Pro Se.

The licensee has entered a plea of guilty to charges that (1) on various dates between September 2nd and 30th, 1939, she sold alcohol to minors in violation of Rule 5(f) of State Regulations No. 31 and (2) on or about September 4th, 1939 she sold more than 32 oz. of alcohol to one person in a consecutive period of twenty-four (24) hours in violation of Rule 5(c) of State Regulations No. 31.

It appears that this licensee, in at least eighteen instances between September 2nd and September 30th, 1939, sold alcohol for non-beverage use to various persons under the age of twenty-one (21) years. The Special Alcohol Permit, pursuant to which these sales were made, was issued on the express condition, among others, that sales of alcohol shall not be made to any person under the age of twenty-one (21) years. In addition, this permittee violated another specific condition in selling more than 32 oz. of alcohol to one person in a consecutive twenty-four (24) hour period.

Alcohol permits confer privileges which may be exercised only by those persons who prove themselves worthy. The conduct of this permittee does not merit continuance of these privileges. The permit will be cancelled and, in addition, the liquor license will be suspended for ten (10) days less five (5) for the plea which was received in ample time prior to hearing and thereby saved the Department the time and expense incident to proving its case.

Accordingly, it is, on this 10th day of April, 1940,

ORDERED that Special Permit AL-1 be and the same is hereby cancelled, effective immediately, and it is further

ORDERED that Plenary Retail Distribution License D-15, heretofore issued by the Board of Commissioners of the City of Jersey City, be and the same is hereby suspended for five (5) days, effective April 15th, 1940 at 2:00 A.M.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

2. DISQUALIFICATION - APPLICATION TO LIFT - GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, pursuant to R. S. 33:1-31.2 (as amended by Chapter 350, P.L. 1938).

Case No. 91

CONCLUSIONS AND ORDER

On February 3, 1933 petitioner was sentenced, after pleading guilty to the crime of robbery, to an indeterminate jail sentence. On May 4, 1934 he was paroled and is now under probation.

Upon his release from prison, petitioner pursued his trade as a mason and plasterer, working for private companies for the first two years and thereafter, and until November 1939, on various W.P.A. projects. He has recently been offered employment as a bartender.

Petitioner produced four witnesses at his hearing, two of whom were painting contractors and the other two being liquor licensees in this State. They have all known petitioner for at least five years and all testified that his reputation in the community is good.

A report received from his parole officer certifies that he "has made a very satisfactory adjustment". Fingerprint returns disclose that petitioner's record since 1933 is clear, and the Chief of Police of the municipality in which he resides advises that there are no complaints or pending investigations against him.

In view of the foregoing, it satisfactorily appears that petitioner has been a law-abiding citizen for at least five years last past, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 11th day of April, 1940,

ORDERED, that petitioner's statutory disqualification because of the conviction hereinbefore set forth, be and the same is hereby lifted in accordance with the provisions of R.S.33:1-31.2 (as amended by Chapter 350, P.L. 1938).

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

3. DISCIPLINARY PROCEEDINGS - TWO HUNDRED FEET RULE - CHARGES DISMISSED UPON PROOF OF WAIVER BY BOARD OF EDUCATION.

In the Matter of Proceedings to cancel or revoke Plenary Retail Distribution License No. D-13, issued to

GROVE LIQUORS, INC., 133 Grove Street, Montclair, New Jersey,

by the Board of Commissioners of the Town of Montclair.

CONCLUSIONS AND ORDER

Samuel Rosenblatt, Esq., Attorney for Defendant-Licensee.
Emerson A. Tschupp, Esq., Attorney for Department of Alcoholic Beverage Control.

It is charged that (1) the entrance to the defendant's liquor store is within 200 feet of the nearest entrance of the Grove Street Public Grammar School in Montclair, contrary to R. S. 33:1-76, and that (2) the defendant falsely denied this fact when applying for its license, contrary to R. S. 33:1-25.

As to (1): The Grove Street school is, like many schoolbuildings, set back from the street. A concrete school-walk which leads to and from a regularly used side door of the school meets the public sidewalk at a point less than 200 feet from the entrance to the defendant's store. On either side of this school-walk as it thus meets the public way there is a lawn which is enclosed by a pipe fence two feet high (apparently erected to keep persons from trespassing on the grass).

This concrete school-walk (100 feet or more in length between the public way and the school door) constitutes an actual "entrance" to the school within the meaning of R.S. 33:1-76, since it is there that attendants at the school leave the public way and "enter" upon what is obviously the school premises en route to the schoolbuilding. See Re Coven, Bulletin 48, Item 11; Re Pelleteri, Bulletin 50, Item 2; Re F & A Distributing Co., Bulletin 127, Item 4; Stacewicz v. Trenton, Bulletin 148, Item 2; Goldberg v. Little Falls, Bulletin 177, Item 4; Memorial Presbyterian Church v. Newark et als., Bulletin 191, Item 8; Bely v. Bayonne et al., Bulletin 266, Item 4; Szycher v. Bayonne, Bulletin 266, Item 6; Re Schiffman, Bulletin 273, Item 5.

While such an entrance is, as illustrated by the cited cases, frequently separated from the public way by a gate or similar enclosure, such an enclosure is not a requisite but is merely evidential of how far the public may go. Goldberg v. Little Falls, supra. Nor is it necessary that the entrance be a main, instead of, as here, a side entrance. Memorial Presbyterian Church v. Newark et als., supra; Bely v. Bayonne et al., supra; Szycher v. Bayonne, supra.

Hence, I find that the defendant's store falls within the proscribed distance of 200 feet from the Grove Street School.

However, the defendant, after these proceedings were brought, obtained from the Montclair Board of Education a waiver

(under R. S. 33:1-76) for its license. This subsequently obtained waiver will be deemed to be corrective procedure, and hence no further steps will be taken to cancel the license. Re Martinek, Bulletin 347, Item 1.

Accordingly, charge (1) is dismissed.

As to (2): There is no evidence that the defendant, when applying for and obtaining its liquor license, deliberately misrepresented that the school was not within the prohibited distance. License for the premises was originally held (in 1938-9) by Irving Royak. When Royak applied for that license, the Montclair Board of Commissioners, fully apprized of all the facts, granted his application in the apparent belief that the correct mode of measurement to the school was not to the concrete walk but actually to the doorway into the schoolbuilding. Royak's license was renewed for the present fiscal year and then transferred to the defendant. When the defendant applied for such transfer, its officers were advised by Royak's attorney that the premises did not fall foul of the 200-feet rule.

I am satisfied that the officers of the defendant acted in good faith and did not knowingly make a misstatement in setting forth that its premises were not within 200 feet of any school.

Hence, charge (2) is also dismissed. Re McCauley, Bulletin 295, Item 10; Re Miller, Bulletin 347, Item 10.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 11, 1940.

4. DISQUALIFICATION - APPLICATION TO LIFT - DENIED.

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

Case No. 76

CONCLUSIONS AND ORDER

Petitioner was convicted in 1909 of the crime of manslaughter, and released from prison in 1917. Petitioner admits that the crime involved moral turpitude but requests that his disqualification be removed in view of his alleged law-abiding conduct since his release from prison.

Testimony establishes that since 1917 he has never been arrested or convicted of any crime; that he has been continuously employed at various jobs as laborer, chauffeur, porter and butler. His most recent employment was as steward and bartender of a club which held a liquor license.

To corroborate his assertion that he had led a law-abiding life since his release from prison he produced a member of the governing body of the municipality where petitioner lives and is employed, who has known him for two and a half years; a business acquaintance of twenty-five years; a next-door neighbor of five years;

another business acquaintance of five years, and a social acquaintance of twelve years, all of whom testified that petitioner was a law-abiding citizen.

However, petitioner testified that he received no salary from the club licensee by whom he was employed but received as compensation the net profits of the liquor business. In disciplinary and cancellation proceedings the club pleaded guilty to having aided and abetted petitioner to exercise the rights and privileges of its club license and admitted that it was not a bona fide club but merely a front for petitioner and his wife. Re Lincoln Social Club, Bulletin 396, Item 8.

It is a violation of the Alcoholic Beverage Law for a non-licensee to exercise the rights and privileges of a license. R. S. 33:1-26. In view of the fact that petitioner has engaged in the liquor business by means of a dummy club as a front, I am, despite the favorable testimony of petitioner's character witnesses, not satisfied that he has been leading an honest and law-abiding life for the last five years, warranting removal of his disqualification. See Re Case No. 67, Bulletin 345, Item 7, involving a similar situation.

His petition is therefore denied.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 12, 1940.

5. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 12, 1940

Re: Case No. 278

This proceeding is to determine whether respondent has been "convicted of a crime involving moral turpitude" and hence is disqualified, under R. S. 33:1-25, 26 from holding a liquor license or working for a liquor licensee in New Jersey.

In 1928 respondent was apparently convicted in this State for disorderly conduct, and in 1932 for transporting liquor in violation of a city ordinance. However, neither of these convictions disqualifies him since they are not convictions of a "crime" within the meaning of R. S. 33:1-25, 26. Re Case No. 314, Bulletin 393, Item 9 (violation of municipal ordinance); Re Case No. 318, Bulletin 394, Item 17 (disorderly conduct).

In 1935 respondent was convicted in this State both of robbery and of carrying a weapon unlawfully (apparently in execution of the robbery).

Although admitting this conviction in so far as carrying a weapon unlawfully is concerned, respondent claims that the Judge dismissed the charge as to robbery. However, a certified copy of the record in the case shows that respondent was actually convicted of that charge also.

Robbery is a crime which necessarily involves moral turpitude. Re Blank, Bulletin 78, Item 13; Re Kennedy, Bulletin 118, Item 10; Re Case No. 313, Bulletin 393, Item 8. So, too, by the same token is the crime of carrying a weapon unlawfully when committed in furtherance of robbery.

It is, therefore, recommended that respondent be declared disqualified, by reason of his conviction of both robbery and carrying a weapon unlawfully, from obtaining a liquor license or working for a liquor licensee in this State.

Nathan Davis,
Attorney-in-Chief.

APPROVED:
E. W. GARRETT,
Chief Deputy Commissioner.

6. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.
April 4, 1940

Case No. 316

Applicant seeks a determination of his eligibility to be employed as a solicitor notwithstanding conviction of crime following previous favorable determination of his eligibility for employment. Case No. 103, not officially reported.

Subsequent to the previous hearing in June 1936, applicant on January 12, 1939 pleaded non vult to an indictment for embezzlement, it being alleged in the indictment that he had in November 1938 embezzled from his employer, a wholesale liquor licensee by whom he was employed as a solicitor-collector, the sum sum of $249.86. He was sentenced to six months' imprisonment in the county jail.

Applicant admits the embezzlement of $213.42, claiming that he appropriated that sum to his own use out of collections for the reason that his salary, ranging as it did from six to eleven dollars a week, was insufficient to pay his living and traveling expenses. However, it appears that his wife had an independent income from a small dry goods store conducted by her, but that applicant never asked her for any money during the time he was embezzling that of his employer.

Embezzlement ordinarily involves moral turpitude. Re Case No. 285, Bulletin 345, Item 8, which also involved an embezzling solicitor-collector. Nothing in the testimony appears to free applicant's crime of that element.

It is therefore recommended that applicant be declared disqualified from holding a liquor license or being employed by a liquor licensee in this state.

Emerson A. Tschupp,
Attorney.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

7. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

April 4, 1940

Re: Case No. 320

Hearing was held to determine whether applicant is eligible to be employed by a liquor licensee in this State, despite his conviction of the crime of using the mails to defraud. He pleaded guilty to this crime and on June 29, 1939 received a suspended jail sentence of a year and a day, and was placed on probation for five years.

Applicant testified that he was the owner of a large real estate development at one of the summer resorts in this State; that he had an arrangement with a corporation, of which he was secretary, to sell it individual lots of that development after purchasers had been procured therefor by salesmen of the corporation; that he did none of the selling on behalf of the corporation, and that his duties as secretary were confined to the office and required only that he answer the telephone and keep the office clean, for which he was paid $50.00 weekly.

Examination of the indictment reveals that applicant, together with several other members of the corporation, was charged with having made false representations to twenty-four persons in connection with the sale of the real estate to such persons; that, as a result of these false representations which were known to the defendants to be false and made for the purpose of defrauding the purchasers, the latter deposited moneys, stock and other valuable securities with the defendants, which they converted to their own use; that the defendants made use of the mails in furtherance of these fraudulent practices.

Applicant denied that he was in any way implicated in these unlawful transactions and contended that he had no knowledge that any such false representations had been made. If so, why did he plead guilty? As was said in Case No. 61, Bulletin 193, Item 2: "If no guilty intent, why such a plea?"

Moreover, the facts related by applicant, even if true, are tantamount to a plea of innocence, and constitute, in effect, a collateral attack on his conviction. This cannot be done in this proceeding. Re Case No. 303, Bulletin 361, Item 6.

In the absence of mitigating circumstances, the crime of using the mails to defraud involves the element of moral turpitude. Re Case No. 196, Bulletin 219, Item 10. No facts have been here disclosed to cleanse the crime of that element.

It is recommended that applicant be advised that he is ineligible to be employed by a liquor licensee in this State.

Samuel B. Helfand,
Attorney.

APPROVED:
E. W. GARRETT,
Chief Deputy Commissioner.

8. APPELLATE DECISIONS - HALL v. SHREWSBURY TOWNSHIP.

CHARLES HALL, )

Appellant, )

-vs- ) ON APPEAL CONCLUSIONS

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF SHREWSBURY, )

Respondent )

Vincent P. Keuper, Esq., Attorney for Appellant.
John S. Applegate, Esq., Attorney for Respondent.

This appeal is from the denial of a plenary retail consumption license for premises at Asbury Avenue and Shafto Road, Reeveytown, Shrewsbury Township.

The Township (population - 1052, area - 16.3 square miles) presently has thirteen liquor licenses, viz., a club, a plenary retail distribution and eleven plenary retail consumption licenses.

At one time a municipal limitation (resolution of April 10, 1937) restricted consumption licenses in the Township to nine. However, respondent repealed this limitation by ordinance of December 10, 1938.

Appellant's site, where he plans to conduct an establishment "similar to a roadhouse", specializing in chicken dinners and catering to the transient trade of the road, is located in an undeveloped section of the Township. A roadside restaurant holding a consumption license is already located on Shafto Road about two-fifths of a mile to the south. Another consumption place is located some two miles to the southeast, and a third some two and one-half miles to the north.

The vote against appellant's license was 2-0, the chairman and another committeeman voting.

The chairman testified, in effect, that he voted against the license because he believes there are now sufficient liquor places in the Township. However, he further testified that the reason why the original limitation was repealed was to enable two residents in the Township to obtain consumption licenses, one because he had "gone to a great deal of expense.....to build the place for a license", the other because he owned premises from which a licensee had obtained transfer of his license.

The other committeeman also testified that, in his opinion, sufficient liquor places now exist in the municipality. However, he nevertheless admitted that he had been willing to issue a license to appellant for certain other premises in the Township, and finally declared that his reason for voting to deny appellant's application was that enough liquor places exist in appellant's vicinity.

The given reason for repealing the original limitation and increasing the number of licenses from nine to eleven may, perhaps, be open to criticism. However, that is not the question in

this case. There must be some stopping point in the issuance of licenses. Respondent's action should be sustained unless it clearly appears that there is need for an additional license. Eleven plenary retail consumption licenses exist in this municipality with a population of but 1052, thus being one consumption license for less than each one hundred of population. There is nothing to show that the liquor places already in existence are not ample to serve the needs of residents of the Township or appellant's vicinity or the needs of the traveling public. See Granda v. Rockaway, Bulletin 282, Item 7.

The action of respondent is, therefore, affirmed.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 13, 1940.

9. APPELLATE DECISIONS - BASCOVE v. MAGNOLIA.

ISRAEL BASCOVE, )
Appellant, ) ON APPEAL
) CONCLUSIONS
-vs- )
BOROUGH COUNCIL OF THE BOROUGH OF MAGNOLIA, )
Respondent )

Frank M. Lario, Esq., Attorney for Appellant.
Matthew F. Van Istendal, Jr., Esq., Attorney for Respondent.
George D. Rothermel, Esq., Attorney for Objectors.

Appellant appeals the denial of his application for a plenary retail distribution license for premises at White Horse Pike and Warwick Road in the Borough of Magnolia.

Subsequent to the filing of the application and before its denial, respondent, on March 12, 1940, adopted an ordinance which provides in part:

> "Section 5. No retail alcoholic beverage license other than plenary retail consumption license shall be issued by the Mayor and Council of the Borough of Magnolia."

The Commissioner has no jurisdiction to review the reasonableness of the ordinance in so far as it totally prohibits the issuance of licenses other than plenary retail consumption, nor is it material that the ordinance was adopted while appellant's application was pending. Tenenbaum v. Salem, Bulletin 109, Item 1; Forest Hill Boat Club v. Cinnaminson, Bulletin 372, Item 7; Italian American Citizens Club v. Greenwich, Bulletin 392, Item 9.

The action of respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.
By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 13, 1940.

10. FAIR TRADE - NOTICE OF NEXT PUBLICATION.

April 15, 1940

The next official publication of minimum resale prices, pursuant to the Fair Trade rules (Regulations No. 30), will be made on or about Friday, May 10, 1940, effective on or about Wednesday, May 15, 1940. New items and changes in old items must be filed at the offices of this Department not later than Friday, April 26, 1940.

In order that retail licensees be afforded sufficient time to conform their prices, the pamphlet price lists will be mailed at least one week prior to the effective date.

Notification of the proportionate share of the aggregate expense involved will be made to participating companies as soon as the pamphlet price list is mailed to retail licensees.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

11. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED - NO PADLOCK IMPOSED.

| | |
|---|---|
| In the Matter of the Seizure on January 20, 1940, of a still at 415 West Street, in the City of Camden, County of Camden and State of New Jersey. | Case 5663<br>ON HEARING<br>CONCLUSIONS AND ORDER |

Rocco Palese, Esq., Attorney for Italian-American Building and Loan Association.
Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

On January 20, 1940, as the result of a fire, investigators of this Department discovered and seized a complete "bootleg" still set up for operation in the upper portion of a garage at 415 West Street, Camden.

The still was not registered under the provisions of R. S. Title 33, Chapter 2. At the hearing, no one appeared to contest forfeiture. It is determined that the seized property constitutes unlawful property. R. S. 33:2-5.

As to the padlocking: Anthony Malatesta testified that he is president of the Italian-American Building and Loan Association, the owner of the garage; that as agent of the Association he rented the garage to one Joseph Helfer for use as a warehouse in the business of collecting paper and boxes; that the rental was $15.00 per month; that he had no knowledge of the presence of the still in the garage. Subsequent investigation tends to show that Helfer sublet the upper portion of the garage for $5.00 per month to one Ragapiera who has since died as a result of burns sustained when the still exploded. The Building and Loan Association apparently had no dealings with Ragapiera.

Under the circumstances, no padlock will be imposed.

Accordingly, it is ORDERED that the seized property, set forth in Schedule "A", be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5,and that it be retained for the use of hospitals and State, County and municipal institutions at the direction of the Commissioner.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 13, 1940.

SCHEDULE "A"

1 - copper pre-heater
1 - set 1" copper coils
1 - copper dephlegmator
1 - Mast Foos & Co. hand force pump
1 - pre-heater hood
100 - pounds of coke
25 - pounds of sugar
10 - 50-gallon wooden barrels with mash
1 - lot of stove pipes
1 - 50-gallon cooker
1 - iron stove base
2 - 5-gallon wooden barrels
miscellaneous pipe, hose and fittings
1 - 50-gallon cooler

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on March 1, 1940, of a Ford Coupe and a quantity of alcoholic beverages found therein, on Absecon Highway, in the City of Absecon, County of Atlantic and State of New Jersey.

Case 5701

ON HEARING
CONCLUSIONS AND ORDER

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

On March 1, 1940, Investigator Tracy of this Department, accompanied by Constable Coccaro of Atlantic County, stopped a Ford Coupe driven by Robert Shepperson (a well known liquor law violator), and discovered therein a bottle of alcoholic beverages. They also observed Charles Bose, the passenger and owner of the vehicle, throw another bottle out of the car. This was recovered and found to contain an alcoholic beverage. The bottles bore no Federal tax stamps or other indication of tax payment, and the motor vehicle was not licensed to transport alcoholic beverages. The Ford Coupe and alcoholic beverages were seized, and Robert Shepperson and Charles Bose were arrested, charged with possession and transportation of illicit alcoholic beverages.

At a hearing duly held to determine whether the motor vehicle and the alcoholic beverages should be confiscated, no one appeared to contest the proceedings.

The alcohol is presumably "bootleg" because, although fit for beverage purposes, it bore no tax stamps. P.L. 1939, c. 177. Under the Statute, illicit alcohol and the vehicle used in its transportation are subject to confiscation. R.S.33:1-66(c). It is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property (set forth in Schedule "A", annexed hereto) 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 Commissioner.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 15, 1940.

SCHEDULE "A"

2 bottles of alcoholic beverages
1 Ford Coupe, Serial No. A4646128,
1939 N. J. Registration ZW271NJ

13. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED, PADLOCK ORDERED.

| | |
|---|---|
| In the Matter of the Seizure on February 6, 1940 of a still in a dwelling occupied by William E. Kinslow, in the Township of Pemberton, County of Burlington and State of New Jersey. | Case 5677<br>CONCLUSIONS AND ORDER |

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

On February 6, 1940 investigators of this Department searched the farm occupied by William E. Kinslow, located five miles west of Lakehurst Road between White's Bog and Reeves' Bog in Pemberton Township, on which was situated a two-story frame dwelling comprising six rooms and a shed and six outbuildings. They discovered and seized the alcoholic beverages and unregistered still described in Schedule "A" annexed hereto, in a chicken house about a hundred feet distant from the residence.

At a seizure hearing duly held no one appeared to contest the forfeiture of the seized articles or the padlocking of the premises.

Accordingly, it is ORDERED that the seized property be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 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 Commissioner.

It is further ORDERED that the premises occupied by William E. Kinslow, five miles west of Lakehurst Road on a woods road between White's Bog and Reeves' Bog, Pemberton Township, being the premises on which the still was found, shall not be used or occupied for any purpose whatsoever for a period of six months commencing the 16th day of May, 1940.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 16, 1940.

SCHEDULE "A"

2 - copper cookers
1 - set of copper coils
2 - copper goosenecks
1 - copper pipe
1 - 1-gallon bottle of alcoholic beverages
2 - 50-gallon galvanized receiving tanks
1 - 2-burner gasoline stove
2 - 30-gallon wooden barrels with corn mash
5 - gallons of gasoline
25 - feet of rubber hose

14. APPELLATE DECISIONS - WIEGAND v. HIGH BRIDGE.

JOHN WIEGAND, T/a WELCOME INN, )
Appellant, )
-vs- ) ON APPEAL
) CONCLUSIONS
BOROUGH COUNCIL OF THE BOROUGH OF HIGH BRIDGE, )
Respondent )
- - - - - - - - - - - - - - - - - - )

Emmett D. Topkins, Esq., Attorney for Appellant.
Ryman Herr, Esq., Attorney for Respondent.

Appellant held a plenary retail consumption license for premises located on Fairview Avenue in the Borough of High Bridge from Repeal to October 4, 1937. It was then transferred to one Harry Combes, who held the license until June 30, 1939, and did not thereafter renew. Appellant thereupon applied for such license for said premises but his application was denied. This is an appeal from such denial.

The following are the stipulated issues:

(1) There is no need for any further licensed premises;

(2) Premises are in a residential neighborhood; and

(3) Prior misconduct at the premises.

As to (1): A Borough resolution adopted December 16, 1936, which limits the number of plenary retail consumption licenses to six, remains in effect. There are but five such licenses in the Borough. Where, as here, vacancies exist in the quota, an applicant may not be denied a license on the declared ground that sufficient consumption places exist in the Borough. DeLucca v. Fairview, Bulletin 279, Item 12. The first alleged ground was, therefore, not a sufficient reason for denial.

As to the remaining grounds: The testimony establishes that the neighborhood in which the license is sought is, in general, residential in character. The population of the Borough is between 2000 and 2200, and there are, in the vicinity of the premises, between 300 and 350 residents. Across the street is a neighborhood delicatessen store, and a quarter of a mile away is a repair and blacksmith shop. The next nearest businesses are, to the south, one-half mile away and to the north, two miles away.

Six witnesses, none of whom live more than 250 feet away from the premises in question, testified, in sum, that during the period prior to October 4, 1937 the premises were operated in a very disorderly fashion; that, almost nightly, until 2:00 or 3:00 A.M., there was considerable noise consisting of loud singing and talking, racing of motors, blowing of horns and use of profane language; that on numerous occasions intoxicated persons were observed on the premises; that patrons intending to use the outhouses in the rear of the premises were observed relieving themselves in the open; that appellant himself was on eight or ten occasions observed in an intoxicated condition.

In addition, it appears that during an early afternoon in the latter part of May 1939, appellant entered the premises as a patron accompanied by a female companion; that she was served two or three drinks; that she got drunk; that the then licensee requested appellant to "take that woman **out of** the place", to which appellant replied, "No, serve her another drink. I saw her drink eighteen or nineteen."

Appellant denies all such evidence of prior misconduct. There is, however, no reason to believe that the stories of these witnesses were manufactured out of thin air. Their only apparent interest in the proceedings is their desire that the peace and quiet of their residential neighborhood be maintained.

In view of the evidence as to unsatisfactory conditions in the past, it cannot be said that the denial was arbitrary or unreasonable. As the Commissioner said in Wilson v. Highlands, Bulletin 282, Item 8:

> "A licensee who locates his tavern in a residential district is under a strict duty to cause no disturbance to the residential quiet and decency of the neighborhood."

The action of respondent is affirmed.

D. FREDERICK BURNETT,
Commissioner.

By: E. W. GARRETT,
Chief Deputy Commissioner.

Dated: April 16, 1940.

15. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED, PADLOCK ORDERED.

| | |
|---|---|
| In the Matter of the Seizure on February 4, 1940, of a still at 10 Brooklyn Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey. | Case 5674<br>ON HEARING<br>CONCLUSIONS AND ORDER |

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

On February 4, 1940, investigators of this Department, accompanied by Atlantic City Police, seized a "bootleg still" in operation at 10 Brooklyn Avenue, Atlantic City.

The still was not registered under the provisions of R. S. Title 33, Chapter 2. At the hearing, no one appeared to contest forfeiture. It is determined that the seized property constitutes unlawful property. R. S. 33:2-2.

As to padlocking: At the hearing, Frank J. Clark testified that he is employed by Bacharach Real Estate Company, managing agent of the above premises which are owned by James T. Butler, and that this building, located in a low-class neighborhood, is under his direct supervision; that on January 25, 1940, one James Ward appeared at the company's office and, upon the payment of $5.00 to an employee there, rented the property; that the rent for the premises was $10.00 per month. Clark further testified that he proceeded to the premises later, on the same day, and there found Ward, who was about to move in; that his only conversation with Ward was with reference to collecting the balance of the rent; that he made no investigation as to the man's previous record or reputation; and that he was not aware of the presence of the still until notified by agents of this Department.

This is the second occasion in which a still has been discovered in premises managed by Bacharach Real Estate Company. The first seizure occurred in 1937 at 9 Thompson Street, a very short distance from the site of the present seizure. Seizure Case 3823. With that background, they should have been more vigilant in the selection of their tenants. Apparently they have failed to profit from that experience. Questioned at the hearing, Clark testified:

"Q What steps did you take, because of that incident, to try to safeguard against occurrences of this type being repeated?

"A In this particular locality it is kind of tough. Rents are small. As long as the rents come in, we don't bother the tenants."

Landlords as well as their agents cannot rent premises to tenants without investigation and then expect to get off scot-free when the tenant is apprehended using the premises for illicit alcoholic beverage activities.

In view of the foregoing, no good cause has been shown why the padlocking penalty should not be imposed. In fixing the length of the penalty, I am considering Clark's testimony that his company voluntarily padlocked the premises as soon as the still was discovered.

Accordingly, it is ORDERED that the property set forth in Schedule "A" (annexed hereto) be and hereby is forfeited in accordance with the provisions of R. S. 33:2-5 and that it be retained for the use of hospitals, State, County and municipal institutions, or destroyed in whole or in part at the direction of the Commissioner.

It is further ORDERED that the building, erected on premises located at 10 Brooklyn Avenue, in the City of Atlantic City, County of Atlantic and State of New Jersey, being the premises in which the still was found, shall not be used or occupied for any use whatsoever for a period of one month, commencing the 30th day of April, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: April 16, 1940.

By: E. W. Barnett
Chief Deputy Commissioner.

SCHEDULE "A"

1 copper cooker
1 copper gooseneck
1 wooden cooler with copper coils
1 2-burner oil stove
1 galvanized receiving tank
6 50-gallon barrels of rye mash
1 pint of alcoholic beverages