

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

BULLETIN 699

MARCH 8, 1946.

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MEMORANDUM FOR THE DIRECTOR

DATE: 10/15/54

TOP SECRET

Reference is made to the report of the Special Agent in Charge, New York, dated 10/15/54, captioned as above.

The report contains information regarding the activities of the Soviet Espionage Service in New York City.

It is noted that the above information was obtained from a confidential source who has provided reliable information in the past.

The information is being furnished to you for your information and for the information of the Bureau.

Very truly yours,  
Special Agent in Charge

Special Agent in Charge

Special Agent in Charge

Special Agent in Charge

Special Agent in Charge

Special Agent in Charge

Special Agent in Charge

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

BULLETIN 699

MARCH 8, 1946.

1. DISCIPLINARY PROCEEDINGS - FRONT - LICENSEE, ALTHOUGH DISQUALIFIED, EXERCISED THE RIGHTS AND PRIVILEGES OF LICENSE PRIOR TO TRANSFER - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR A PERIOD OF 30 DAYS.

In the Matter of Disciplinary Proceedings against

JOHN C. REDDICK, JR.  
T/a REDDICK'S CAFE  
3201-3203 Pacific Avenue  
Wildwood, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of Wildwood.

Irving Shenberg, Esq., Attorney for Defendant-licensee.  
Harry Castelbaum, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleads non vult to charge alleging that:

"From September 7, 1944 and until May 12, 1945 you exercised the rights and privileges of the plenary retail consumption license then being held by Marion A. Pyott for premises 3201-3203 Pacific Avenue, Wildwood, New Jersey, in violation of R. S. 33:1-26."

The Departmental file discloses that defendant became a naturalized citizen of the United States on April 27, 1945. Previous thereto, on August 17, 1944, defendant, then a Canadian national, entered into an agreement with one Marion A. Pyott whereby he purchased his licensed premises, taking actual possession thereof on September 7, 1944. Because defendant was disqualified to be a liquor licensee, the business was continued in the name of the licensee, Marion A. Pyott, until the latter's death on May 12, 1945. The license was then extended in the name of Pyott's widow, Florence O. Pyott, as executrix of the estate of Marion A. Pyott, and continued in her name until June 28, 1945, when it was transferred by the local issuing authority to defendant. Renewal of same was granted to defendant for the current 1945-46 licensing period.

Defendant contends that he became aware that he was disqualified to hold a liquor license on August 17, 1944, after the agreement to purchase the licensed premises had been signed and part of the purchase price had been paid by him. Furthermore, defendant claims that he expected to be naturalized on November 6, 1944, but due to the need of additional proof of residence the matter was delayed.

Defendant continued, however, to operate the business under the license issued to the former owner despite the fact that he had learned that such conduct was unlawful.

Even though the unlawful situation has now been corrected, the nature of the violation heretofore committed warrants a suspension of the license. Under the circumstances, I shall, therefore, suspend the license for a period of thirty days.

The proceeding does not abate by reason of the expiration of the licensing year on June 30, 1945, but remains fully effective against the license for the current (1945-46) period. State Regulations No. 16.

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

ORDERED, that Plenary Retail Consumption License C-51, issued by the Board of Commissioners of the City of Wildwood to John C. Reddick, Jr., t/a Reddick's Cafe, for premises 3201-3203 Pacific Avenue, Wildwood, be and the same is hereby suspended for a period of thirty (30) days, commencing at 2:00 a.m. March 5, 1946, and terminating at 2:00 a.m. April 4, 1946.

ALFRED E. DRISCOLL  
Commissioner.

2. ADVERTISING - DECALCOMANIA SIGNS ADVERTISING ALCOHOLIC BEVERAGES MAY NOT BE AFFIXED TO THE INTERIOR OR EXTERIOR OF DOORS OR DISPLAY WINDOWS ON RETAIL LICENSED PREMISES.

NOTICE TO MANUFACTURERS, WHOLESALERS AND RETAIL LICENSEES:

Agents of this Department have found decalcomania signs, advertising a particular brand or type of alcoholic beverages, affixed to the interior or exterior of doors and display windows of certain retail licensed premises. These signs were removed at once and the retailers' attention directed to Rules 2 and 5 of State Regulations No. 21, reading:

"Rule 2. No retail licensee shall permit or suffer the display, on the exterior of the licensed premises, of any signs or other advertising matter bearing the name, brand or trademark of any manufacturer or wholesaler of any alcoholic beverage.

"Rule 5. No retail licensee shall permit or suffer any decalcomania sign, advertising any brand or type of alcoholic beverage to be affixed to or placed upon any door of the licensed premises, or upon any display or show window thereof."

I here bring this matter to your special attention and ask that you cooperate by properly instructing your agents and distributors that in giving out these decalcomania signs they are not to be affixed in violation of the above quoted rules.

ALFRED E. DRISCOLL  
Commissioner.

Dated: March 1, 1946.

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

In the Matter of Disciplinary Proceedings against )  
 )  
 NICHOLAS and SOPHIE DOMENICES )  
 T/a NICK'S CAFE )  
 699 Central Avenue )  
 Camden, N. J., )  
 )  
 Holders of Plenary Retail Consumption License C-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )  
 ----- )

CONCLUSIONS AND ORDER

Nicholas and Sophie Domenices, Defendant-licensees, Pro se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to a charge that they possessed illicit alcoholic beverages at their licensed premises in violation of R. S. 33:1-50.

On January 9, 1946 an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized on defendants' licensed premises one 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" and one 4/5 quart bottle labeled "Carstairs White Seal Blended Whiskey", when his "field" tests indicated that the contents thereof were not genuine as labeled. Subsequent analysis by a Federal chemist confirmed the fact that the contents of the two seized bottles had been refilled.

The licensees deny any knowledge of the cause of the violation. Licensees, however, are responsible for any "refills" found in their stock of liquor. Re Kurian, Bulletin 517, Item 2.

Defendants have no previously adjudicated record. The license will be suspended for a period of fifteen days. Cf. Re Nurse, Bulletin 680, Item 7.

Accordingly, it is, on this 28th day of February, 1946,

ORDERED, that Plenary Retail Consumption License C-24, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Nicholas and Sophie Domenices, t/a Nick's Cafe, for premises 699 Central Avenue, Camden, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 6, 1946, and terminating at 2:00 a.m. March 21, 1946.

ALFRED E. DRISCOLL  
Commissioner.

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

In the Matter of Disciplinary Proceedings against )

HOWARD JOHNSON )  
T/a HOWARD'S CAFE )  
3829 Marlton Pike )  
Pennsauken Township )  
P. O. Camden, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Pennsauken. )  
----- )

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

BY THE COMMISSIONER:

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

On December 27, 1945 an inspector of the Federal Alcohol Tax Unit, Internal Revenue Service, seized on defendant's licensed premises two 4/5 quart bottles labeled "Canadian Club Blended Canadian Whisky", when his "field" tests indicated that the contents thereof were not genuine "Canadian Club Whisky" as labeled. Subsequent analysis by a Federal chemist confirmed the fact that the contents of the seized bottles were not genuine as labeled. There is cogent reason to believe that each of the seized bottles labeled "Canadian Club" was refilled with "Harwood" whiskey.

As I have repeatedly pointed out, a customer is entitled to receive exactly what he orders. Retailers are not permitted to refill bottles. Re Leda, Inc., Bulletin 678, Item 1.

Defendant has no previously adjudicated record. I shall suspend his license for a period of fifteen days. Re Nurse, Bulletin 680, Item 7.

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

ORDERED, that Plenary Retail Consumption License C-4, issued by the Township Committee of the Township of Pennsauken to Howard Johnson, t/a Howard's Cafe, for premises 3829 Marlton Pike, Pennsauken Township, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. March 6, 1946, and terminating at 3:00 a.m. March 21, 1946:

ALFRED E. DRISCOLL  
Commissioner.

5. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN, NOVAK, BROTMAN, PFEIFER, LENSI AND MAROTTA.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, JOHN NOVAK, SOPHIE BROTMAN, EMIL PFEIFER, JOHN LENSI and DANIEL G. MAROTTA,

Respondents

-----)

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq., Attorneys for Appellant. John J. Fallon, Esq., by Robert F. McAlevy, Jr., Esq., Attorney for Respondent Board. Dominick J. Marrone, Esq., Attorney for John Novak. Nathan Zeichner, Esq., Attorney for Daniel G. Marotta. Other individual respondents appearing pro se.

BY THE COMMISSIONER:

These appeals relate to the issuance of five plenary retail distribution licenses by the Board of Commissioners of the City of Hoboken. All five appeals were scheduled for hearing on the same day. Testimony was offered in one case (Novak) and it was stipulated that such testimony should constitute the record in each of the other four cases. Since a common issue pervades all of these appeals, they may be considered together in this opinion.

The City of Hoboken, according to the last official census, has a population of 50,115. As of July 1, 1945, there was outstanding in that municipality a total of 221 retail liquor licenses (exclusive of club licenses).\* This total comprised 201 plenary retail consumption licenses and 20 plenary retail distribution licenses. The ratio of those licenses to population was one to each 225 persons. With particular reference to each type of license, the ratio for consumption licenses was one to 250, and for distribution licenses, one to 2500. The appellant contends that these figures indicate that, as of July 1, 1945 (the commencement of the fiscal year), the public need and necessity of the residents of the respondent municipality did not require the issuance of any further liquor licenses. With this contention, I am inclined to agree. It has long been my conviction, amply borne out by experience, that our problem in this state is one of too many licenses rather than too few. For that reason I have advocated, for several years last past, that each issuing authority adopt an ordinance limiting the number of licenses (see R.S.33:1-40) on the basis of no more than one consumption license to every one thousand persons and one distribution license to every three thousand persons. The respondent, however, has not seen fit to adopt any ordinance of limitation.

\*For clarity, it should be explained that each of the 221 licensees is privileged to sell alcoholic beverages in the original containers and, in addition, the consumption licensees may also sell for on-premises consumption by the glass.

The issuance of retail liquor licenses rests, in the first instance, within the reasonable discretion of the local issuing authority. In the absence of an abuse of such discretion, the action of the authority in issuing liquor licenses will not be disturbed. The question, therefore, is whether the respondent Board abused its discretion in granting the five distribution licenses herein involved.

The underlying test in the issuance of liquor licenses is the necessity and convenience of the public. This has always been the applicable test in this state. Cf. Paul v. Gloucester County, 50 N. J. L. 585, Ct. of E. and A. (1888). In that case, the court said (at p. 596):

"No one has a right to demand a license; license is a special privilege granted to the few, denied to the many.....The license by the old law cannot be granted unless twelve reputable freeholders certify that it is necessary and will conduce to the public good. The necessity for a recommendation appears in the license law as early as 1738."

The most recent expression of this test is to be found in a decision by the Supreme Court in Zicherman v. Driscoll, decided February 5, 1946 (not yet officially reported), wherein it is stated:

"The common interest of the general public should be the guide post in the issuing and renewing of (liquor) licenses."

So far as the "common interest of the general public" of the City of Hoboken is concerned, it would appear that it was amply served, at least with respect to distribution licenses with which these appeals are involved, for many years last past. From July 1941 to July 1944, a maximum of seventeen distribution licenses for each fiscal year were issued by the respondent Board. On July 1, 1944 it issued eighteen such licenses, and during that fiscal year expiring June 30, 1945, added two more. If it be argued that the war years produced an influx of residents and defense workers in the municipality, necessitating an increase in the number of distribution licenses, the cited figures negate the force of any such argument. In any event, and conceding that an increase may have been warranted during the war years, the argument falls of its own weight with the advent of the reconversion period following the cessation of hostilities in August 1945.

The five distribution licenses herein were issued during September and October, 1945. In addition, there were seventeen new consumption licenses issued between July 1st and November 1st, 1945. The overall ratio existing on July 1, 1945 was thus further reduced to one license for every two hundred inhabitants and, for distribution licenses, one to every two thousand.

There must, of necessity, be a saturation point beyond which a municipality may grant no additional applications for liquor licenses. If there were no such point, there would be no discretion to be exercised by an issuing authority. All liquor license applications would be required to be granted, so long as the requisite fee was paid and the necessary qualifications of the applicants and the premises were met. It is settled, however, that such is not the law. In Bumball v. Burnett, 115 N. J. L. 254, in which the prosecutor on certiorari had been denied a license, Justice Parker stated:

"Prosecutor argues apparently that a liquor license is to be obtained and is obtainable on the same theory as a license to carry on, say a grocery business, demandable by any respectable citizen on payment of the prescribed fee: but that is not the case. The sale of intoxicating liquor is in a class by itself. Paul v. Gloucester, 50 N. J. L. 585, 595. 'No one has a right to demand a license: license is a special privilege granted to the few, denied to the many.' Ibid. 596. 'There is no inherent right in a citizen to sell intoxicating liquors by retail. It is not a privilege of a citizen of the State of the United States.' Meehan v. Board, 29 N.J.L.J. 370; 64 Atl. Rep. 689. See, also, Hagan v. Boonton, 62 N.J.L. 150.

"One phase of the present argument for the writ seems to be that as the ordinance (as claimed) says nothing about the number of licenses to be issued, the borough council has no power to call a halt until, with a slate clean of pending applications, it ordains a limit, or at least fixes a limit by resolution: but we see no merit in this. If the ordinance had fixed one hundred as a limit, still the council, in its discretionary power to license or not to license, could stop short of that number at any point, or could license A and refuse B. As a matter of history, in this very county of Somerset a quarter of a century ago, when licenses were controlled by the Court of Common Pleas, and there was no legal limit on the number, that court announced that, in its opinion, there were enough licensed places in the county, and no more licenses would be granted until further order. No question of the legality of this action was ever formally raised.

"We deem the application for a writ wholly without merit, and allocatur is denied.

"It may do no harm to add, that in view of seventeen existing licenses in a population of three thousand three hundred and thirty-six, or more than one license to each two hundred inhabitants, the judgment of the mayor and council in refusing to grant more, seems to have been a sound one."

It is thus clear that, when liquor licenses are issued to serve the private interests of individual applicants, without any regard for the paramount issue of public necessity and convenience, the action of the issuing authority in granting such applications constitutes an abuse of discretion.

This would appear to be the situation with respect to the issuance of the five distribution licenses herein. The appellant alone produced testimony bearing on the issue of public necessity. Neither the Board nor any of the individual respondents presented any proof on this issue. Conceding, for present purposes, the presumptive validity of the action of the respondent Board in granting the applications, that presumption would appear to be negated by the ratio of licenses to population previously cited. Apart from this, however, the proofs presented by the appellant support its contention that public necessity did not authorize the additional licenses, and required that the issuing authority or the individual respondents proceed with proofs to combat that contention. The complete absence of any such rebutting proofs is fatal to the cause of the respondents.

A case on all fours with those at bar was presented to former Commissioner Burnett in Franco v. Phillipsburg, Bulletin 392, Item 5. There the appeal involved an increase in the number of distribution licenses from three to five. After pointing out that, prior to the increase, there was one license per four hundred of population, the Commissioner said:

"Appellants have sustained the burden of proof that public necessity and convenience did not warrant the granting of two additional plenary retail distribution licenses, at least to the extent that the onus of going forward was shifted to respondents. But respondents produced no testimony tending to establish the reasonableness of the increase in the quota and the public necessity for the additional licenses. For aught that appears, the issuance of the licenses served only the private interests of the individual respondents."

This decision was appealed to the Supreme Court (125 N.J.L.157). In affirming the setting aside of the additional licenses, Justice Case stated:

"The right extensively to regulate the sale of intoxicating liquors by retail is within the police power of the state. Meehan v. Excise Commissioners, 73 N. J. L. 382, 75 id. 557. Broad control by the commissioner over the conduct of licensees under the existing statute has been judicially sustained, Franklin Stores Co. v. Burnett, 120 N. J. L. 596, as has also the right of imposing regulations and suspending the licenses of offending licensees, Gain v. Burnett, 122 N. J. L. 39, 123 id. 317. We think that the commissioner, under the proofs and under his finding, based upon the proofs, that public necessity and convenience did not warrant the granting of those additional plenary retail distribution licenses, had authority to revoke the licenses." (Underscoring mine)

It should be further noted that since October 1945, in addition to the licenses herein, the respondent Board has issued eight new consumption licenses and six new distribution licenses. Pending appeals in connection with the latter six licenses will be disposed of by separate opinion.

Licensing run riot! This conclusion is inescapable from the status of the record before me. The action of the respondent Board in each case must be reversed and the license issued to each individual respondent will be cancelled.

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

ORDERED, that the action of the respondent, Board of Commissioners of the City of Hoboken, in granting the applications for plenary retail distribution licenses of the five individual respondents herein, be and the same is hereby reversed; and it is

FURTHER ORDERED, that the plenary retail distribution licenses issued to the individual respondents, John Novak, Sophie Brotman, Emil Pfeifer, John Lensi and Daniel G. Marotta, be and the same are hereby cancelled, set aside and declared null and void, and each such individual respondent is hereby directed forthwith to cease all alcoholic beverage activity under the license heretofore issued to him.

ALFRED E. DRISCOLL  
Commissioner.

6. ACTIVITY REPORT FOR FEBRUARY, 1946

To: Alfred E. Driscoll, Commissioner

<u>ARRESTS:</u>		Licensees and employees - - - - -	3	Bootleggers - - - - -	4
		Procuring illicit alcoholic beverages in speakeasy - - - - -			8
		Total number of persons arrested - - - - -			15
<u>SEIZURES:</u>		Brewed malt alcoholic beverages (beer, ale, etc.) - gallons - - - - -			
		Wine - gallons - - - - -			4
		Distilled alcoholic beverages (whiskey, brandy, etc.) - gallons - - - - -			33.2
<u>RETAIL LICENSEES:</u>		Total number of premises inspected - - - - -			1104
		Total number of premises where alcoholic beverages were gauged - - - - -			675
		Total number of bottles gauged - - - - -			10328
		Total number of premises where violations were found - - - - -			153
		Total number of violations found - - - - -			215
		Type of violations found:			
		"Fronts" (concealed ownership) - - - - -	4	Prohibited signs - - - - -	78
		Gambling devices - - - - -	2	No sign denoting legal sale hours - - - - -	
		Illicit liquor - - - - -	50	off-premises consumption - - - - -	22
		Other mercantile business - - - - -	6	Stock disposal permits necessary - - - - -	11
		Price pamphlet not displayed - - - - -	13	Unqualified employees - - - - -	19
				Other types of violations - - - - -	10
<u>STATE LICENSEES:</u>		Premises inspected - - - - -			9
		License applications investigated - - - - -			28
<u>COMPLAINTS:</u>		Investigated, reviewed and closed - - - - -			320
		Investigation assigned, not yet completed - - - - -			218
<u>LABORATORY:</u>		Analyses made - - - - -			155
		"Shake-up" cases (alcohol, water and artificial coloring) - - - - -			14
		Liquor found to be not genuine as labeled - - - - -			33
<u>IDENTIFICATION BUREAU:</u>		Criminal fingerprint identifications made - - - - -			8
		Persons fingerprinted for non-criminal purposes - - - - -			201
		Identification contacts with other enforcement agencies - - - - -			185
		Motor vehicle identifications via N. J. State Police Teletype - - - - -			15
<u>DISCIPLINARY PROCEEDINGS INSTITUTED:</u>		Cases transmitted to municipalities - - - - -			21
		Violations involved:			
		Bookmaking on premises - - - - -	4	Sale for off-premises consumption by clubs - - - - -	1
		Brawls - - - - -	2	Sale to intoxicated persons - - - - -	3
		Gambling (shuffleboard) - - - - -	1	Sale to minors - - - - -	9
		Hostesses - - - - -	1	Sale to non-members by clubs - - - - -	1
		Sale during prohibited hours - - - - -	6		
		Cases instituted by Department (2 cases also involving cancellation proceedings)* - - - - -			22
		Violations involved:			
		Fraud and front - - - - -	1	Sale during prohibited hours - - - - -	2
		Gambling (cards) - - - - -	1	Sale to minors - - - - -	4
		Illicit liquor - - - - -	11	Obscene pictures - - - - -	1
		Lewdness - - - - -	1	Tie-in sales* - - - - -	2
		Sale by minor permittee - - - - -	1	Unqualified employee - - - - -	1
		Cases brought by municipalities on own initiative and reported to Department - - - - -			4
		Violations involved:			
		Brawls - - - - -	4	Sale to intoxicated persons - - - - -	1
<u>HEARINGS HELD AT DEPARTMENT:</u>		Total number of hearings held - - - - -			48
		Appeals - - - - -	8	Seizures - - - - -	3
		Disciplinary proceedings - - - - -	23	Applications for license - - - - -	4
		Eligibility - - - - -	9	Tax revocation - - - - -	1
<u>PERMITS ISSUED:</u>		Total number of permits issued - - - - -			763
		Unqualified employees - - - - -			129
		Solicitors - - - - -			111
		Social affairs - - - - -			271
		Home manufacture of wine - - - - -			7
		Disposal of alcoholic beverages - - - - -			143
		Miscellaneous permits - - - - -			102

Respectfully submitted,  
ERWIN B. HOCK  
Deputy Commissioner.

7. STATE LICENSES - APPLICATION FOR TRANSFER OF PLENARY WHOLESALE LICENSE DENIED.

In the Matter of an Application )  
to Transfer from )  
HARRY SCHENKEL )  
75 William Street )  
Newark, N. J., )  
to )  
MACK LIQUOR DISTRIBUTORS, INC. )  
60 Park Place )  
Newark, N. J., )  
Plenary Wholesale License W-90 )  
issued by the Commissioner of )  
Alcoholic Beverage Control. )  
----- )

CONCLUSIONS  
AND ORDER

BY THE COMMISSIONER:

On July 26, 1945 Plenary Wholesale License W-90 was issued to Harry Schenkel for premises at 75 William Street, Newark. At that time the supply of nationally advertised liquor was limited and manufacturers had fixed allotments for existing licensed wholesalers in this State. Two days before the license was issued, the attorney representing the applicant Harry Schenkel was advised that the license would be granted with the express understanding that the licensee would not attempt to secure any portion of existing quotas now being supplied to licensees in this State, and that the Department reserved the right, in the event that Mr. Schenkel applied for renewal of his license for the 1946-47 fiscal year, to reconsider the whole question of the number of wholesale licenses to be issued in this State.

Investigation discloses that Harry Schenkel has never exercised the privilege granted by the license.

On January 18, 1946 Mack Liquor Distributors, Inc. filed an application for the transfer of License W-90 from Harry Schenkel to itself, and from 75 William Street, Newark, to 60 Park Place, Newark. Investigation of this application discloses that on January 11, 1946 Harry Schenkel and Mac Zimetbaum entered into an agreement whereby Schenkel agreed to sell, assign and transfer to Zimetbaum the license considered herein for the sum of \$15,000.00. The agreement provided that it might be assigned by Zimetbaum to a corporation to be formed by him, and it appears that Zimetbaum is the President and majority stockholder of Mack Liquor Distributors, Inc. The agreement further provides that it shall be void if the Commissioner of Alcoholic Beverage Control denies the transfer of the license.

Investigation further discloses that the premises sought to be licensed by Mack Liquor Distributors, Inc. consists of a portion of a law office occupied by Abraham Harkavy, a counsellor at law of the State of New Jersey.

I have decided to deny the application of Mack Liquor Distributors, Inc. for transfer of the license for the following reasons:

- (1) Applicant has failed to satisfy me that it has sufficient finances to enter the wholesale liquor business;

- (2) It has failed to show that it has a source of supply for merchandise to be sold;
- (3) It has neither possession nor control of the premises to be licensed;
- (4) The premises sought to be licensed would not be suitable or adequate for licensed premises;
- (5) The transfer of the license is not necessary to take care of any present need of licensed retailers of this State.

It is difficult to understand why Mr. Zimetbaum should have agreed to pay \$15,000.00 to Harry Schenkel for his consent to the transfer of the license considered in this proceeding. It is true that applications for new wholesale licenses have been carefully considered, and that it is necessary for applicants to establish that an additional wholesale license is required to meet public convenience and necessity before I will exercise my discretionary power to issue a license.

Application for the transfer of a wholesale license by a person or corporation engaged in the business for which the license was granted will, under normal circumstances, be granted provided the transferee is found to be fully qualified and the premises sought to be licensed meet the requirements of the Department.

In the present case, however, Schenkel has been a licensee in name only for he has never exercised the privilege of his license.

The right to transfer is not inherent in a license. It is a privilege which may be granted in the sound discretion of the issuing authority. R. S. 33:1-26. The cited section of the Law provides that under no circumstances shall a license, or rights thereunder, be deemed "property" subject to sale. It would be contrary to sound public policy, as well as legislative intent, to permit Schenkel to secure a substantial profit for the transfer of a privilege granted him by the State in view of the fact that he had never assumed any of the obligations which accompany the license privilege. The license was granted him so that he would be privileged to purchase alcoholic beverages from manufacturers and thereupon serve the needs of the retailers of the State, and thus indirectly serve public convenience and necessity. These functions he never performed.

ALFRED E. DRISCOLL  
Commissioner.

Dated: March 4, 1946.

8. APPELLATE DECISIONS -- HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN ET AL. -- ORDER CANCELLING LICENSES STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION, Appellant,

-vs-

ORDER

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, and SOPHIE BROTMAN, JOHN LENSI, DANIEL G. MAROTTA, JOHN NOVAK and EMIL PFEIFER, Respondents

BY THE COMMISSIONER:

It appearing that by Conclusions and Orders herein dated March 1, 1946, plenary retail distribution licenses held by each of the five individual respondents were cancelled, set aside and declared null and void, and each individual respondent directed forthwith to cease all alcoholic beverage activity under the license theretofore issued to him, and

It further appearing that respondent Sophie Brotman has declared her intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Orders and to prosecute the writ, if granted, with due diligence, and

It further appearing to my satisfaction that Sophie Brotman may suffer irreparable harm if a stay is not granted by me pending application to a Justice of the Supreme Court for said writ, and

It further appearing that the other individual respondents are entitled to the same relief since the issues in all cases are substantially the same;

It is, on this 5th day of March, 1946,

ORDERED, that the Orders heretofore entered herein be and the same are hereby stayed until further orders are entered herein; on condition, however, that application for writ of certiorari shall be made to a Justice of the New Jersey Supreme Court within fifteen (15) days from the date hereof and thereafter prosecuted with diligence.

ALFRED E. DRISCOLL Commissioner.

9. SEIZURE - FORFEITURE PROCEEDINGS - STOCK OF ALCOHOLIC BEVERAGES AND SODA, JUKE BOX, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED.

In the Matter of the Seizure on ) Case No. 6945  
 January 17, 1946, of a quantity )  
 of alcoholic beverages, soda, a )  
 music machine, cash register, )  
 cigarette vending machine, )  
 furniture, furnishings, and other )  
 personal property at 68 Walnut )  
 Street, in the Borough of Penns )  
 Grove, County of Salem and State )  
 of New Jersey. )  
 ----- )

ON HEARING  
CONCLUSIONS AND ORDER

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

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and soda, a music machine with 90 cents in currency, a cash register with \$16.44 in currency, a cigarette vending machine, and furniture and furnishings and other personal property, itemized in a schedule hereinafter set forth, seized on January 17, 1946, at 68 Walnut Street, Penns Grove, New Jersey, constitutes unlawful property and should be forfeited.

Speakeasy operators evidently regard the premises as a choice location for their unlawful activities. Twice during last year, alcoholic beverages and speakeasy equipment were seized at the premises. In October 1945 Nelson Rivers, who operated the speakeasy when the last seizure occurred, was sentenced to six months' imprisonment and to pay a fine of \$100.00. On the same day, Juanita Forten, his barmaid, was sentenced to four months' imprisonment and to pay a fine of \$100.00. See Re Seizure Case No. 6879, Bulletin 684, Item 11.

On January 17, 1946, at about 10:45 p.m., ABC agents visited the premises to investigate a complaint that a speakeasy was again being conducted there. One of the agents entered to determine whether he could purchase alcoholic beverages and other agents who accompanied him entered about fifteen minutes later.

One of the rooms was again furnished as a barroom, with a cash register, juke box and the other equipment above referred to. When the agents entered, two women, one of whom was Juanita Forten, and four men were drinking alcoholic beverages, and Vernice M. Fuller was tending bar. The agent who entered first had a bottle of beer in his hand. He had ordered drinks of alcoholic beverages from Vernice Fuller, which she had served, and for which he paid her.

The agents obtained a signed statement from Vernice Fuller in which she declared that she had been operating a speakeasy at the premises since about October 1, 1945, and admitted that she had sold drinks of whiskey and beer on the evening in question. She did not hold any license authorizing her to sell or serve alcoholic beverages.

The agents seized the above mentioned personal property and arrested Vernice Fuller on the charge that she sold alcoholic beverages and possessed alcoholic beverages for purpose of sale, in violation of the Alcoholic Beverage Law.

The seized alcoholic beverages were intended for sale without a license, and hence are illicit. Illicit alcoholic beverages, together with all fixtures and other personal property (including the receipts

of the unlawful business) seized therewith in the building in which such illicit alcoholic beverages are found, are subject to forfeiture. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, no one appeared to oppose forfeiture of the seized property. This was to be expected under the circumstances.

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 Commissioner.

ALFRED E. DRISCOLL  
Commissioner.

Dated: March 5, 1946

SCHEDULE "A"

- |  |   |
|--|---|
| 1 - Wurlitzer Music Machine Model #616, Serial A-36550A, with 90 cents in currency | 1 - cigarette machine, Serial #3920   |
| 3 - marble top tables  | 20 - bottles of beer  |
| 9 - chairs   | 108 - bottles of soda   |
| 69 - bottles of "7-Up"   | 1 - National Cash Register, Serial #2232586 (728), with \$16.44 in currency |
| 62 - bottles of Coca Cola  | 1 - bottle whiskey  |
| 1 - 1/2 gallon jug of wine   |   |
10. RETAIL LICENSES - MAY NOT BE ISSUED UNLESS LICENSE FEE IS FIXED BY FORMAL MUNICIPAL REGULATION - STATE COMMISSIONER IS WITHOUT POWER TO ORDER ISSUANCE OF LICENSE WHERE A MUNICIPALITY HAS FAILED TO FIX A FEE.

March 5, 1946

Emmett D. Topkins, Esq.  
Flemington, N. J.

Dear Sir:

I have your letter dated March 1st, inquiring whether an appeal may be filed from the refusal of a local issuing authority to fix a license fee.

R. S. 33:1-22 provides for an appeal to the Commissioner from the action taken by a local issuing authority whereby a license is refused or granted, and R. S. 33:1-26 provides for an appeal to the Commissioner from the action of a local issuing authority whereby a transfer of a license is refused or granted. In either case it is necessary for the appellant to show that he has complied with all the statutory prerequisites pertaining to his application, including payment of the fee, as set forth in R. S. 33:1-25 and R. S. 33:1-26 respectively. The Alcoholic Beverage Law does not specifically provide for an appeal to the Commissioner from the failure of the local issuing authority to fix a fee within the limits prescribed by the statute for the various types of retail licenses described in R. S. 33:1-12.

The precise point was considered in Miller v. Greenwich, Bulletin 57, Item 9. You will note that Commissioner Burnett ruled therein that he had no power to order the Township Committee to exercise its discretion and fix a schedule of license fees. This case has been followed in Lysaght v. Denville, Bulletin 250, Item 1, and Caledonian Club, Inc. v. Paterson, Bulletin 269, Item 13, and the

same question was referred to by me in Re Perona, Bulletin 572, Item 9. Following the established precedents with which I agree, I regret to inform you that an appeal to the Commissioner could accomplish nothing under the circumstances referred to in your letter.

Very truly yours,  
ALFRED E. DRISCOLL  
Commissioner.

11. APPELLATE DECISIONS - JURASKA v. PERTH AMBOY.

CHARLES J. JURASKA, )  
Appellant, )  
-vs- )  
BOARD OF COMMISSIONERS OF THE )  
CITY OF PERTH AMBOY, )  
Respondent )

ON APPEAL  
CONCLUSIONS AND ORDER

John C. Stockel, Esq., Attorney for Appellant.  
Francis M. Seaman, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This appeal is from respondent's denial of appellant's application for a transfer of his plenary retail consumption license from 697 to 667 Charles Street, Perth Amboy.

The testimony adduced at the within hearing discloses that appellant applied for a place-to-place transfer of his license because the premises in which he now operates were in need of repairs. Lester Torok, son-in-law of the owners of the building wherein appellant's licensed premises are presently located, appeared at the hearing before the local issuing authority on October 17, 1945 and objected to the granting of the transfer. The minutes indicate that appellant tentatively agreed to remain in his present premises if proper and necessary repairs were made. It was thereafter announced by a member of the respondent Board that the official decision of the Board regarding the application for transfer would be made at the next regular meeting. At the next meeting no action was taken. On December 5, 1945, however, a motion to deny the transfer was approved unanimously by the members of respondent Board. Hence this appeal.

In Wasko v. Trenton, Bulletin 671, Item 1, the Commissioner stated:

"It is well settled that the privilege of transfer is not inherent in a liquor license. If the refusal to transfer is based upon reasonable grounds, it will be sustained upon appeal. However, if the application for a transfer is arbitrarily or unreasonably denied, the denial of the transfer must be reversed. Van Schoick v. Howell, Bulletin 120, Item 6; Willner's v. Camden, Bulletin 669, Item 14. In other words, the transfer privilege (R. S. 33:1-26 may not be nullified or otherwise diminished by municipal regulation, or denied except for good cause. Good cause is that which is related directly to the objectives which the Alcoholic Beverage Law seeks to accomplish."

At the hearing of the instant appeal, witnesses produced by the parties hereto were substantially in agreement that sundry repairs to 697 Charles Street had been made. Lester Torok also corroborated the fact that he had stated to the members of respondent Board at the time application for transfer was made that the rent paid by appellant for the premises at 697 Charles Street was the only source of income of the landlords.

The protest of a landlord against the transfer of a tenant's liquor license to other premises, based solely on the ground that the transfer will result in a financial loss, is ordinarily not a valid ground for denying the transfer. Cf. Re Zabriskie, Bulletin 355, Item 3. An owner invests money in premises at his own risk. See Ninety-One Jefferson Street, Passaic, Inc. v. Passaic, Bulletin 255, Item 9. Respondent contends that appellant agreed to remain at the premises if repairs were made thereto. Appellant, however, contends that the repairs which have been made are not sufficient and that his present premises are unfit because they are infested with vermin.

There is sufficient testimony in the instant case to support the allegations of appellant that the building occupied by him was in such disrepair at the time the application for transfer was filed as to render it untenable. The premises sought to be licensed are, according to the testimony of appellant, within 500 feet of his present licensed premises. This being so, a transfer of the license to the building for which application was made does not violate any local ordinance. No valid reason was given by respondent for the denial of appellant's application. However, there is no evidence that respondent considered the questions as to whether the proposed premises are suitable to be used as licensed premises or whether the character of the neighborhood is such to warrant the transfer of the license to the proposed premises.

Since it is thus manifest that in disposing of the matter below the Board gave no consideration to the suitability of the proposed premises, the case must be remanded to the Board in order that it may make its personal findings upon the issues which have not been decided herein.

Accordingly, it is, on this 5th day of March, 1946,

ORDERED, that this case be and the same is hereby remanded to the respondent Board of Commissioners of the City of Perth Amboy for further and immediate action in accordance with the foregoing conclusions.

*Alfred E. Dismal*  
Commissioner.