

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

BULLETIN 826

DECEMBER 29, 1948.

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

BULLETIN 826

December 29, 1948.

1. DISCIPLINARY PROCEEDINGS - ORDER SUSPENDING SOLICITOR'S PERMIT  
STAYED PENDING APPEAL TO APPELLATE DIVISION OF SUPERIOR COURT.

In the Matter of Disciplinary )  
Proceedings against )

DANIEL FLAX )  
284 Prospect Street )  
East Orange, N. J., )

O R D E R

Holder of Solicitor's Permit )  
No. 817, issued by the State )  
Commissioner of Alcoholic )  
Beverage Control. )  
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BY THE COMMISSIONER:

On November 19, 1948, I suspended the solicitor's permit of the defendant for ten days, commencing December 14, 1948. See Bulletin 822, Item 5. The effective date of the suspension was fixed to coincide with the concluding date of the suspension imposed against the wholesale license of Galsworthy, Inc., the defendant's employer. See Bulletin 822, Item 4.

The latter suspension has been stayed pending an appeal to the Appellate Division of the Superior Court. Application is now made to postpone the suspension of the defendant until the termination of said appeal. While no court review of the defendant's suspension has been sought and the defendant must, therefore, serve the full period of his suspension irrespective of the outcome of the aforesaid appeal, I shall, in fairness to the defendant, grant the application.

Accordingly, it is, on this 10th day of December, 1948,

ORDERED that the suspension of Solicitor's Permit No. 817, heretofore ordered on November 19, 1948, be and the same is hereby postponed until the termination of the appeal referred to above and until my further order.

ERWIN B. HOCK  
Commissioner.

December 2, 1948

2.

ACTIVITY REPORT FOR NOVEMBER 1948

ARRESTS:

Total number of persons arrested - - - - -	13
Licensees and employees - - - - -	1
Bootleggers - - - - -	11
ABC agent impersonator - - - - -	1

SEIZURES:

Stills - over 50 gallons - - - - -	1
50 gallons or under - - - - -	1
Alcohol - gallons - - - - -	25.00
Mash - Gallons - - - - -	1,423.00
Distilled alcoholic beverages - gallons - - - - -	40.39
Wine - gallons - - - - -	1.80
Brewed malt alcoholic beverages - gallons - - - - -	20.86

RETAIL LICENSEES:

Premises inspected - - - - -	976
Premises where alcoholic beverages were gauged - - - - -	972
Bottles gauged - - - - -	15,622
Premises where violations were found - - - - -	16
Violations found - - - - -	17
Type of violations found:	
Unqualified employees - - - - -	6
Probable fronts - - - - -	3
Disposal permit necessary - - - - -	2
Gambling devices - - - - -	1
Prohibited signs - - - - -	1
Other mercantile business - - - - -	1
Reg. #38 sign not posted - - - - -	1
Other violations - - - - -	2

STATE LICENSEES:

Premises inspected - - - - -	47
License applications investigated - - - - -	8

COMPLAINTS:

Complaints assigned for investigation - - - - -	251
Investigations completed - - - - -	301
Investigations pending - - - - -	101

LABORATORY:

Analyses made - - - - -	110
"Shake-up" cases (alcohol, water and artificial color) - bottles - - - - -	8
Liquor found to be not genuine as labeled - bottles - - - - -	7

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	11
Persons fingerprinted for non-criminal purposes - - - - -	151
Identification contacts made with other enforcement agencies - - - - -	152
Motor vehicle identifications via N. J. State Police Teletype - - - - -	12

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	7
Violations involved:	
Sale during prohibited hours - - - - -	3
Permitting hostesses on premises - - - - -	1
Permitting lottery activity on premises (numbers) - - - - -	1
Sale to non-members by clubs - - - - -	1
Permitting gambling on premises (cards) - - - - -	1
Sale to minors - - - - -	1
Cases instituted at Department - - - - -	26
Violations involved:	
Possessing illicit liquor - - - - -	7
Fraud and front - - - - -	4
Sale during prohibited hours - - - - -	4
Permitting immoral activity on premises - - - - -	4
Sale to minors - - - - -	3
Sale to non-members by clubs - - - - -	2
Permitting hostesses on premises - - - - -	2
Conducting business as a nuisance - - - - -	2
Sale to retailer on default list - - - - -	2
Permitting slot machines on premises - - - - -	1
Sale to intoxicated persons - - - - -	1
Mislabeling beer taps - - - - -	1
Unqualified employees - - - - -	1
Failure to report retailer off default - - - - -	1
Failure to file contract of employment of solicitor - - - - -	1
Failure of wholesaler to retain copies of orders - - - - -	1
Delivery to retailer not supported by order - - - - -	1
Failure to report retailer in default - - - - -	1
Employing solicitor without permit - - - - -	1
Solicitor employed by retailer - - - - -	1

\* 1 includes cancellation proceedings

Cases brought by municipalities on own initiative and reported to Department - - - - -	4
Violations involved:	
Sale to minors - - - - -	3
Sale during prohibited hours - - - - -	1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - -	39
Appeals - - - - -	3
Disciplinary proceedings - - - - -	19
Eligibility - - - - -	9
Seizures - - - - -	6
Application for license - - - - -	1
Hearing on petition - - - - -	1

PERMITS ISSUED:

Total number of permits issued - - - - -	1,551
Employment - - - - -	92
Solicitors - - - - -	103
Disposal of alcoholic beverages - - - - -	127
Social affairs - - - - -	452
Special wine - - - - -	687
Miscellaneous - - - - -	90

Erwin B. Hock  
Commissioner

3. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against )

CLAIRE PELAK )  
Route 23 )  
West Milford )  
P.O. Oakridge, N. J., )

Holder of Plenary Retail Consumption License C-24, issued by the Township Committee of the Township of West Milford, and transferred during the pendency of these proceedings to )

CONCLUSIONS AND ORDER

CHARLES STROHMEYER )  
Morstown Road )  
West Milford )  
P.O. Newfoundland, R.F.D., N.J. )  
----- )

Claire Pelak, Defendant-licensee, Pro Se.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleaded not guilty to charges alleging that she (1) sold alcoholic beverages to a minor, in violation of R. S. 33:1-77, and (2) sold, served, delivered and allowed, permitted and suffered the service and delivery of alcoholic beverages to a person under the age of 21 years, and allowed, permitted and suffered the consumption of alcoholic beverages by said person upon her licensed premises, in violation of Rule 1 of State Regulations No. 20.

The defendant was properly charged on the basis of a sworn statement in writing secured by Department agents from Vernon ---, a minor, that he had been sold, served and permitted to consume ten glasses of beer at defendant's licensed premises. His statement was corroborated in part by a sworn statement of his girl companion who said that Vernon was served three or four glasses of beer. Two other minors accompanying Vernon and the girl refused to give any statement during the investigation.

At the trial the girl testified in accordance with her statement. However, the two minors other than Vernon testified that no alcoholic beverages had been served to or consumed by any member of the group; and Vernon, when sworn as a witness, denied under oath that he had been served any beer or other alcoholic beverage at the licensed premises, admitted that his previous sworn statement to the contrary was false, and claimed that the statement was part of a plan to induce belief that he was drunk on the night in question so that "things would go easier" for him in an impending criminal prosecution. In defense, the licensee, her husband who acted as bartender on the night in question, and a patron, all testified that the four minors were at the licensed premises on the night in question but that they were served nothing to drink except Coca Cola.

In this posture of the testimony, and particularly in view of the recanting denial of the basic facts by the principal witness for the prosecution, the evidence is insufficient to establish the licensee's guilt of the charges. Hence, I find the defendant not guilty.

Accordingly, it is, on this 10th day of December, 1948,

ORDERED that the charges herein be and the same are hereby dismissed.

ERWIN B. HOCK  
Commissioner.

4. DISQUALIFICATION - APPLICATION TO LIFT - GOOD CONDUCT FOR FIVE YEARS LAST PAST NOT SHOWN - 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. )

CONCLUSIONS

Case No. 717.  
-----)

BY THE COMMISSIONER:

On October 16, 1942, petitioner was convicted of the crime of breaking, entering and larceny, as a result of which he was placed on probation and fined \$50.00 by a Judge of a Court of Special Sessions. Petitioner was also apprehended on April 21, 1943 by the Federal authorities and charged with possession of counterfeit gasoline stamps. The records received at this Department indicate no final disposition on file in the matter. Petitioner testified that he was mistaken for another person and thereafter released when the mistake was discovered. On October 7, 1944 and on May 1, 1948, petitioner received suspended sentences on charges of being a disorderly person and violation of the Anti-Noise Ordinance, respectively.

The conviction of the charge of breaking, entering and larceny is the conviction of a crime which involves the element of moral turpitude. Re Case No. 432, Bulletin 518, Item 5. It will, therefore, be unnecessary to determine whether any of the other convictions involve moral turpitude.

Petitioner testified that in so far as the violation of the Anti-Noise Ordinance was concerned, he pleaded not guilty and the Judge of the Police Court told him "to try to keep the noise down". Although petitioner claims that he was actually innocent, he may not here collaterally attack the merits of his conviction in the Criminal Court. See Re Case No. 173, Bulletin 504, Item 7.

In order to grant petitioner's request for removal of his disqualification, I must, under the statute, be satisfied that he has been leading a law-abiding life for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. R. S. 33:1-31.2. In view of the convictions disclosed by the police records received at this Department, one as late as May 1, 1948, it is apparent that petitioner has not been law-abiding for five years last past.

The petition is denied.

ERWIN B. HOCK  
Commissioner.

Dated: December 14, 1948.

5. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND STOCK OF MERCHANDISE IN SPEAKEASY IN GROCERY STORE ORDERED FORFEITED.

In the Matter of the Seizure ) Case No. 7250  
 on April 21, 1948 of a quantity )  
 of alcoholic beverages and soda )  
 and the stock of grocery store )  
 merchandise at 107 Adams Street, ) ON HEARING  
 in the City of Newark, County of ) CONCLUSIONS AND ORDER  
 Essex and State of New Jersey. )

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 Louis K. Press, Esq., Attorney for John Pravilionis  
 Harry Castelbaum, Esq., appearing for the State 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, and further, pursuant to the provisions of a stipulation entered into by the attorney for John Pravilionis, to determine whether a quantity of alcoholic beverages and soda and the stock of grocery store merchandise, described in a schedule attached hereto, seized at a grocery store operated by John Pravilionis located at 107 Adams Street, Newark, N. J., constitute unlawful property and should be forfeited.

It appears that eight 4/5 quart bottles and a one-half gallon jug of whiskey, a one-half gallon of wine in a jug which had no label, four bottles of beer and 95 empty beer bottles and the other articles were seized because, according to ABC agents, Pravilionis sold them alcoholic beverages without a license at his grocery store on April 19 and 21, 1948. Pravilionis appears to live alone in a room to the rear of the store. He was arrested for violating the liquor laws and gave the agents a signed statement specifically setting forth that an ABC agent paid him for drinks of whiskey and that he had been selling whiskey and other alcoholic beverages at his store for three or four months to customers who came to eat there.

Pending the seizure hearing in the case, all of the seized property, except the alcoholic beverages, were returned to John Pravilionis upon payment by him to the State Commissioner of Alcoholic Beverage Control of its appraised retail value of \$1,000.00, under protest, pursuant to R. S. 33:1-66. Pravilionis has stipulated that said Commissioner shall determine in this proceeding whether this money shall be returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66 and the stipulation, John Pravilionis appeared with counsel and sought return of the aforesaid sum of \$1,000.00. Forfeiture of the alcoholic beverages was not contested.

The evidence indicates that one of the agents entered the store on April 19th, ordered two ham sandwiches, then asked for and was served by Pravilionis with a drink of whiskey. He stated further that as he was eating the sandwiches he ordered and was served another drink of whiskey; that he then paid Pravilionis \$1.20 for the two sandwiches and two drinks of whiskey, and that he then asked for another drink of whiskey, which he was served and for which he paid Pravilionis thirty cents.

On April 21st the above mentioned agent and another agent entered the store. The first agent bought some groceries, ordered two sandwiches, and said he would like to have a drink, whereupon Pravilionis

took the two men to the rear of the store and poured two drinks of whiskey. After they had these sandwiches and these drinks of whiskey, the first agent paid Pravilionis \$2.00 for the groceries, sandwiches and drinks. The first agent then ordered two more drinks of whiskey and a sandwich, for which he paid Pravilionis ninety cents. The second agent says that he ordered three drinks of whiskey for himself, his fellow agent and Pravilionis, and paid Pravilionis ninety cents for this whiskey.

The service of two rounds of whiskey on April 21st and the payment by the second agent for one of the rounds is confirmed by Pravilionis in his statement.

At the hearing, Pravilionis denied that the statement which he signed presented the actual facts, and it is urged that he is illiterate and was so nervous when he signed the statement that he did not know what he was doing.

Pravilionis testified at the hearing that he gave drinks of whiskey to the agents without charge when they purchased sandwiches from him. Without detailing the testimony at length, it has a significant pattern in that in going over the statement, question by question, he admitted that most of his answers were correctly set forth, including the location of the liquor store where he purchased the alcoholic beverages, and only repudiated those answers in which he acknowledges that he sold alcoholic beverages unlawfully.

Whether or not Pravilionis unlawfully sold alcoholic beverages is a matter of fact, to be determined from the evidence presented. The assertion by the agents that Pravilionis sold them drinks of whiskey is supported by his written statement. There is no apparent reason why the agents should unjustly accuse Pravilionis of selling whiskey to them. On the other hand, his denial at the hearing that he made these sales is obviously influenced by his desire to escape forfeiture. It is my conclusion that the evidence warrants the finding that Pravilionis actually sold alcoholic beverages unlawfully. In this connection, it should be noted that it is a violation of the liquor laws even if Pravilionis gave the drinks with the sandwiches. The service, in a restaurant, of alcoholic beverages with meals, even though there is no extra charge for the alcoholic beverages, constitutes a sale of alcoholic beverages, for which a license is required. Re Amato, Bulletin 726, Item 8. Within the purview of the Alcoholic Beverage Law, the service of sandwiches is tantamount to the service of meals. It should be further noted that the wine in the jug is prima facie an illicit alcoholic beverage because the jug did not bear any label. R. S. 33:1-88. The other alcoholic beverages seized, which I find were intended for unlawful sale, likewise constitute illicit alcoholic beverages. R. S. 33:1-1(i). Illicit alcoholic beverages and other personal property seized therewith on the premises constitute unlawful property, subject to seizure and forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

As in all cases of this nature, forfeiture of the seized property, including the money deposited in place of that part of the property which was returned, must follow as of course. See Seizure Case No. 7263, Bulletin 812, Item 2, and cases cited therein.

Hence, for the reasons above expressed, John Pravilionis' request for the return of the money which he deposited with me is denied.

Accordingly, it is DETERMINED and ORDERED that the alcoholic beverages and empty beer bottles itemized in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, and that

it be retained for the use of hospitals and state, county and municipal institutions or destroyed in whole or in part at the direction of the State Commissioner of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the stock of grocery store merchandise seized at the premises, as itemized in an inventory made thereof, which inventory is referred to as if incorporated herein at length, constitutes unlawful property, and the sum of \$1,000.00 representing the retail value thereof, paid under protest to the State Commissioner of Alcoholic Beverage Control by John Pravilionis, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

ERWIN B. HOCK  
Commissioner.

Dated: December 13, 1948.

SCHEDULE "A"

- 1 - 1/2 gallon of whiskey
- 1 - quart Kummel
- 7 - 4/5 quarts of whiskey
- 4 - bottles of beer
- 95 - empty beer bottles
- 101 - bottles of soda

stock of grocery store merchandise at premises as itemized in an inventory made thereof in the case and which is referred to as if incorporated herein at length.

6. SEIZURE - FORFEITURE PROCEEDINGS - SUGAR INTENDED FOR US IN MANUFACTURE OF ILLICIT ALCOHOLIC BEVERAGES AND TRUCK IN WHICH SUGAR WAS TRANSPORTED ORDERED FORFEITED.

In the Matter of the Seizure )  
on October 22, 1948 of 110 one )  
hundred pound bags of sugar and )  
a White truck in the vicinity of )  
the intersection of Spruce Street )  
and Tonnele Avenue, in the City )  
of Jersey City, County of Hudson )  
and State of New Jersey. )

Case No. 7332

ON HEARING  
CONCLUSIONS AND ORDER

Meehan Brothers, Esqs., by John J. Meehan, Esq., Attorneys for  
Sam Schifano.

Harry Castelbaum, Esq., appearing for the State 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 White truck, and 110 one hundred pound bags of sugar being transported therein, seized on October 22, 1948 in the vicinity of the intersection of Spruce Street and Tonnele Avenue, Jersey City, New Jersey, constitute unlawful property and should be forfeited.

It appears that two Hudson County police officers stopped the truck at about 2:30 a.m. on the morning of the day in question because it bore no name or other identification thereon. The officers discovered that the truck was being used to transport a load of sugar. The driver, Vito Palmeri, told them conflicting and evasive stories concerning the source and destination of the sugar, finally stating that he intended to deliver the sugar in Paterson, New Jersey, to be

used for the manufacture of alcohol, and that he had recently been arrested in New York by ATU agents in connection with the seizure of an unregistered still.

The officers then seized the truck and sugar, notified the State Department of Alcoholic Beverage Control, and the truck and sugar were turned over to that Department.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel entered an appearance for one Sam Schifano, the registered owner of the motor vehicle, and stated that Schifano was also the owner of the sugar and sought the return of the truck and sugar.

The two police officers who stopped the truck testified that Palmeri at first claimed that he did not know what was in the truck. When they refused to accept such an explanation, Palmeri told them that he was transporting a "hot" (stolen) load of sugar which he had picked up in New York and was to deliver in Paterson to "Freddie"; that the sugar was to be used in the manufacture of alcohol at a still, and that he was in a "jam" in that he had recently been arrested by ATU agents at Lake Mahopac, New York, in connection with the seizure of an unregistered still.

Another officer testified that Palmeri told him the same story later that day and then changed his story, stating that two strange men approached him in New York on the evening of October 21st, and asked him whether he wanted to make some money by procuring a truck for them; that he borrowed the truck from Schifano, turned it over to the two men, who drove away and came back shortly thereafter with the truck load of sugar; that he then agreed to drive around with the truck and deliver it to these men the following morning at a stated location in New York City; that he lost his way, found himself in Jersey City, and was on his way back to New York when apprehended.

According to the testimony of the ABC agents, Palmeri repeated to them his conflicting stories, on the one hand, that the sugar was to be delivered in Paterson and, on the other, that the sugar was to be delivered in New York. He refused to sign any written statement because of the pending criminal proceedings against him in New York.

It is a well accepted fact that bootleggers have habitually used sugar in the manufacture of illicit alcohol. There is a familiar pattern in all cases of this type, in that whenever a person is caught transporting sugar which may be on its way to an illicit still, that person tells a weird and unbelievable tale concerning the source and destination of the sugar, and the actual owner invariably fails to appear to claim such sugar. See Seizure Case No. 7018, Bulletin 730, Item 9, and cases cited therein. In the instant case, there is the added factor that Palmeri admitted the sugar was to be used for the manufacture of alcohol.

The conclusion, in the instant case, that the sugar was intended to be converted into, or used in the manufacture of, illicit alcoholic beverages is amply justified. It has been the uniform ruling of this Department that under such circumstances the sugar, and the truck in which the sugar was transported, constitute unlawful property within the meaning of R. S. 33:1-1(y), and are subject to forfeiture under R. S. 33:1-66.

The Superior Court of Pennsylvania has given the same effect to a substantially similar Pennsylvania statute and directed the forfeiture of a truck transporting sugar to an illicit still. Commonwealth v. One 1936 Ford Truck, 7 Atl. 2d 532. Also see Oliver v. U. S., 170 F. 2d 142 (USCA, Fifth Circuit, October 1948).

As a general principle of law, vehicles used for the transportation of materials for the manufacture of liquor have been held forfeitable under statutes providing for the forfeiture of property used in the illegal manufacture of liquor. 48 C.J.S., p.608.

Accordingly, under the evidence presented, a prima facie cause for forfeiture of the sugar and truck has been established.

Sam Schifano has presented a subtle variation of the familiar pattern in these cases. He was present at the hearing. This altered the pattern in that ostensibly, the actual owner appeared to claim such sugar. However, Schifano did not testify in his own behalf, and thus possibly avoided any embarrassing cross-examination. His counsel offered in evidence a purported bill for sugar, which was not admitted into evidence because Schifano did not take the witness stand to identify the bill. Claimant's counsel then rested his case, whereupon Schifano was called as a witness for the Department to testify concerning his arrests in New York in 1941 and 1945 for alleged violations of the Federal liquor laws, albeit he was not convicted in either case. It is significant that although Schifano, while on the witness stand, made the cursory statement that he claimed to be the owner of the sugar, his counsel did not ask him any questions seeking to develop the source, actual ownership of, or destination of the sugar.

The omission of a party to an action to testify to facts or to produce evidence in explanation, except where the evidence is not peculiarly within his power or is merely cumulative, raises a presumption against his claims. Wratchford v. Millburn Twp., 105 N. J. L. 657 (E. & A. 1929).

Accordingly, there has been no legally acceptable evidence presented to contradict the statements attributed to Palmeri concerning the ownership and destination of the sugar nor to establish that Schifano was the owner of the sugar or that such sugar was not intended for the manufacture of illicit alcohol.

Forfeiture of the truck and sugar is contested by Schifano basically upon the grounds (1) that the original seizure by the police officers was made without a search warrant; (2) that Palmeri's statements to the various officers and ABC agents are not admissible and have no binding effect upon the owner of the seized property; and (3) that the evidence does not warrant the conclusion that the sugar was to be used in the manufacture of illicit alcoholic beverages.

Forfeiture of property for violation of the Alcoholic Beverage Law does not depend upon its seizure pursuant to a search warrant. Re Amato, Bulletin 726, Item 8.

As to the admissibility of Palmeri's statements, the law is well settled in this state that when an automobile is being driven by one other than the owner, there is a presumption that the automobile is in the possession of the owner, and that the driver is acting in the owner's business. Cowan v. Kaminow, 128 N.J.L. 598, p. 402 (E. & A. 1942).

Schifano has not presented any evidence to rebut that presumption. Hence, Palmeri's possession of the truck was that of Schifano, the owner. Declarations of a person legally in possession of property subject to forfeiture are admissible against the owner of such property. See Dobbins v. U. S., 96 U.S. 385, 24 L. Ed. 637.

Forfeiture proceedings under R. S. 33:1-66 are in "rem". If the property was actually used in violation of the Alcoholic Beverage Law, it is subject to forfeiture regardless of whether the owner put it to such use or whether such owner is legally responsible, in criminal proceedings, for its unlawful use by some other person. The owner's lack of participation in or absence of knowledge of the offense is no bar to the forfeiture of his property. Seizure Case No. 5439, Bulletin 437, Item 4; Seizure Case No. 6282.

In forfeiture proceedings, the guilt or innocence of the owner of the property is not in issue; the only issue is whether the property was used in violation of law. Alcorn v. Alexandrovicz, 153 A. 786, 112 Conn. 618.

As to the third contention, I have already stated my conclusion, for the reasons above expressed, that the evidence warrants the finding that the sugar was to be used for the manufacture of illicit alcohol.

I find that sufficient cause has been presented for the forfeiture of the truck and sugar, and such will be the order.

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

ERWIN S. HOCK  
Commissioner.

Dated: December 17, 1948.

SCHEDULE "A"

110 - 100 lb. bags of sugar  
1 - White Truck - Serial No. 236795,  
Engine No. 110A822, N.Y. 1948  
Reg. 516-596.

## 7. RETAIL CONSUMPTION LICENSEES - TATTOOING AT TAVERNS TABOO.

December 17, 1948.

Dear Sir:

This acknowledges your letter of December 1st, asking whether a tavernkeeper may allow a tattooist to set up in business at his tavern. You say that the tattooist's customers are mainly to be soldiers from Fort Dix.

With certain exceptions here not material, the Alcoholic Beverage Law prohibits a tavernkeeper from allowing any "other mercantile business" at his licensed premises. See R. S. 33:1-12(1), (2). As to this provision it has been ruled that "other mercantile business" refers to the sale of actual merchandise or commodities and not to the sale of services (Bulletin 770, Item 6). Hence, it may well be that the tattooing business does not come within the above prohibition.

However, in addition to the foregoing restriction, the Alcoholic Beverage Law exhibits a fundamental policy of seeking to ban wholly inappropriate businesses of any kind at taverns. Thus, in view of such fundamental policy, the Department has heretofore ruled that a barber business, though not strictly involving the sale of merchandise, is not to be permitted at a tavern on the ground that liquor and shaving do not mix (Bulletin 205, Item 15).

Similarly, in my opinion, the tattooing business is wholly inappropriate and out of place in a tavern. I do not believe persons seated at a bar or elsewhere in a tavern should have their drinking cojoined with the tattooist's art. I shudder to think of tavern patrons waking up the "morning after", staring in amazement or regret not at pink elephants but at the sight of a dancing lady or battleship or army tank on their chests! I have equal shudders at what might happen if the tattooist, during the slow hours, had been fortifying himself with a few drinks. Considering the public weal, it is my ruling that tavernkeepers shall not allow tattooing at taverns in New Jersey.

Very truly yours,  
ERWIN B. HOCK  
Commissioner.

8. DISQUALIFICATION - APPLICATION TO LIFT DENIED BECAUSE APPLICANT PARTICIPATED IN VIOLATIONS OF ALCOHOLIC BEVERAGE LAW DURING FIVE-YEAR PERIOD.

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

CONCLUSIONS  
AND ORDER

Case No. 643  
----- )

BY THE COMMISSIONER:

By Order dated January 10, 1947, I refused to remove petitioner's disqualification for reasons as appear therein. See Case No. 567, Bulletin 746, Item 3. Petitioner has now presented a further petition asking for this relief.

Three elements involved in the instant proceedings are, first, that the conviction disqualifying petitioner occurred at least five years prior to the date of my consideration of the matter; second, that petitioner has conducted himself in a law-abiding manner during that period; and third, that his association with the alcoholic beverage industry will not be contrary to the public interest. R. S. 33:1-31.2.

While there seems to be no doubt that the disqualifying conviction herein occurred more than five years prior to this date, it further appears, however, that in 1945 petitioner, although then disqualified, was employed on the licensed premises of a tavern operated by his wife and her sister. While so employed, specifically on February 8, 1945, he permitted the licensed premises to be open and he sold alcoholic beverages thereon, all in violation of a local "closing" ordinance. It further appears that he interfered with the agents of the State Department of Alcoholic Beverage Control in the performance of their duty, particularly in the striking from the hands of one investigator a sample of the alcoholic beverage so sold, and destroying the same. As a result of this activity the license held by his wife and her sister was suspended for twenty days, Re Volino and Maheltz, Bulletin 666, Item 11. Certainly it cannot be said that petitioner was law-abiding in his conduct on that morning. I therefore cannot find that he has been law-abiding during the last past five years.

Accordingly, it is, on this 20th day of December, 1948,

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

ERWIN B. HOCK  
Commissioner.

## 9. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

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

CONCLUSIONS  
 AND ORDER

Case No. 716.  
 ----- )

BY THE COMMISSIONER:

In a prior proceeding, decided on December 7, 1944, it was ruled that petitioner was disqualified from being associated in any capacity with the alcoholic beverage industry because of his convictions on divers occasions of crimes involving moral turpitude. Re Case No. 346, Bulletin 642, Item 4.

Petitioner's criminal record includes, between 1922 and 1934, three separate convictions for breaking, entering and larceny, with consequent incarceration during a substantial part of this twelve-year period. In February, 1935 petitioner was committed to the State Prison for six to nine years after he pleaded guilty to a violation of the act commonly known as the "Gangster Act". When that law was declared unconstitutional by the United States Supreme Court, petitioner was released from the penal institution. He was thereupon arrested under a detainer warrant upon an indictment charging him with the commission, in August 1934, of the crime of burglary and larceny. He pleaded guilty to this indictment in October, 1939 and received a three-year suspended jail sentence and was placed on probation for five years.

It appears that relief was denied petitioner at the prior hearing because he was acting as a bartender in a licensed premises in October, 1943, and became personally implicated in a violation of the Alcoholic Beverage Law, as a result of which the license of his employer was suspended for a substantial period of time. Re Case No. 346, supra.

Petitioner has reapplied to have his disqualification removed. The fingerprint records on file in this Department indicate that petitioner has not been arrested or convicted of any crime since the denial of his former petition, and there is no evidence to indicate that he has worked in a licensed premises at any time since October, 1943.

Petitioner testified that during the war he worked in a shipyard and, when "laid off" in 1945, he obtained work with an oil man as a truck driver, which position he holds at the present time. Petitioner testified that he is nearly sixty years of age and his physical condition makes it necessary that he procure a position with duties less strenuous than his present employment requires. He testified that "...I could do light work as a bartender -- for three years I have been doctoring."

Petitioner produced three witnesses who testified that they have known petitioner eight or more years and that he bears a reputation for being a law-abiding citizen in the community in which he lives.

The Chief of Police of the municipality wherein petitioner resides certified that there are no complaints or investigations concerning petitioner presently pending in the Police Department. The Chief of Police further advised that petitioner has lived in the community for seven years, and during that time his attitude and behavior have been most exemplary.

I conclude, after consideration of all the evidence, that petitioner has been law-abiding, especially during the past five years, and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 20th day of December, 1948,

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

ERWIN B. HOCK  
Commissioner.

10. ADVERTISING - RETAIL LICENSEES - HEREIN OF PASTING STICKERS ON BOTTLES.

December 21, 1948

Gentlemen:

This follows up our letter of December 15th as to stickers being affixed by retail liquor dealers to bottles of alcoholic beverages sold by them, advertising their establishments.

Although there is nothing inherently wrong in such a practice (Bulletin 122, Item 9), there has been fear that it might lead to undue cluttering of the bottles and thus defeat the effectiveness of the labels on the bottles. While not unaware of this possible risk, I think it can be adequately controlled by use of proper safeguards.

Hence, superseding any prior ruling in the matter, I herewith rule that it is permissible, so far as this Department is concerned, for a retail liquor dealer in New Jersey to affix a single sticker to his bottles, provided that the sticker contains no more than the retailer's name, address and telephone number, and that the sticker does not cover or obscure any of the labels required or authorized by law.

Very truly yours,  
ERWIN B. HOCK  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

WILLIAM GUSKIND )  
T/a WILLIE'S DELICATESSEN )  
500 Jersey Avenue )  
Jersey City 2, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-49, issued by the Board of Commissioners of the City of Jersey City. )

-----)  
Isidore Hornstein, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensee pleaded non vult to a charge alleging that he sold a 4/5 quart bottle of Old Mr. Boston Muscatel Wine below the minimum consumer price, in violation of Rule 6 of State Regulations No. 30.

On October 21, 1948, an employee of the defendant-licensee sold the product in question to an ABC agent for the sum of fifty-nine cents, whereas the minimum retail price of said item, as established in Bulletin 814, effective September 1, 1948, was sixty-nine cents.

Defendant has a previous adjudicated record. His license was suspended by the local issuing authority for two days beginning December 21, 1936 and again by such authority for three days beginning December 13, 1937. The first suspension was imposed for sales during prohibited hours on an election day and the second for sales to a minor. Further, his license was suspended by the Commissioner for twenty days, effective December 2, 1938, for a sale in violation of State Regulations No. 30 and again for fifty days, beginning January 2, 1940, for violations of State Regulations No. 30 and No. 21. The instant case is the third time the defendant has been guilty of selling below the minimum consumer price.

Under all of the circumstances, including the defendant's continuous clear record for the past eight years, I shall suspend defendant's license for thirty days, less five days' remission for the plea entered herein, or a net suspension of twenty-five days.

Accordingly, it is, on this 23rd day of December, 1948,

ORDERED that Plenary Retail Distribution License D-49, issued by the Board of Commissioners of the City of Jersey City to William Guskind, t/a Willie's Delicatessen, for premises 500 Jersey Avenue, Jersey City, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 9:00 a.m. January 3, 1949, and terminating at 9:00 a.m. January 28, 1949.

ERWIN B. HOCK  
Commissioner.

12. DISCIPLINARY PROCEEDINGS - ALLOWING, PERMITTING AND SUFFERING BOOKMAKING AND GAMBLING ON LICENSED PREMISES - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 JOSEPH BERNARD KERNAN & )  
 JAMES PAUL KERNAN )  
 T/a KERNAN'S CAFE )  
 200 Market Street )  
 Camden, N. J., )  
 Holder of Plenary Retail Consumption License C-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden. )

CONCLUSIONS AND ORDER

Joseph B. Kernan & James P. Kernan, Defendant-licensees, Pro Se. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendants pleaded non vult to a charge alleging that, on September 24, 1948 and October 19 and 20, 1948, and on divers other days, they allowed, permitted and suffered bookmaking and gambling on and about their licensed premises, in violation of Rule 7 of State Regulations No. 20.

The file in the instant case discloses that, on September 24, 1948 and on October 19 and 20, 1948, ABC agents placed bets on horses with a "bookmaker" on the defendant's licensed premises.

The bartender employed by defendants was present on each occasion when the "bookmaker" accepted the bets on horse races from the ABC agents and from various patrons but did nothing to prevent the unlawful activities. The bartender admitted in a signed statement that he was aware of the fact that the person receiving the bets had previously been convicted of bookmaking.

The licensees have no previous adjudicated record. I shall, therefore, suspend their license for a period of fifteen days, less five days' remission for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of December, 1948,

ORDERED that Plenary Retail Consumption License C-78, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joseph Bernard Kernan & James Paul Kernan, t/a Kernan's Cafe, for premises 200 Market Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 3, 1949, and terminating at 2:00 a.m. January 13, 1949.

ERWIN B. HOCK  
Commissioner.

13. STATE LICENSES - NEW APPLICATIONS FILED:

Duquesne Brewing Company of Pittsburg  
South 22nd and Mary Sts., Pittsburgh, Pennsylvania.  
Application for Limited Wholesale License filed December 3, 1948.

Arthur K. and Dorothy Pincoart, t/a Royal Liquors Company  
731 Washington St., Hoboken, N. J.  
Application for Warehouse Receipts License filed December 10, 1948.

New Jersey State Library *Erwin B. Hock*  
Commissioner.