Deputy Director Stockburger ✓

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1734 June 7, 1967

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd., Newark, N.J. 07102

BULLETIN 1734 June 7, 1967

1. COURT DECISIONS - NOCE v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 366-66

ALFRED J. NOCE,

Plaintiff-Appellant,

vs.

STATE OF NEW JERSEY, DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL

Defendant-Respondent.

Argued April 24, 1967 Decided May 5, 1967
Before Judges Sullivan, Kolovsky and Carton.

On appeal from the Director of the Division of Alcoholic Beverage Control.

Mr. John Anthony Lombardi argued the cause for appellant.

Mr. Stephen G. Weiss, Deputy Attorney General, argued the cause for respondent (Mr. Arthur J. Sills, Attorney General, attorney).

PER CURIAM.

Appeal from the Director's decision in Re Elig. No. 752, Bulletin 1714, Item 6. Director affirmed. Opinion not approved for publication by the Court committee on opinions.

2. APPELLATE DECISIONS - NOMAT, INC. v. MAPLE SHADE.

NOMAT, INC.,

Appellant,

v.

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MAPLE SHADE,

Respondent.

On Appeal

CONCLUSIONS and ORDER

A. Donald Bigley, Esq., Attorney for Appellant
Richman, Berry and Ferren, Esqs., by Grover C. Richman, Jr., Esq., Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appeal herein is from the action of respondent in refusing to approve revised plans and specifications for the building to be constructed on a plot of ground known as 460 S. Lenola Road, Maple Shade, as to which appellant's application for renewal of license for 1966-67 had been granted subject to completion-of-premises special condition based on previous plans and specifications.

Appellant alleges in its petition of appeal that the action of respondent was erroneous and should be reversed because it was arbitrary, capricious, unreasonable and constituted an abuse of discretion.

The answer filed herein denies the aforesaid allegations relied upon by appellant for reversal of respondent's action.

The matter was heard de novo pursuant to Rule 6 of State Regulation No. 15.

William Levin (president of appellant corporation) testified that the land on which the proposed licensed premises is to be located is 135 feet wide and 305 feet deep, with facilities for parking sixty-eight cars; that the proposed building, of "steel and masonry" in the shape of an "L", will be 80 feet wide, 75 feet deep, with an 18 by 35 foot offset; that there will be five entrances: one "a drive-up canopy-type entrance on the left side of the building in case of foul weather, there are 2 front entrances, and another side entrance on the right-hand side of the building;" also "a utility entrance in the back of the building for maintenance and receiving merchandise;" that the bar part of the building is to be set back eighteen feet from the rest of the building and will contain blue glass panels, whereas the front part of the building leading into the premises, where package goods are to be displayed, will contain clear glass.

William Levin further testified that there will be a fifty-foot fully equipped bar having thirty-nine stools, two sinks and two ice chests under the bar, and also "4 under-bar refrigerators for bottled beverages" and "a draft beer system and an ale system;" that there will be an island in the center of the bar which will hold "50 to 100 open bottles of liquor" and in the area will be thirteen large booths "that cover a large part of this room."

Mr. Levin also testified that there will be a six by eighteen foot kitchen with all modern kitchen facilities such as sinks, stoves, etcetera. Furthermore, he said that the bar will extend "approximately ten feet by eighteen feet" into the area where package goods are displayed. Furthermore, Mr. Levin said "This would be beef and ale type of operation with a package liquor department."

George Senior, a member of the respondent Committee, testified that "there is no question about the amount of parking; the use of the lot area, the building. There is parking, for example, on both sides of the building. No problem in any zoning matter."

Committeeman Senior further testified that the rejection of the revised plans submitted by appellant was on the ground that the outside and inside of the building to be used as a licensed premises would not appear as one to be used for

a tavern operation.

Committeeman Senior stated that he was aware of the kitchen facilities and that a rather large bar with some thirty-nine stools plan to be installed in the premises. He also stated that the new location set forth in the revised plans for the bar was "definitely superior to the original plans;" that a great number of local residents shop in the nearby Moorestown mall and that the latter has no establishment in which beer and sandwiches might be obtained.

Explaining his opinion with reference to proposed building, Committeeman Senior continued:

> "The most impressionate thing to the committee when we looked at these plans was the very clever way in which the architect had contrived to make a presumably single premises building act and look like two distinctly different functions. This in our minds came entirely wrong for the purpose of the intendment. The outward appearance in the transcript of it, taking the weather route, the structure house line or type of facing material, is completely different from left to right. The set-back is different from left to right. The visibility into the building from the outside is completely different between the two halves. And the roof line or the ceiling height inside there is a distinct three feet difference, being much higher, three feet higher, in the package goods department. We got from consideration of the plans a very strong impression that this was, in fact, intended to be primarily a package goods store with a bar on the side, and we do not feel this is in the best interests on that basis."

One of the questions to be resolved is whether the proposed interior layout of the premises as contemplated by appellant and shown on the revised plans submitted with the application for the renewal of the license for the current licensing period comes within the purview of the definition of a "public barroom" so intended by R.S. 33:1-12.23. The latter provides in part as follows:

> "... such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises ..."

In Coral Lounge and Cocktail Bar, Inc. v. Hock, 5 N.J. Super. 163, Judge Colie stated "... it seems clear to us that a barroom means that portion included within the four walls of the room in which the bar is located." Judge Schettino said in Passaic County Retail Liquor Dealers' Association v. Board of Alcoholic Beverage Control for the City of Paterson, et als., 37 N.J. Super. 187, "True, each application must be considered in the light of the plans and other specific facts presented."

An examination of the revised floor plan of the interior of the premises which was approved ex parte by the Director indicated appellant's compliance with the requirements of the statute (R.S. 33:1-12.23) that the sale or display of alcoholic beverages in original containers for

consumption off the licensed premises will be exclusively in the public barroom. The barroom will be completely unobstructed by any objects or partitions.

I shall now comment on the revised plans relating to the type of architecture of the exterior of the front part of the proposed premises. The mere fact, as stated by Committeeman Senior, that the outside structure of the building may give some persons the impression that the licensee is primarily operating a package goods store with a bar on the side cannot be determinative as to the legality of the operation to be conducted inside the structure. The statute in question (R.S. 33:1-12.23), being state-wide in application, may not be derogated by any local issuing authority to superimpose upon any liquor licensee additional requirements. Thus the contention of the respondent appears to carry little, if any, weight with regard thereto.

I might also add that, if the licensed business is operated in violation of R.S. 33:1-12.23 and State Regulation No. 32, appropriate action may be taken to suspend or revoke the license. See Re Krystyniak, Bulletin 1021, Item 2.

After careful consideration of the testimony presented and the exhibits in the instant appeal, I am satisfied that respondent abused its discretion in rejecting the revised plans submitted by appellant. Hence it is recommended that the action of respondent with reference thereto be reversed and that it be ordered to approve the revised plans and specifications and amend the special condition as need may be.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof were filed by respondent, pursuant to Rule 14 of State Regulation No. 15, wherein respondent contends (1) the Hearer erred in giving effect to the ex parte approval (by a member of the Division's staff) of appellant's revised plans, (2) that the Hearer failed to give due consideration to the discretionary power vested in a municipal license issuing authority and (3) the Hearer's recommended finding that the revised plans comply with the requirements of the "Broad Package Privilege Law" (R.S. 33:1-12.23, et seq.) is erroneous with respect to both the interior and exterior of the proposed licensed premises.

Initially, I state that the above mentioned ex parte approval has been excluded from my consideration of the record herein. The very nature of such approval causes it to be binding on neither the Division nor the parties involved in this appeal.

Respondent in its exceptions emphasizes the discretionary power vested in the respondent by the State Alcoholic Beverage Law. However, we must distinguish between the discretionary power exercised by a municipal issuing authority in determining whether a particular location is appropriate for a proposed place-to-place license transfer and the statutory construction question pertaining to whether the sale or display for sale of alcoholic beverage package goods in certain areas of the proposed licensed premises would be contrary to the "Broad Package Privilege Law." See Fanwood v. Rocco, 33 N.J. 404, 414 (1960), wherein it is stated that municipal action on a license transfer "is broadly subject

to appeal to the Director of the Division of Alcoholic Beverage Control" and may be reversed by the Director where it is "improperly grounded."

My reading of the record discloses that the respondent's disapproval of the revised plans was based upon a misinterpretation of the legal effect of the "Broad Package Privilege Law" upon the proposed operation of the premises in question, rather than the exercise of a discretionary power concerning the proposed location of said premises. The prior application for transfer of the license to the self-same location had been unanimously approved by the respondent, subject only to a special condition concerning completion of the premises. Also, according to certified Division records, of which I hereby take judicial notice, on June 27, 1966, the license was similarly renewed by resolution adopted by respondent.

The revised plans show an irregularly shaped eight-sided interior area open to the public, part of which is located in the east side of the proposed building, and the remainder of which is located in the west side. The proposed bar is broadly rectangular in shape, measuring approximately 31' x 15' in size, with a total perimeter of about 98 feet and provision for 39 bar stools. About 7 feet of one end of the bar will be in the west rectangular area (45' x 61' in size), the remainder of the bar will be in the east rectangular area (about 28' x 29' in size). The perimeter of the west area will be devoted primarily to the sale and display for sale of alcoholic beverage package goods. The east area will be almost totally occupied by the proposed bar. No question is raised as to the bona fide nature of the bar itself.

In essence, respondent contends that compliance with the "Broad Package Privilege Law" should be measured by whether the principal appearance of the interior and exterior of the licensed premises is a barroom or a liquor store. However, from the date of adoption of such law in 1948, this Division has consistently construed the definitional section of such statute as being exclusive, permitting no implementation, by way of interpretation, regulation, ordinance or special condition, that would superimpose an "appearance" requirement upon the definition of a "public barroom" contained therein. The statute contains no limitations with respect to the appearance of the interior layout of a barroom other than that it must contain a "public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises," and that the sale and display for sale of package goods must take place only in such barroom, not from any other area separate and apart from the barroom. Passaic County Retail Liquor Dealers' Assn. v. Paterson, 37 N.J. Super. 187 (App.Div. 1955). The statute may not be enlarged upon in the name of local discretion.

I have carefully considered the entire record herein and find that the revised plans project an eight-sided room which will constitute a "public barroom" within the meaning of R.S. 33:1-12.23. See Totowa v. Chicken Barn, Inc., 41 N.J. Super. 459 (App.Div. 1956), sustaining Division reversal of the municipal denial of an application to enlarge a barroom to provide greater area for the sale and display for sale of package goods. Consequently, I find that respondent's action was improperly grounded and therefore erroneous. See

South Jersey Retail Liquor Dealers Assn. v. Burnett, 125 N.J.L. 105 (Sup.Ct. 1940). I concur in the Hearer's conclusion and will reverse the action of respondent.

Accordingly, it is, on this 13th day of April, 1967,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to approve the revised plans and specifications heretofore filed by appellant and to amend the resolution adopted by respondent on June 27, 1966 to substitute in the special condition thereof said revised plans and specifications for the plans and specifications theretofore approved.

JOSEPH P. LORDI,
DIRECTOR.

3. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN ROOMING HOUSE - STOCK OF ALCOHOLIC BEVERAGES, EQUIPMENT AND COMMINGLED CASH ORDERED FORFEITED.

In the Matter of the Seizure on August 21, 1966 of a quantity of alcoholic beverages, $57.71 in cash and various fixtures, furnishings and equipment in a dwelling located at 136 Sheridan Avenue, in the Borough of Seaside Heights, County of Ocean and State of New Jersey.	)	Case No. 11,761 On Hearing CONCLUSIONS and ORDER

Citta and Gasser, Esqs., by Joseph A. Citta, Esq., appearing for claimant.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to R.S. 33:1-66 and State Regulation No. 28 to determine whether 20 containers of alcoholic beverages, $57.71 in cash, various furnishings, fixtures and equipment, more particularly set forth in an inventory attached hereto, made part hereof and marked Schedule "A", seized on August 21, 1966 at 136 Sheridan Avenue, in the Borough of Seaside Heights, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at a speakeasy conducted at the said premises.

At the said hearing Curllie Kaigler, represented by counsel, appeared and sought return of the seized property. There were entered into evidence the affidavit of mailing, affidavit of publication, notice of hearing, inventory and the Division chemist's report duly certified by the Director.

The established facts as developed through the testimony of three ABC agents are as follows: At about 2:10 A.M. on Saturday, July 23, 1966 and at about 3:25 A.M. on August 21, 1966 pursuant to a specific assignment to investigate

alleged illegal sales of alcoholic beverages at a rooming house at the above address, a female agent (D), entered the said premises. On her first visit she was accompanied by another female. Curllie Kaigler, the operator of this establishment, directed the agent and her companion to seats at a table in a living room area where she observed five patrons seated at various small tables therein, set up in restaurant style. She ordered scotch and water and her companion ordered vodka and orange juice which Curllie served.

During her stay on this occasion, the patronage increased to about 11 males and females who were observed to be consuming alcoholic beverages which were served to them by Kaigler and his wife, Lenore. After having another round of drinks, the agent handed Lenore a five-dollar bill from which $4.00 was taken in payment for the drinks. As she was leaving, Kaigler unlocked the front door and asked her, "Did you take care of your tab?", to which she replied, "Yes, we paid your wife". He said, "Fine. Come back again."

On her second visit that took place on August 21, 1966 at 3:35 A.M., Agent D was admitted into the premises by Kaigler and took a seat at a table. She ordered and was served a scotch on the rocks by Kaigler who then proceeded to an adjacent room where he resumed his card playing with several other male patrons. At this time the agent observed a waitress serve food and drink to patrons seated at various tables in the foyer and living room, for which she received payment. Upon receiving the said payment, the waitress entered an adjacent bedroom and shortly thereafter returned with change which she handed to the said patron. At about 3:50 A.M. Agent D ordered another scotch and water from the waitress. The waitress went into the kitchen, obtained the drink and placed the same on the agent's table. Within a few minutes, Kaigler admitted two more males into the premises, and the agent heard one male say, "Give me the regular and give him VO and water." Kaigler then went into the kitchen and came out with what looked like a mixed drink, a highball, no bottle, and a shot glass with an amber-colored liquid and a glass of water, which he put on the table and accepted payment therefor.

At this point the waitress approached Agent D and said, "The two gentlemen would like to buy you a drink or join them if you would like" to which she replied, "No, I was getting ready to leave, and it didn't look like my friends were going to show up." She then asked how much she owed for her drinks and was told, "Two drinks," she said, "two dollars," which she promptly paid her with two "marked" one-dollar bills. The agent proceeded to the door, which was unlocked for her by the waitress, and while the door was open two other ABC agents entered the premises.

The waitress evidently recognized these agents and, throwing the two "marked" one-dollar bills on the table, started screaming, "Curllie! Curllie!", and ran toward the bedroom. The agents thereupon identified themselves to Kaigler and were shortly thereafter joined by local police officers.

A search of the premises revealed the cash in the sum of $57.71 on top of the bureau in the bedroom from which the waitress had obtained the change which she used during the evening.

On cross-examination, Agent D stated that the waitress on this occasion, was not the same one who had served her on her earlier visit. She also asserted that, when the door was opened by the waitress, the two agents, who had been standing outside by pre-arrangement, entered the premises. She further insisted that she saw the waitress throw the two "marked" bills on the table, immediately upon recognizing the ABC agents.

She reiterated that on this occasion Kaigler opened the door in response to her ring; she seated herself at a table, and he asked her if she wanted to be served.

Immediately following the confrontation with the agents, the unidentified waitress eluded the agents and departed the premises by way of a fire escape. Kaigler was thereupon arrested, charged with the possession and sale of alcoholic beverages without a license in violation of R.S. 33:1-66(a and b), was released on bail for arraignment in the Seaside Municipal Court.

A certified copy of the chemist's report of the alcoholic beverages by the Director of this Division sets forth that a one-quart bottle containing 25 ounces of Cutty Sark Blended Scots Whisky, 86 Proof is an alcoholic beverage fit for beverage purposes with alcohol by volume of 43.9%. The report further shows that similar analyses were made of the contents of other alcoholic beverages seized at the time which also proved that they were alcoholic beverages fit for beverage purposes.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Curllie Kaigler or any other person at or for the premises where the violation took place. It further appears on the record of this Division that on five prior occasions seizure cases were instituted against Kaigler for possession and sale of alcoholic beverages at the same premises and appropriate forfeiture orders were accordingly entered. Seizure Case No. 9,776; Seizure Case No. 10,353; Bulletin 1371, Item 7; Seizure Case No. 10,646, Bulletin 1435, Item 5; Seizure Case No. 11,341, Seizure Case No. 11,535.

Since there was no permit or license authorizing the sale of alcoholic beverages to any person at or for the premises in question they are illicit because they were intended for sale without a license. Such alcoholic beverages, and personal property, as set forth in Schedule "A" constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; Seizure Case No. 11,597, Bulletin 1679, Item 7. This applies with equal force to the cash found in the open tin box in the bedroom where Kaigler and his employee deposited monies and obtained change in connection with the said sales. Seizure Case No. 11,182, Bulletin 1568, Item 5; Seizure Case No. 10,898, Bulletin 1500, Item 2.

Curllie Kaigler, testifying in support of his claim for the return of said property, gave the following account: On August 21, 1966 Agent D came to the door of this dwelling and when he opened it she asked whether her friends "... came here yet tonight?". When he responded that they had not arrived she asked whether she could enter and wait for them. He admitted her, seated her at the table and at her request got her a drink of scotch and water. He then went into an adjoining room to continue playing cards with some friends of his. His card playing was interrupted several times when he was required to admit

other friends into the premises. He then heard a lot of noise and someone shouted "Curllie! Curllie!" When he left the table he was confronted by the ABC agents who, he insisted, did not identify themselves as agents at that time. There was an argument about the money that the agents seized in the bedroom, as a result of which the local police officers were called.

He added that no arrest warrant was shown to him. He further stated that the television set and all the other personal property belonged to a Mrs. Ernestine Gater, his mother-in-law, whose exact address is unknown to him. He admitted, however, that he owned the alcoholic beverages.

On cross-examination, Kaigler admitted that he served the agents alcoholic drinks of liquor, but didn't expect to get paid therefor. He explained that he was operating a rooming house at this address but did not serve liquor on this night to anyone except to the agent, and some of his own friends with whom he was playing cards.

He was then questioned about the furniture and equipment and stated that it was owned by his mother-in-law who was unaware of any sale or service of alcoholic beverages. He also insisted that he did not know the name of the waitress on duty that night, except that her first name was Edith.

With respect to the cash seized, most of it consisted of silver. He explained that that was used as change for the card games.

His explanation for serving the agent alcoholic beverages without expecting to be paid was that he thought that he knew her, from having seen her at a local bar; thus, he did not consider her a total stranger.

I then inquired whether he did not consider it unusual for a young lady to come to his premises at 3:00 A.M. to wait for some friends. His explanation was that occasionally women do "... come down and wait for their husbands". Finally, he insisted that this waitress had no authority to serve alcoholic beverages or accept payment therefor from anyone. He then admitted that on April 5, 1963 he was sentenced from one to two years in State Prison which sentence was suspended and he was placed on probation and fined $1,000.00 for selling alcoholic beverages; was sentenced on April 13, 1961 and was fined $500.00 for possession and sale of alcoholic beverages without a license; and had been sentenced on prior occasions for similar violations. The record of the State Police Identification Bureau reflecting his record of prior convictions of liquor law violations was introduced into evidence for the purpose of affecting his credibility.

Agent D was called by the Division in rebuttal and testified that the $55.71 in cash was found on a bureau in the adjoining bedroom in an open container. Agent G corroborated this testimony and added that the money was counted and Kaigler was given an inventory thereof on the night of the raid.

I have had an opportunity to evaluate the testimony herein and to observe the demeanor of the witnesses as they testified. I am persuaded that the account given by the ABC agents was a forthright and truthful one and presented a credible and convincing reflection of what actually transpired. On the other hand, I am convinced that

Kaigler was not telling the truth, particularly when he said that the agent was served alcoholic beverages gratuitously, without being required to make payment therefor. Thus, I find that there were illegal sales of alcoholic beverages on the premises.

In a memorandum submitted by counsel for this claimant in summation, it is contended that the search and seizure of the property constituted a violation of the claimant's constitutional rights under the Fourth Amendment. He argues that since the agents did not obtain a search warrant at the time of the arrest and seizure, and that such warrant was first obtained about five hours after the arrest, the said search and seizure were unlawful.

R.S. 33:1-66, authorizing the seizure of unlawful property sets forth in pertinent part in paragraph (a) as follows:

> "a. Any officer knowing, or having reasonable cause to believe, that any person is engaged in unlawful alcoholic beverage activity, it shall be his duty to investigate, under proper search warrant when necessary, which it shall be his further duty to apply for, and to seize all property which he shall know, or have reasonable ground to believe is unlawful property, including in the case of illicit alcoholic beverages within any vehicle, the vehicle containing the same, and to arrest all persons whom he shall know, or have reasonable ground to believe, are committing, or have committed, a misdemeanor under this chapter and to make complaint against such persons as in other cases of misdemeanors. All property when seized shall be under the jurisdiction of the Director of the Division of Alcoholic Beverage Control subject to this chapter."

It is abundantly clear that ABC Agent D was lawfully present on these premises since she was invited therein by the claimant and the unlawful sales of liquor were made directly to her. Under these circumstances no search warrant was required. Cf. The Atlantic (C.C.A.N.Y.) 68 Fed. 2nd 8. R.S. 33:1-4 provides that all division investigators shall have authority to arrest without warrant for violation of the Alcoholic Beverage Act committed in their presence. Cf. United States v. 146, 157 Gallons of Alcohol (D.C., D.M.J.) 3 Fed. Sup. 450.

The entry into the premises by other ABC agents after the unlawful sale of alcoholic beverages to ABC Agent D and their arrest of Kaigler was a simultaneous action and the arrest was justified because of the direct sales as aforesaid. State v. Doyle, 42 N.J. 334, 342; State v. Bindhammer, 44 N.J. 372 (1965); Preston v. United States, 376 U.S. 364, 84 S.Ct.881,11 L. Ed. 2d 777 (1964); Ker v. California, 374 U.S. 23, 83 S.Ct. 1623 (1963). Since the sale was made directly to the agent, the arrest was proper and a search made incidental thereto and reasonably contemporaneous therewith is valid. State v. Doyle, supra; cf. State v. Smith, 37 N.J. 481; Carroll v. United States, 267 U.S. 132, 161; Husty v. United States, 282 U.S. 694, 700; Annotation, 94 L. Ed. 671 (1950); Seizure Case No. 11,439, Bulletin 1641, Item 6.

I therefore find as a fact that the search and

seizure without warrant, made by the agents under these circumstances were proper and the defense of illegal search and seizure must be rejected.

This is an in rem action under R.S. 33:1-66 which seeks forfeiture against the property and bears no relationship to the criminal proceedings which were instituted as a result of the aforesaid violation. Such criminal proceedings are in personam. It should be noted, however, that the same arguments were advanced by the claimant in a substantially identical memorandum submitted to the Mercer County Court in support of a motion to suppress the evidence obtained by virtue of the said search and seizure. The Motion to Suppress was denied by the said court in those proceedings.

The Director has the discretionary authority to return property subject to forfeiture to a claimant who has established to his satisfaction that he has acted in good faith and did not know or have any reason to believe that the property would be used for unlawful liquor activity. R.S. 33:1-66(f). In the absence of such showing the Director has no authority to relieve the claimant of forfeiture. R.S. 33:1-66(e); Seizure Case No. 11,059, Bulletin 1533, Item 8; Seizure Case No. 10,695, Bulletin 1444, Item 6. I find that Kaigler knew of and actively participated in the unlawful sale of alcoholic beverages on the date charged herein, and the seized property was used in connection therewith. Since this constitutes an absence of good faith, the Director is not authorized to return said property.

Accordingly, it is recommended that an order be entered directing the forfeiture of the seized personal property, including the alcoholic beverages and cash, as set forth in the schedule annexed hereto.

Conclusions and Order

No exceptions were taken to the Hearer's Report within the time limited by Rule 4 of State Regulation No.28.

After carefully considering the facts and circumstances I concur in the recommended conclusions in the Hearer's Report and adopt the same as my conclusions herein.

Accordingly, it is, on this 14th day of April, 1967,

DETERMINED and ORDERED that the seized property, including the $57.71 in cash, and the alcoholic beverages, more fully referred to 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 shall be retained, under State Regulation No. 29, for the use of hospitals and State, county and municipal institutions, or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH P. LORDI,
DIRECTOR.

SCHEDULE "A"

9 - containers of alcoholic beverages
11 - containers of beer
Chairs, tables, dresser and miscellaneous equipment
1 - television set, radio, record player, records & tires
1 - filing cabinet
1 - refrigerator, gas range

4. PRACTICES UNDULY DESIGNED TO INCREASE CONSUMPTION - "TWO MEALS FOR THE PRICE OF ONE" PLANS APPROVED SUBJECT TO RESTRICTIONS - HEREIN RECAPITULATION OF SIMILAR DISAPPROVED PRACTICES.

NOTICE TO ALL CONSUMPTION LICENSEES OPERATING RESTAURANTS:

I have given my most studied consideration to many requests for an opinion with respect to the permissibility of retail consumption licensees participating in a two-meals-for-price-of-one plan.

The various programs of the above nature involve the sale by a plan promotor of membership cards to the general public. In general, a subscribing member is required to be accompanied by at least one "guest" when patronizing a participating restaurant and, upon presentation of his membership card, would receive his dinner without charge when his guest orders a dinner of equal or greater value, or would pay only the larger of two food checks, or an amount equal to the average price of the respective dinners would be deducted from the total amount of the food checks. Subscribers are furnished with directories listing the participating restaurants. The plan operator enlists memberships, and extends publicity to the participating restaurants, through the media of newspaper and magazine advertising, newsletters, direct consumer mailing and, in some instances, over the radio.

Under the Alcoholic Beverage Law it is the expressed duty of the Director of this Division, inter alia, to supervise the sale of alcoholic beverages in such manner as to promote temperance (R.S. 33:1-39) and in furtherance of this objective the Director is expressly empowered to adopt rules and regulations with respect to practices unduly designed to increase the consumption of alcoholic beverages (R.S. 33:1-39). Pursuant to this statutory authority Rule 20 of State Regulation No. 20 has been promulgated and provides, in here most pertinent part, that no retail licensee shall, directly or indirectly, offer or furnish any gift, coupon or similar inducement with the retail sale of any alcoholic beverage, or engage in any practice designed to increase unduly the consumption of alcoholic beverages.

The evils attendant upon practices which would result in the undue consumption of alcoholic beverages have long been recognized and the variations of attempted promotional plans having such result have been manifold. To illustrate a few, my predecessors in office and myself have prohibited licensees from furnishing "all the beer you can drink" for a set price (Bulletin 232, Item 3; Bulletin 324, Item 10); "free drinks" during certain hours or on special occasions (Bulletin 314, Item 4; Bulletin 372, Item 2; Bulletin 787, Item 8); giving coupons to patrons redeemable for additional drinks at no further charge (Bulletin 359, Item 4); free drinks in connection with or as an inducement to purchase package goods (Bulletin 372, Item 2); urging patrons to buy "double headers" (Bulletin 655, Item 2); sale of drinks at reduced prices during certain hours or days -- the so-called "cocktail hours" (Bulletin 732, Item 8; Bulletin 1010, Item 5; Bulletin 1239, Item 11); tickets, cards, tokens, "wooden nickels", etc., redeemable in drinks (Bulletin 746, Item 6; Bulletin 1009, Item 10; Bulletin 1052, Item 15); drinks at reduced prices during a given period to patrons paying a "service fee" covering such period (Bulletin 789, Item 8); refunding percentage of amount spent for drinks during the year (Bulletin 812, Item 4); sliding scale of

drinks, i.e. buy one for so much and get next drink at lower price (Bulletin 817, Item 14); multiple drinks at special prices (Bulletin 1010, Item 10); "double shots" at a reduced per unit price (Bulletin 1239, Item 11). It is obvious that competition of this nature would not only be contrary to the best interests of the public, but would also, with each retailer trying to outdo the other, be detrimental to the economic welfare of the trade.

Proper control in achieving temperance in the consumption of alcoholic beverages need not, however, be perverted into unreasonable prohibition. It is axiomatic that virtually all advertisements and promotions by licensees inure to the benefit of their alcoholic beverage businesses. What the statute prohibits -- and Division regulations may not be broader in scope -- are practices designed to unduly increase alcoholic beverage consumption and promote intemperance. If adequate safeguards are observed, it seems unreasonable to prohibit those licensees operating restaurants from engaging in the legitimate promotion thereof by utilizing practices commonly employed by non-licensees engaged in the restaurant business.

For example, it has long been the Division view that a bona fide restaurateur, albeit the holder of a liquor license, may sell "meal tickets". See Bulletin 510, Item 9. Analogy may also be drawn with the once prevalent custom of taverns providing "free lunch" - still in vogue, although to a more limited extent, with the furnishing of nuts, popcorn, cheese and other snacks and now glamorized with the designation of hors d'oeuvres, buffet snacks, canapes, etc. Effective control over this permissible practice has been achieved, and no severe problems of alcoholic beverage control have been experienced, through application of the restriction set forth in Bulletin 787, Item 8, that there may be no advertising of free food except by a dignified sign on the interior of the premises not visible from the exterior of the premises. Cf. also Bulletin 1267, Item 7, to the effect that licensee-restaurateurs may donate a "dinner for two certificate" to be awarded as a door prize by charitable organizations holding raffle licenses.

It is well known that restaurateurs and hotel operators, including a great many who hold no liquor licenses, offer patronage inducements in connection with their restaurant and hotel operations, e.g., issuance of "meal tickets" as indicated above; seasonal reductions in food and hotel charges; special "weekend" rates; special "Honeymoon" rates; special attractions during certain periods such as "breakfast in bed" without additional charge, etc. In my opinion restaurateurs and hotel operators should not be precluded from engaging in normal competition with non-licensed establishments merely by reason of their holding liquor licenses. Further, licensees located in areas adjacent to a state which permits participation in programs of this nature would suffer an unfair disadvantage if not also allowed to participate.

Accordingly, you are advised that retail consumption licensees participating in programs of the nature outlined above will not be deemed to be in violation of the Alcoholic Beverage Law or State Regulations provided the following conditions are adhered to:

1. Licensees may not honor any membership cards or otherwise participate in the plan, unless they conduct therein a bona fide restaurant within the definition of R.S. 33:1-1(t) reading:

"'Restaurant.' An establishment regularly and principally used for the purpose of providing meals to the public, having an adequate kitchen and dining room equipped for the preparing, cooking and serving of foods for its customers and in which no other business, except such as is incidental to such establishment, is conducted."

2. It must be made unmistakably clear to plan subscribers and participants that the offer applies to food only and does not include any alcoholic beverages whether as part of a meal or otherwise.

3. There may be no mention of any kind of the alcoholic beverage business conducted by a participating restaurant, nor any mention of or reference to the premises as a place to obtain alcoholic beverages, in any publication, directory, mailing piece or any other media advertising or pertaining to the plan.

4. The plan may not include the award of prizes to subscribers, or as an inducement for subscriptions, through drawings or so-called contests.

5. A small dignified sign, emblem or decalcomania may be displayed in or upon the premises of a participating restaurant.

6. Specific programs of the various operators should be submitted to this office for review to avoid improprieties or violations of the regulations, particularly Rule 20 of State Regulation No. 20, by participating licensees.

It is to be understood that my position with respect to these programs will be reviewed from time to time in the light of experience gained in observing their conduct and should experience show abuses resulting in undue control or enforcement problems, I shall have no hesitancy in disapproving further participation by our licensees.

JOSEPH P. LORDI,
DIRECTOR.

Dated: April 26, 1967.

5. DISQUALIFICATION REMOVAL PROCEEDINGS - UNLAWFUL ENTRY - ORDER REMOVING DISQUALIFICATION.

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

Case No. 2106

CONCLUSIONS and ORDER

BY THE DIRECTOR:

Petitioner's criminal record discloses that in 1949, he was convicted in another State for unlawful entry (reduced from burglary and felonious assault) and, as a result thereof, was sentenced to serve three months in a workhouse.

Since the crime of which petitioner was convicted, in my opinion, involves the element of moral turpitude (Re [illegible] No. 506, Bulletin 585, Item 8), he was thereby

rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (42 years old) testified that he is married and living with his wife; that for the past six years he has lived in four neighboring municipalities; that he is a construction worker; that in the winter months he also works as a part time bartender; that between 1960 and 1963, he was part owner of a licensed premises and also worked as a bartender in a local municipality; that in connection therewith, he was fingerprinted by the police department; that bartender's certificates had been issued to him and that, until recently when advised by a local police officer to file the within petition, he had no knowledge of his ineligibility to work in licensed premises in this State.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that, ever since his conviction in 1949, he has not been convicted of any crime.

Petitioner produced three character witnesses (two housewives and an assistant manager of a motor inn) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The Police Department of the municipality wherein the petitioner resides reports that there are no complaints or investigations presently pending against petitioner.

The only hesitation I have in granting the relief sought herein is based on the fact that petitioner, although disqualified, worked in licensed premises in this State. I am, however, favorably influenced by three factors, viz., (a) the testimony of his character witnesses, (b) petitioner's criminal record shows only one conviction of crime which took place over seventeen years ago, and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 26th day of April, 1967,

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

JOSEPH P. LORDI,
Director.

6. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR THIRTY DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Hillcrest Inn, Inc.
t/a Hillcrest Inn, Inc.,
200-202 South Stevens Avenue
South Amboy, N. J.,

Holder of Plenary Retail Consumption License C-37, issued by the Common Council of the City of South Amboy.

CONCLUSIONS and ORDER

Licensee, by Arthur Giddes, Manager, Pro se
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 27, 1967 it sold a glass of beer and two quarts of wine to a minor, age 15, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Saffos, Bulletin 1616, Item 5; Re The Cellar, Inc., Bulletin 1360, Item 7.

Accordingly, it is, on this 1st day of May 1967,

ORDERED that Plenary Retail Consumption License C-37, issued by the Common Council of the City of South Amboy to Hillcrest Inn, Inc., t/a Hillcrest Inn, Inc., for premises 200-202 South Stevens Avenue, South Amboy, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, May 8, 1967, and terminating at 2 a.m. Friday, June 2, 1967.

JOSEPH P. LORDI,
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED.

Jersey National Liquor Company
209-227 McLean Boulevard
Paterson, New Jersey
Application filed June 2, 1967 for additional warehouse license for premises 5th Street, Morris Park, Lopatcong Township, New Jersey, in connection with Plenary Wholesale License W-37.

Wenz Industries (A Corp.)
209 McLean Boulevard
Paterson, New Jersey
Application filed June 5, 1967 for plenary wholesale license and two additional warehouse licenses for premises 4576 Crescent Boulevard, Camden, New Jersey and 5th Street, Morris Park, Lopatcong Township, New Jersey.

Joseph P. Lordi
Director