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

BULLETIN 734 OCTOBER 18, 1946.

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
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1. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES AND JUKE BOX, FIXTURES AND FURNISHINGS IN SPEAKEASY ORDERED FORFEITED - APPLICANT FOR RETURN OF MACHINE FAILED TO ESTABLISH LACK OF KNOWLEDGE OR REASON TO SUSPECT SPEAKEASY ACTIVITIES ON THE PREMISES.

In the Matter of the Seizure on July 13, 1946 of a quantity of alcoholic and other beverages, a music box, and furnishings and fixtures at 156 Sand Road, in the Borough of Westwood, County of Bergen and State of New Jersey.	Case No. 7010 ON HEARING CONCLUSIONS AND ORDER

Joseph H. Gaudielle, Esq., by Marconi V. A. Caporale, Esq., Attorney for Pettigrew Williams.
George G. Tillotson, Pro se.
Harry Castelbaum, Esq., appearing for the Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, a music box, and furnishings and fixtures, described in a schedule attached hereto, seized on July 13, 1946 at 156 Sand Road, Westwood, N. J., constitute unlawful property and should be forfeited.

On July 4, 1946, an ABC agent, checking a complaint that speakeasy activities were being carried on at the above premises, entered the cellar of an unfinished building located at the rear of the above premises. Pettigrew Williams was at a bar in the cellar and the agent purchased from him drinks of beer and whiskey, as well as two sandwiches.

The agent left the premises without disclosing his identity. Later that day he returned, and observed a man carry a few bottles of beer and a bottle of whiskey into the cellar. The agent entered the cellar and observed seven men there drinking whiskey and birch beer at the bar. The agent asked for a bottle of beer, but was told by Williams that he only had birch beer and whiskey left. The agent then purchased drinks of whiskey from Williams, pouring most of the whiskey into a bottle, which he retained for evidential purposes. The agent took no further action on that day.

On July 8th the agent again returned and purchased drinks of whiskey and beer from Pettigrew Williams. He also purchased from Williams, to take away from the premises, a partially filled bottle of whiskey containing about three or four drinks.

Pettigrew Williams did not hold any license authorizing him to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages.

On July 13, 1946 the agent obtained a search warrant for the premises on the basis of the unlicensed sales of alcoholic beverages to him, and he and other ABC agents executed the warrant on that day.

The agents seized a bottle of whiskey, a jug of wine, a quantity of soda, the bar, tables, chairs and a music machine, all of which were in the cellar. Williams was arrested on charges of selling alcoholic beverages without a license and possessing alcoholic beverages with intent to sell such beverages unlawfully. On October 7, 1946, Williams tendered a plea of guilty, in criminal court, to the charge of selling alcoholic beverages without a license on July 8, 1946.

Williams was arrested in 1937 in Park Ridge in Bergen County for a similar violation of the Alcoholic Beverage Law and was fined $100.00.

The circumstances compel the inference that the seized alcoholic beverages were intended for sale at this speakeasy. Hence, such alcoholic beverages are illicit. R. S. 33:1-1(i). These illicit alcoholic beverages, together with the other beverages, the music box, and the other fixtures and furnishings seized in the cellar, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R. S. 33:1-2, R. S. 33:1-66.

When the matter came on for hearing pursuant to R. S. 33:1-66, George G. Tillotson, the owner of the music box, appeared and sought its return by way of appeal to my discretionary authority rather than by way of denial that the music box is legally subject to forfeiture. Mr. Williams appeared only for the purpose of aiding Mr. Tillotson to recover the machine. He did not oppose forfeiture of the other property seized.

Mr. Tillotson is the owner of about 200 music machines, located in restaurants, stores and other commercial establishments. Williams' cellar did not resemble any such business establishments and Tillotson had few, if any, machines in a place of a similar nature. The controlling issues are whether Tillotson, when placing his machine in this unusual location, knew or should have anticipated that speakeasy activities would be carried on there, and whether he made a reasonable inquiry concerning Williams' character and background without discovering his previous conviction for bootlegging. Cf. Seizure Case No. 6981, Bulletin 721, Item 3; Seizure Case No. 6950, Bulletin 719, Item 6; Seizure Case No. 6875, Bulletin 716, Item 3.

According to Mr. Tillotson, Williams telephoned on three or four occasions for a machine, representing that he intended to operate a barbecue at the premises on weekends; that Tillotson, at Williams' suggestion, telephoned to a mutual acquaintance, the owner of a restaurant where Tillotson had a machine; that this man spoke well of Williams and did not tell Tillotson that Williams had a previous conviction for bootlegging. Tillotson then went to the premises, looked the place over, and had the machine placed there about three weeks prior to its seizure.

Mr. Tillotson describes the place where his machine was located as a typical farm outbuilding, one and a half stories in height, with one story for the most part underground; a cellar such as is used for the storage of vegetables. The cellar, in which there was the music machine, had a cement floor, a crude bar or counter on saw horses, tables and chairs. When Tillotson was there he observed a number of men eating and drinking soda. He says that he thought it was some sort of a club.

When asked whether the thought came to him that persons likely to come to the place for parties would drink, Tillotson replied, "They bring their own bottles, or a lot of them do."

Pettigrew Williams, testifying on Tillotson's behalf, said that when asking for the machine he told Tillotson that he "put in an application for selling whiskey for the Fourth -- after I was refused I went and called up this gentleman (Tillotson) to tell him not to bring this box because I was refused on this whiskey license -- And then he didn't bring it there for the Fourth and when he did bring it I had had the barbecue." Later in his testimony it was his recollection that the municipality refused to grant him a license after the box was in his place.

Williams further testified that since 1944 he had made three or four applications to the municipality for various types of retail liquor licenses for the premises, none of which were granted; that when he applied to Tillotson for the machine he had on file an application for a club license, which later was likewise refused.

It is not necessary to determine whether Mr. Tillotson's conversation with the restaurant owner should be regarded as an adequate investigation of Williams' character and background, since it appears that Tillotson was definitely aware that Williams' principal objective was to sell alcoholic beverages at the premises.

In the light of this knowledge it appears reasonable to expect that Tillotson would remove the machine if it was in Williams' premises before he was told that Williams had failed to obtain a license, or would not deliver it to such a strange location if he knew of such refusal at the time. Tillotson did not follow this course, possibly through carelessness.

Under R. S. 33:1-66(f), I have the discretionary authority to return property subject to forfeiture to a person who has satisfied me that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use. The evidence presented does not satisfy me that Tillotson can be so regarded. His application for the return of the music box is therefore denied.

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

ERWIN B. HOCK
Deputy Commissioner.

Dated: October 10, 1946.

SCHEDULE "A"

1 - bottle of whiskey
1 - gallon bottle of wine
1 - keg Birch Beer
1 - bottle soda
1 - wooden bar
3 - tables
3 - chairs
1 - Wurlitzer Music Box #69896

2. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC AND OTHER BEVERAGES, JUKE BOXES AND OTHER FURNISHINGS AND FIXTURES IN SPEAKEASY ORDERED FORFEITED - APPLICATION FOR RETURN OF JUKE BOXES AND TWO CASH REGISTERS DENIED FOR FAILURE OF CLAIMANTS TO ESTABLISH THEIR GOOD FAITH AND ABSENCE OF KNOWLEDGE OF OR REASON TO SUSPECT SPEAKEASY ACTIVITIES AT ESTABLISHMENT.

In the Matter of a Seizure on May 26, 1946 of a quantity of whiskey and other beverages, a number of empty beer and soda bottles, two music machines, a Crossley Wall Amplifier, two juke box coin boxes, two National cash registers, a bagatelle machine, a radio, and other fixtures and furnishings, at premises located on the south side of Stanger Avenue, occupied by Bessie Brooks (Mitchell) and Ernest Mitchell, in Glassboro Lawns, in the Township of Elk, County of Gloucester and State of New Jersey.	Case No. 6989 ON HEARING CONCLUSIONS AND ORDER

Albert B. Melnik, Esq., Attorney for Emby Distributing Company.
Vernon H. Fisler, Jr., Esq., Attorney for Daniel Mills and Gloria Brooks.
Harry Castelbaum, Esq., appearing for the State Department of Alcoholic Beverage Control.

This matter has been heard pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic and other beverages, two music machines, a bagatelle machine, two cash registers and other fixtures, furnishings and personal property, described in a schedule attached hereto, seized on May 26, 1946 at premises occupied by Bessie Brooks (Mitchell) and Ernest Mitchell, located in Glassboro Lawns, constitute unlawful property and should be forfeited.

On May 25, 1946, ABC agents were checking a complaint that speakeasy activities were being carried on in a restaurant known as "Mitchell's Blue Spruce Inn" located at the above address. The agents were informed that two women in the place had purchased whiskey, served to them in a pitcher by Rufus Ford. When the agents entered the restaurant in the early morning hours of May 26th, they found one of the women there with a small pitcher containing whiskey in front of her. This woman identified Ford as the person who had sold her two pitchers of whiskey. Ford admitted to the agents that such was the fact.

There were about 50 patrons in the place at the time and the agents observed several empty quart beer bottles on various tables. Ernest Mitchell and Bessie Brooks (Mitchell) were behind the counter, preparing and serving food. Ernest Mitchell disappeared before the agents had an opportunity to question him. Bessie Brooks (Mitchell) claimed to be the owner of the restaurant.

Bessie Brooks (Mitchell), Ernest Mitchell and Rufus Ford did not hold a license authorizing any of them to sell or serve alcoholic beverages. Neither were the premises licensed for the sale of alcoholic beverages.

Rufus Ford was arrested and charged with selling alcoholic beverages without a license. Bessie Brooks (Mitchell) was arrested and charged with possession of alcoholic beverages with intent to sell such beverages unlawfully.

The ABC agents seized a quantity of whiskey and soda, empty beer and soda bottles, two music machines, a Crossley Wall Music Amplifier, two cash registers, a bagatelle machine, the currency in such machines, and furnishings and fixtures and other personal property.

This restaurant has a long and unsavory record as a notorious speakeasy. Its record is as follows:

On December 12, 1940, Ernest Mitchell and Clarence Morrow were arrested at this restaurant and a quantity of illicit alcoholic beverages were seized there. Bessie Brooks (Mitchell) was in the place at the time. Mitchell was charged in criminal court with the possession of illicit alcoholic beverages, pleaded guilty in the Special Sessions Court of Gloucester County and was sentenced to pay a fine of $100.00 or be imprisoned for thirty days.

On February 22, 1941, Ernest Mitchell was again arrested at this restaurant and a quantity of illicit alcoholic beverages was seized there. Mitchell was charged with possession of illicit alcoholic beverages, pleaded guilty in the aforesaid Special Sessions Court and was sentenced to pay a fine of $200.00 or be imprisoned for sixty days.

On April 29, 1944, Wilford Carter was arrested at the restaurant, charged with the sale of alcoholic beverages there without a license and possession of alcoholic beverages with intent to sell such beverages unlawfully. He pleaded guilty in the Special Sessions Court of the county and was fined $100.00. Ernest Mitchell and Bessie Brooks (Mitchell) resided at the premises, but Carter was arrested because he was the person who actually sold the alcoholic beverages.

On May 5, 1945, Ernest Mitchell was arrested at the restaurant on charges of selling alcoholic beverages without a license, and possession of alcoholic beverages with intent to sell such beverages unlawfully. In that case, Mitchell was accused of selling whiskey in a pitcher. Mitchell pleaded guilty to this charge in the Special Sessions Court of Gloucester County and was fined $500.00.

Bessie Brooks (Mitchell) is reputed to have a matrimonial relationship with Ernest Mitchell and claims to have operated the restaurant for about four years.

In the light of this background, the claim of the patron, and the admission of Ford, it is indubitable that the seized alcoholic beverages were intended for sale at this unlicensed restaurant and hence are illicit. R. S. 33:1-1(i).

The illicit alcoholic beverages, together with the other beverages, music and other machines, fixtures, furnishings and other personal property, all of which were seized in the restaurant, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R. S. 33:1-2, and R. S. 33:1-66.

When the matter came on for hearing pursuant to R.S. 33:1-66, counsel entered an appearance for Emby Distributing Company which sought return of the two music machines, the amplifier and other music machine equipment. Daniel Mills and Gloria Brooks also appeared each sought return of a cash register. No one appeared to oppose forfeiture of the balance of the seized property.

Under R. S. 33:1-66(f), I have the discretionary authority to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the property was put or of such facts as would have led a person of ordinary prudence to discover such use.

Despite the fact that to all outward appearances it was a restaurant, nevertheless, since the place was actually a notorious speakeasy, and persons connected with the place had been convicted in criminal court for speakeasy activities there, it is incumbent upon a claimant seeking to avoid forfeiture of his property to present satisfactory evidence that the character of the operator and the nature of the business was investigated. See Seizure Case 6898, Bulletin 687, Item 1.

A short time before the seizure, the music company purchased a "route" of machines, which included the machines located at the premises in question. A representative of the company testified that he visited the restaurant about May 10th, but merely checked that the machines were actually there and that the serial numbers were correct. The list against which this representative checked, covering about 120 machines, described this restaurant as "Mitchell's Blue Spruce Inn".

According to this witness, Mr. Bushwick, from whom the "route" of machines was purchased, was asked the general question, "Now these locations, are there any houses, or saloons, or speakeasies, or anything like that there?", and Bushwick answered, "No." Actually, of the 120 locations, 22 places are listed either as a "cafe", "tavern", "bar" or "grill", and many others, listed as restaurants or "lunch" rooms, may also have had liquor licenses.

It is to be noted that there was no specific inquiry of Bushwick as to the character of "Mitchell's Blue Spruce Inn". Bushwick was not present at the hearing and hence it is mere speculation as to what knowledge he had or what inquiry he made concerning the character of the place or its owner or owners. In any event, it is doubtful whether acceptance by a purchaser of a seller's general assurance that machines are all located in places of good character can be termed an adequate investigation. The music company apparently placed no particular reliance on Bushwick's alleged general representation as to the character of the locations where he had his machines, inasmuch as it did not include anything to this effect when obtaining Bushwick's affidavit as to any unpaid debts against the route.

On his visit there, the music company's representative says that he spoke to some woman who told him she was the owner of the place. He did not ask her for her name. Asked whether he had had any occasion to go to neighbors or police officers or any one to check as to the character or nature of the business being carried on at a location where his company placed machines, he did not answer directly but said, "If you buy a man out and that man sells you a certain type of route you just take his word for it." Pressed for a more direct response to the question, he said:

"I have been around long enough to kind of smell a speakeasy before I walk into it.

"Q You depend upon your sense of sight and smell rather than your sense of checking, either with the police or the neighbors, to find out whether the place has a reputation as a speakeasy?

"A That is right.

* * * * * * * * *

"Q Do I understand, in your business connection with your present employer, there has never been any occasion upon which at any spot you asked anyone in the neighborhood, or any law enforcement officials as to the reputation of the location?

"A That is right.

"Q As I understand it, you judge a place merely by sight?

"A Yes."

John Atton, employed by a concern which financed the music company's purchase of this route, testified that he accompanied the representative of the music company on his tour of inspection. His sole purpose was to determine whether the machines actually existed, and were at the locations named. He was not there to check the character of the establishment or its owner. He says that his company did not require him to check the character of either the establishment or its owner.

This case forcibly demonstrates the ease with which speakeasy operators could equip their establishments without fear of forfeiture of such equipment, if those furnishing the equipment could successfully reclaim their property even though they followed a business practice which disregarded common prudence.

In the instant case, the restaurant, with a notorious reputation for speakeasy activities, which should have been discoverable on mere inquiry in the community, has not one, but three machines located there, without the slightest effort on the part of the owner of such machines to ascertain the name of the person with whom it was to divide the profits or the character of the establishment. A concern that operates in this manner must accept the risk of loss of its property if it is found in a speakeasy. Seizure Case No. 6898, supra. The application of Emby Distributing Company for return of the music machines is therefore denied.

Daniel Mills, a brother of Bessie Brooks (Mitchell), and Gloria Brooks, her fourteen-year-old daughter, each seek return of a cash register.

I am inclined to accept their proof of ownership thereof, despite the meager nature of their testimony, because Mills appears to be of good character, and legitimately employed for many years, while the age of the daughter suggests her freedom from wrongdoing. It is possible, as she claims, that she received the cash register as a birthday gift to aid her in her small candy enterprise at the premises.

However, although neither of these persons appears to be personally involved in the speakeasy activities of their kin, nevertheless, they too are chargeable with whatever knowledge a reasonably prudent person would have had in like circumstances. Mills knew Ernest Mitchell, was friendly with him, and was in contact, altho infrequently, with him and Bessie Brooks (Mitchell) for the past ... years. The daughter, of course, resided on the premises. It is, therefore, highly improbable that they did not know or at least suspect that speakeasy activities were being carried on at the restaurant.

The principle, in seizure proceedings, that claimants must establish that they exercised common prudence, applied to the claim of the music company, applies more forcefully to relatives. While it

is doubtful, under the circumstances in the case, nevertheless, even if neither Mills nor Gloria Brooks actually knew of the long record of speakeasy activities at the restaurant, it is well nigh inconceivable that they did not suspect that such activities were being carried on there. It may well be that Mills did not deem it his duty to remonstrate, and that the daughter was not in the position to do so, but that does not alter the fact that if they left their property in a speakeasy they risked its loss. Consequently, the application of Daniel Mills and Gloria Brooks for the return of the cash registers is denied.

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

ERWIN B. HOCK
Deputy Commissioner.

Dated: October 10, 1946.

SCHEDULE "A"

1 - bottle rye whiskey
419 - bottles of soda
a large number of empty beer and soda bottles
48 - glasses
1 - Seeburg Music Machine, Model RC 8800, Serial #90200 and currency therein
1 - Seeburg Music Machine, Model Vogue, Serial #64627 and currency therein
1 - Crossley Wall Amplifier (Music) Model 633 CJ 4N and currency therein
2 - Wallmatic Juke Box Coin Boxes and currency therein
2 - National cash registers
1 - bagatelle machine and currency therein
1 - Admiral Portable Radio
1 - G. E. Electric Fan, Model 5K H45 AB 55 B, 1/4 H. P.
1 - Double Cola Ice Box
1 - Coca Cola Ice Box
4 - tables, 18 chairs, 4 benches, 1 counter

3. BULLETIN ITEM CORRECTED.

Bulletin 733, page 16, paragraph 3, lines 10-11, change "unconvincing" to "convincing".

ERWIN B. HOCK
Deputy Commissioner.

4. APPELLATE DECISIONS - JENNINGS v. DOVER TOWNSHIP (OCEAN COUNTY), SHAW AND KRALIK.

RAYMOND JENNINGS,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF DOVER (Ocean County) and LOUIS SHAW and ALICE KRALIK,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Edward F. Beers, Esq., Attorney for Appellant.
Percy Camp, Esq., Attorney for Respondent Township Committee.
Charles J. Berkowitz, Esq., Attorney for Respondent, Alice Kralik.

This is an appeal from the action of respondent, Township Committee, whereby it transferred a plenary retail consumption license from Louis Shaw to Alice Kralik and from premises known as 2 Main Street to premises at Northwest Corner of Grand Central Avenue and First Street, Ortley Beach, Township of Dover.

Appellant, a resident of the Township of Dover, alleges, in substance, that the transfer was erroneous because (a) the vicinity is segregated from the remaining part of the township and has no need to be served by such transfer; (b) the population of the section does not warrant the transfer; (c) residents of Ortley Beach do not wish an additional license; and (d) the action of the local issuing authority was arbitrary.

The Township of Dover embraces a large territory and is situated, for the most part, on the mainland. The section thereof which is known as Ortley Beach is, however, located on a narrow strip of land between the Atlantic Ocean and Barnegat Bay and is separated from the rest of the township by Barnegat Bay. Ortley Beach extends along this narrow strip of land a distance of eight-tenths of a mile between Lavalette on the north and Seaside Heights on the south. It has a beach on the Atlantic Ocean side. The transfer of the license in question was granted from premises on the mainland to premises in the Ortley Beach section of the Township of Dover.

The evidence given by appellant herein indicates that he is one of the very few persons who live permanently in this section of the township. Clearly, Ortley Beach is a summer resort and appellant estimates that the summer population is approximately 750. This figure apparently does not include persons who visit the beach for one-day outings. At the hearing below, appellant was the only resident who opposed the transfer, although five or six other residents had filed written protests thereto. At the hearing herein, appellant and two other residents appeared in opposition to the transfer. Appellant contends that a plenary retail consumption license issued for premises known as the Turf Club and located on the beach is sufficient and that the residents oppose the transfer of a license to

the premises operated by Alice Kralik and located about a block from the beach. Appellant contends also that the Township Committee ignored the sentiment of the residents which was expressed at a meeting of the Township Committee held in April, 1946.

On the other hand, Colin J. Applegate, Chairman of the Township Committee, testified that he interviewed a number of persons who own large tracts of undeveloped land at Ortley Beach and that these persons had advised him that they favored the transfer of the license. He said that he considered the needs of the section in voting to grant the transfer. Committeeman Robert A. Lederer testified that he visited the Turf Club during the summer and found it crowded. He also testified that "in the summertime we have, maybe, forty thousand people that resort to Ortley Beach, which is sponsored and paid for by Dover Township." A photograph introduced into evidence shows that the Kralik building is a modern, substantial structure and the evidence indicates that it will be operated as a restaurant and barroom. It was stipulated that the third committeeman, Stanley C. Grover, who also appeared at the hearing herein, would corroborate the testimony of Committeeman Lederer, if called. The three committeemen inspected the Kralik premises before they unanimously voted to grant the transfer. John F. Eberhardt, president of Ortley Beach Welfare and Tax Payers Association, testified that, at the request of appellant, he had sent a letter to respondent Township Committee protesting the transfer, but that, after viewing the premises, he advised the Township Committee to ignore the protest.

The determination of the question as to the number of licensed premises which should be permitted in any given vicinity is a matter confided to the sound discretion of the issuing authority. Kalish v. Linden, Bulletin 71, Item 14. The evidence herein discloses a difference of opinion as to the need of an additional license and a difference of opinion as to the sentiment of the residents, but it is clearly inadequate to show that respondent Township Committee acted arbitrarily or abused its discretion in granting the transfer. The action of the Township Committee is, therefore, affirmed.

Accordingly, it is, on this 11th day of October, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

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

In the Matter of Disciplinary Proceedings against

HI-HAT BAR, INC.
T/a HI-HAT BAR
20 Main Street
Keansburg, N. J.,

Holder of Plenary Retail Consumption License C-5 issued by the Borough Council of the Borough of Keansburg.

CONCLUSIONS AND ORDER

Defendant-licensee, by Abraham Gerzoff, President.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

Defendant has pleaded guilty to a charge that it possessed illicit alcoholic beverages at its licensed premises, in violation of R. S. 33:1-50.

On July 17, 1946, an agent of the Federal Alcohol Tax Unit tested 41 open bottles in defendant's premises and seized a 4/5 quart bottle labeled "Canadian Club Blended Canadian Whisky" when his field test indicated that the contents thereof were not genuine as labeled. Subsequent analysis by the Federal chemist leads to the conclusion that said bottle had been at least partially refilled with another Canadian whiskey.

At the time of the seizure and at the time of submission of the plea, the President of the defendant corporation disclaimed all knowledge of the "refill" and placed the blame upon a bartender who was discharged after the violation occurred. Nevertheless, defendant is responsible for the violation. Re Barrale, Bulletin 705, Item 5.

The minimum suspension for so-called "refill cases" involving one bottle is fifteen days. Re Rudolph, Bulletin 680, Item 1. Defendant has no prior adjudicated record. Hence I shall suspend defendant's license in this case for a period of fifteen days.

Accordingly, it is, on this 13th day of September, 1946,

ORDERED, that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Keansburg to Hi-Hat Bar, Inc., t/a Hi-Hat Bar, for premises 20 Main Street, Keansburg, be and the same is hereby suspended for a period of fifteen (15) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of said suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PREVIOUS RECORD - LICENSE SUSPENDED FOR A PERIOD OF 20 DAYS.

In the Matter of Disciplinary Proceedings against FRANK MOSCARELLI T/a PIONEER TAVERN 42 Marconi Avenue Woodbridge Township P. O. Iselin, N. J., Holder of Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Woodbridge.	CONCLUSIONS AND ORDER

Leo J. Berg, Esq., Attorney for Defendant-licensee.
Anthony Meyer, Jr., Esq., appearing for Department of Alcoholic Beverage Control.

Defendant pleads non vult to a charge alleging that he possessed two 4/5 quart bottles labeled "Four Roses Fine Blended Whiskey", the contents of which were not genuine as labeled, in violation of R. S. 33:1-50.

On September 7, 1946, an investigator of the Department of Alcoholic Beverage Control seized the two bottles mentioned in the charge when preliminary tests thereof indicated that the contents of the bottles were not genuine as labeled. Subsequent analysis by the chemist employed by the Department of Alcoholic Beverage Control discloses that the contents of the seized bottles varied in sol and acids from the contents of genuine bottles of the same product.

Defendant herein has a prior adjudicated record. Effective January 23, 1945, his license was suspended for a period of ten days by the State Commissioner on a charge of selling alcoholic beverages to minors. See Re Moscarelli, Bulletin 648, Item 3. Under the circumstances, I shall suspend defendant's license for a period of twenty days.

Accordingly, it is, on this 14th day of October, 1946,

ORDERED, that Plenary Retail Consumption License C-38, issued by the Township Committee of the Township of Woodbridge to Frank Moscarelli, t/a Pioneer Tavern, 42 Marconi Avenue, Woodbridge Township, be and the same is hereby suspended for a period of twenty (20) days. Pursuant to notice of August 23, 1946, Bulletin 727, Item 12, the effective date of such suspension is reserved for future determination.

ERWIN B. HOCK
Deputy Commissioner.

7. APPELLATE DECISIONS - ROSENBERGER v. BERLIN BOROUGH.

EARL E. ROSENBERGER, t/a BERLIN HEIGHTS INN,
Appellant,
-vs-
BOROUGH COUNCIL OF THE BOROUGH OF BERLIN,
Respondent

ON APPEAL
CONCLUSIONS AND ORDER

William T. Cahill, Esq., Attorney for Appellant.
George D. Rothermel, Esq., Attorney for Respondent.

This is an appeal from the refusal to renew a plenary retail consumption license for premises located at 69 White Horse Pike, Borough of Berlin, where appellant has conducted a licensed business for a period of three years.

Respondent contends that its action was proper because appellant has consistently and repeatedly violated the provisions of the Alcoholic Beverage Law.

The violations disclosed, which are substantiated by the official records of the Department of Alcoholic Beverage Control, are (1) in 1938 a license held in the name of one William A. Wilson was suspended for a period of twenty-one days when it was ascertained that appellant had an undisclosed interest in the business; (2) in 1942 a license held in the name of one Mae Frances Sperry was suspended for thirty days when it was adjudged that the said Mae Frances Sperry was acting as a "front" for appellant; and (3) appellant's license was suspended for a period of sixty days beginning September 4, 1945, after he had pleaded guilty to a charge alleging sale to minors. At the time the sixty-day suspension of the license was imposed, the local issuing authority told appellant that it would not renew his license which expired on June 30, 1946, and that he could not transfer it.

No application for a person-to-person transfer of the lice was ever filed with the respondent Borough Council. Hence, the doubtful legality of the threatened refusal to grant a transfer was never tested.

It is now well established in New Jersey that "no one has a right to demand a license. A license is a special privilege granted to the few, denied to the many." Paul v. Gloucester, 50 N.J.L. 585; Meehan v. Jersey City, 70 N.J.L. 382; Bumball v. Burnett, 115 N.J.L. 254.

Appellant is not entitled to renewal of his license as a matter of right. Malone v. Bordentown, Bulletin 129, Item 8. Zicherman v. Newark, Bulletin 647, Item 5. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion, this Department will not interfere with the actions of the constituted authorities. Allen v. Paterson, 98 N. J. L. 661; Fornarotto v. Public Utility Commissioners, 105 N. J. L. 28; Zicherman v. Driscoll, 133 N. J. L. 586.

There appeared to be evidence before the local issuing authority to support its action. Under R. S. 33:1-19, it is the duty of the Borough Council to administer the issuance of such licenses, and under R. S. 33:1-24, it is its duty to investigate applicants for licenses. Under the duty imposed upon it, the Board is required to

consider an applicant's past record as a licensee. Re Zicherman v. Driscoll, supra.

The appellant, during the hearing, admitted the various violations enumerated in these conclusions and, in addition thereto, it appears that he pleaded non vult in the Court of Special Sessions to a co plaint made for the sale to minors aforesaid. As a result of sa plea, he was fined $100.00.

In view of the foregoing, respondent's refusal to renew appellant's license does not appear to be unreasonable and is in fact justified by appellant's previous misconduct. Therefore, respondent's action will be affirmed.

Accordingly, it is, on this 14th day of October, 1946,

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

ERWIN B. HOCK
Deputy Commissioner.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Franam Corporation
518 Main Street
Boonton, N. J.
Application for Plenary Wholesale License filed October 14, 1946.

Ruth M. Davidson
445 White Horse Pike
Watsontown, N. J.
Application for State Beverage Distributor's License filed October 14, 1946.

Peter J. and Joseph A. Salzano
T/a S & S Distributing Co.
1070 East 25th St.
Paterson, N. J.
Application for State Beverage Distributor's License filed October 14, 1946.

New Jersey Apple Growers, Inc.
Cottrell Road
Browntown, Madison Township, N. J.
Application for Limited Distillery License filed October 15, 1946.

Central Beverage Co.
114 Academy St.
Jersey City, N. J.
Application for Warehouse Receipts License filed October 17, 1946.

ERWIN B. HOCK
Deputy Commissioner.

9. COURT DECISIONS - NEW JERSEY SUPREME COURT - STATE LIMITATION LAW (P. L. 1946, CHAPTER 147) DECLARED NULL AND VOID ON GROUND THAT SENATE AND HOUSE OF ASSEMBLY NEVER CONCURRED IN THE SAME ENACTMENT.

NEW JERSEY SUPREME COURT
No. 25 October Term, 1946

In the Matter)
-of-)
The Application praying that)
Chapter 147 of the Laws of 1946 may)
be decreed to be null and void in)
accordance with Revised Statutes of)
New Jersey 1:7-4, MARTIN KORNBLUH)
and HARRY TEMEL,)
Petitioners.)

134 NJL 529

Argued October 1946 Decided 1946

On Petition

For petitioners, Thomas E. Duffy, Martin Klughaupt, Joseph J. Weinberger.
For State of New Jersey, Walter D. Van Riper, Joseph Lanigan.
Before the Chief Justice, Justices Parker, Bodine, Donges, Heher, Perskie, Colie, Oliphant & Wachenfeld.

BODINE, J. The proceeding is instituted by two citizens under the provisions of R. S. 1:7-4 to have it judicially determined that Chapter 147 of the Laws of 1946 was not passed by both houses of the Legislature pursuant to the constitutional requirements of this State.

The Chapter in question is entitled: "An Act concerning alcoholic beverages, limiting the number of licenses to sell alcoholic beverages at retail, and supplementing Chapter 1, Title 33 of the Revised Statutes."

The bill originated in the Senate as Senate Bill 74 and was approved by the Governor on April 24, 1946. The undisputed proofs demonstrate that the bill, as introduced in the Senate and amended in that body, was sent to the Assembly. The bill was again amended in the Assembly and with the Senate amendment was duly adopted in that House. When the bill arrived in the Senate but one of the Assembly amendments was sent to that body. The Senate concurred in the Assembly amendment sent to it, but obviously could not concur in the one not sent. The bill in the form and substance approved by the Governor was never passed by the General Assembly.

Section 6 of the Act provides as follows: "Nothing in this act shall prevent the issuance of a new license, application for which was duly and properly filed on or before April first, one thousand nine hundred and forty-six." The Assembly struck out the date "April first, one thousand nine hundred and forty-six" and by amendment substituted "August first, one thousand nine hundred and forty-six." The discrepancy is, that the Senate made the effective date of section 6, April 1, 1946, and the House of the Assembly made the same section effective August 1, 1946. The two branches of the Legislature never concurred in the same enactment. The bill approved by the Governor is the Senate version and not the House version.

The complete bill, as enacted in the House, was never concurred in by the Senate and never reached the Governor in its final form.

Our duty in the premises arises under R. S. 1:7-4. The case controlling upon us is In re Jaegle, 83 N. J. L. 313.

The law will be declared null and void. R. S. 1:7-6.

10. LIMITATION OF NUMBER OF RETAIL LICENSES - STATE SUPREME COURT'S DECISION THAT STATE LIMITATION LAW IS NULL AND VOID DOES NOT MEAN THAT ADDITIONAL LICENSES MAY OR SHOULD BE GRANTED - LIMITATION ORDINANCES REMAIN IN FULL FORCE AND EFFECT.

HEREIN RECOMMENDATION THAT NO ADDITIONAL LICENSE BE ISSUED IN THE ABSENCE OF A PUBLIC NEED FOR THEM.

TO ALL MUNICIPAL LICENSE ISSUING AUTHORITIES:

The State Limitation Law (Chapter 147 of the Laws of 1946) set forth a State-wide limitation of plenary and seasonal retail consumption and plenary retail distribution licenses. Our Supreme Court has declared that Law null and void, not on the merits but on the ground that the Senate and House of Assembly never concurred in the same enactment.

It does not follow, from the invalidation of the State Limitation Law, that specific applications for new licenses may or should be granted.

The Alcoholic Beverage Law empowers the governing body of each municipality to limit, by ordinance, the number of retail licenses. (Revised Statutes, 33:1-40). Limitation ordinances have been adopted and are in full force and effect in the large majority of New Jersey municipalities and, of course, a license may not be issued in violation of an operative numerical limitation ordinance. Such ordinances, and amendments thereof, do not require the State Commissioner's approval first obtained but are subject to review by the Commissioner on appeal pursuant to Revised Statutes, 33:1-40 and 33:1-41. Similarly, the determination to grant or deny a retail license application rests in the first instance with the municipal issuing authority (Revised Statutes, 33:1-19) and a municipal authority's action granting or denying an application is appealable to the State Commissioner pursuant to Revised Statutes, 33:1-22. The Commissioner, therefore, may not rule upon the reasonableness or validity of a particular numerical limitation ordinance or amendment thereof, or comment upon the merits of a specific retail license application unless and until the matter is formally before him on appeal as provided in the statute.

Speaking generally, however, experience shows that there are far too many liquor licenses in New Jersey. This Department strongly urges that if and when a new license is sought, the municipal authority concerned will give first and most serious consideration to the question whether an additional license is needed in terms of the best interest and public welfare of the municipality before granting such license or amending its limitation ordinance to authorize additional licenses.

Most New Jersey municipal authorities have consistently refused to grant additional licenses unless they were convinced of a clear public need for them. It is our hope this policy will be firmly adhered to and our recommendation that it be followed in all municipalities throughout the state.

Ernest B. Hock
Deputy Commissioner.

Dated: October 18, 1946.