

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

May 8, 1969

BULLETIN 1854

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this appeal, it is considered appropriate to make a determination upon the factual merits herein. The central and dispositive issue is whether the evidence justified the Board's refusal to renew the license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. The burden of proof in cases involving discretionary matters where renewal of license is sought falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277.

Appellant contends, in his petition of appeal, that he is being deprived of property rights by the Board's action. This was effectively answered by the court in Zicherman v. Driscoll, 133 N.J.L. 586, 587, holding:

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. 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 court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

In its consideration of this matter, the Board was guided by the principles enunciated in Tumulty v. Dunellen et al. (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

"The problem before [the Board], upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed." (Emphasis supplied)

It should be preliminarily noted that the licensed business has not been in operation since about February 26, 1968, when the premises were padlocked pursuant to the

foreclosure of a security agreement given by Phidoto Enterprises, Inc. We are thus called upon to determine whether the manner of operation of these premises prior thereto justifies the refusal by the Board to renew the said license.

John Magdziak, a detective sergeant of the Passaic Police Department, assigned to liquor control matters, testified that he was familiar with the operation of these premises during the past few years and had in his possession the police record with respect to incidents or calls for police assistance. Limiting himself to the calendar year 1967 and in 1968 until the premises were padlocked, his report shows the following:

On February 4, 1967, the police were summoned to this tavern on two occasions. The first was a report of a woman being assaulted and the second involved the larceny of money from a female patron.

On February 19, 1967, the police responded to a call and investigated a complaint that a patron was injured in a fight at the tavern.

On July 9, 1967, the police were called because of a disturbance at the said premises.

On August 2, 1967, the police investigated a complaint that a patron was being threatened by another patron with a gun.

On August 9, 1967, another disturbance occurred at these premises which required police assistance.

On August 19, 1967, police were summoned to investigate an atrocious assault and battery with a knife which occurred at the said premises.

On September 10, 1967, police investigated a complaint that a fight was in progress and one of the patrons was being assaulted at the said premises.

On February 4, 1968, police were summoned to investigate an injury to a female patron. The victim was allegedly kicked in the mouth by a male patron while in the tavern.

Since these premises were closed shortly thereafter, no further police investigations were made. In the opinion of the witness, this facility was a "trouble spot" and "the reputation among all police is that it is a trouble spot."

Milton Mostel, Chairman of the Municipal Board of Alcoholic Beverage Control, testified that before making its unanimous determination, the Board thoroughly reviewed the licensee's record "going back a considerable length of time." He personally interviewed members of the Police Department; and it was the unanimous opinion of everyone he asked, including local residents, that this facility "ranked very high on the ten worst spots in town." He received letters from the leaders of local civic groups complaining about this operation. He concluded that "its bad influence on the area was known and talked about, so it wasn't something that we could take lightly...It was not a desirable place." In his opinion, it was clearly a trouble spot.

Peter J. Perry, a member of the Board, substantially corroborated the testimony of the chairman. He stated that in his experience, as a resident of this particular neighborhood, these premises were noisy and attracted an unsavory element. It was near public schools and the foul language and actions in front of the tavern, including the embracing and wrestling of men and women, unnecessarily exposed children and young people who were required to pass this facility. He, too, felt that it was a trouble spot.

Mitchell Hill, a nearby resident and vice-president of the Parent-Teachers Association of the school in the vicinity, asserted that "usually in the evenings and most times in the afternoon" when this tavern was open, he found the outside of the premises "highly congested with people milling around, playing around, hollering, cursing." A resolution was passed by his organization protesting the continuance of this operation.

Appellant produced several witnesses who testified with respect to their experiences at this tavern. Frederika Jackson, a registered nurse, stated that she visited these premises four or five times weekly and never noticed any rudeness or foul language. She observed people standing in front of the tavern even after the premises had been padlocked. However, she admitted that she usually drove by in a car and did not stop unless she wanted to go into the premises for a drink on "rare occasions." She also admitted that her weekend visits were usually during the afternoon and, during those visits, she never heard any profanity.

Walter Ingram, a Christian Evangelist associated with the Astro Temple of God, testified that he had visited these premises because "Any man is worth saving. So, I chose that area because in my view it was worth saving, and there were people there who needed saving, you see." He explained that he was given permission to use the rear room of the tavern for meetings of his church members and on those occasions he found that the patronage was orderly. He stated that the business was run in a businesslike way. "It probably made a lot of money because a lot of people frequented the place." However, he usually visited the premises around 3:00 until 5:00 p.m., but not on weekends.

June Fairley testified that during her visits at these premises, she did not hear any loud or obscene language. She admitted that she was employed as a barmaid occasionally when her organization gave parties or a fashion show. These activities usually took place during the afternoon.

William Rodgers, a special police officer employed by appellant, stated that he was assigned to keep order at this tavern, both inside and outside. On cross examination, he stated that he had been so employed on weekends on and off for three and a half years. During the time he was on duty, he always saw two or three or four people hanging around, but he would usually tell them to disperse.

From the totality of the evidence adduced herein, I am persuaded that that these premises were conducted in such manner as to justify the characterization as a

"trouble spot." The tavern appears to have been conducted in an unruly and noisy manner, permitted congregation of men and women in front of the tavern who used foul and abusive language. It is no surprise that this type of patronage resulted in the numerous incidents hereinabove delineated, involving serious breaches of the peace.

Licensees are responsible for conditions that exist both inside and outside the licensed premises. As early as Conte v. Princeton, Bulletin 139, Item 8 (1936), this Division has firmly held to that principle. See, most recently, Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1; aff'd id. nom. App. Div. 1968, not officially reported, recorded in Bulletin 1809, Item 1; certif. den. 51 N.J. 464.

It is significant that respected leaders in the community and of such organizations as the Parent-Teachers Association and the National Association for the Advancement of Colored People were moved to complain to the Board because of the nuisance and the clear threat to passers-by and to children attending the school in the vicinity. The Board understood the sense of outrage of these residents. By its resolution (introduced in evidence), the Board refused to renew nine licenses (including the subject license) for the reason that the public necessity and convenience dictated that they not be renewed. The Board members obviously felt that it was their clear obligation to rid the city of these facilities. With a municipality already over-burdened with liquor licensees, the Board properly determined that only those facilities which were operated in an orderly manner, and which did not attract undesirable elements, create disturbances or promote the objectionable conditions reflected in the record, should be permitted to exercise the licensed privilege.

By its action in denying renewal, the Board unequivocally proclaimed that the bell had tolled on this type of operation in this municipality and that the community would no longer tolerate trouble spots such as appellant's. Nordco, Inc. v. State, supra; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 36 N.J. Super. 512; aff'd 20 N.J. 373.

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In the issuance or renewal of licenses, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428, 449 (1960).

There is no suggestion in this case of any improper motivation on the part of the Board in its action; it must be assumed that it acted in good faith and in the best interests of the community. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501; Frey v. Hoboken, Bulletin 1768, Item 1.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority but merely to determine whether reasonable cause exists for

its opinion and, if so, to affirm irrespective of his personal view. Lekas & Paroby v. Newark, Bulletin 1802, Item 2. Or, to put it in another way: where reasonable men, acting reasonably, determine that the license should not be renewed, the Director should affirm such determination in the absence of a finding that "the act of the Board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

At the opening of this hearing, the Board's attorney moved to dismiss this appeal on the ground that appellant had no jurisdiction to prosecute the appeal under R.S. 33:1-26. The facts briefly are as follows: After the licensed premises were padlocked on or about February 26, 1968, Leon Sachs was made assignee for the benefit of creditors by deed of assignment from Phidoto Enterprises, Inc. dated June 7, 1968, the original of which was filed with the City of Passaic. Such assignment was not obtained by court proceeding or through a court order. No application for extension of the license to the assignee was made. Instead, appellant applied for "renewal" of the license for 1968-69. Notwithstanding the lack of any extension of the license, appellant alleged in his petition of appeal that he was the holder of the 1967-68 license.

R.S. 33:1-26 provides that if the operation of the business covered by the license "shall devolve by operation of law upon a person other than the licensee, the...issuing authority may...extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid." If a license is extended, the holder thereof can exercise the same rights as the original licensee. Cf. The Boss Co., Inc. v. Atlantic City, 40 N.J. 379, 384.

The provision dealing with the extension of licenses to an assignee for the benefit of creditors is contained in Rule 6 of State Regulation No. 5, as follows:

"A license may not be extended to an assignee for the benefit of creditors, unless said assignee presents to the issuing authority a court order authorizing him to continue assignor's business, during a period set forth in said order, as provided for in N.J.S. 2A:19-16."

The assignee for the benefit of creditors had no intention of continuing this business, but merely sought a "renewal" of the license for the purpose of disposing of the assets of the assignor. Cf. Nordco, Inc. v. State, *supra*. However, since there was no extension (nor could there be, absent requisite court order) of the 1967-68 license to the assignee, there could be no lawful renewal thereof to the assignee. See R.S. 33:1-96 and 12.26 providing, *inter alia*, that to constitute a renewal license (as distinguished from a new license, the granting of which would be prohibited by the state limitation law), such license must be applied for by and issued to the holder of the preceding expired license.

After carefully considering the entire record and the exhibits, I reach the irresistible conclusion that the Board acted circumspectly, reasonably and in the best interests of the community in refusing, on the basis of not only the facts but also the law, to grant appellant's application for "renewal" license for the current licensing year. It is, therefore, recommended that the Board's action be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report were filed by the attorney for the appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel, the Hearer's report and the exceptions thereto, which I find to be lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 17th day of March 1969,

ORDERED that the action of the respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order entered on June 26, 1968, extending the term of appellant's license pending the determination of the appeal, be and the same is hereby vacated effective immediately.

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - 50 ROUTE 46 CORP. v. EAST PATERSON.

50 Route 46 Corp., t/a Town)	
House Hotel,)	
)	
Appellant,)	On Appeal
v.)	
)	CONCLUSIONS
Mayor and Council of the)	AND ORDER
Borough of East Paterson,)	
)	
Respondent.)	

Cohn and Lifland, Esqs., by Albert L. Cohn, Esq.,
Attorneys for Appellant
Lucien Baron, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is addressed to the unanimous action of the Mayor and Council of the Borough of East Paterson (hereinafter Council) which denied appellant's application for a plenary retail consumption license for motel premises 50 New Jersey State Highway Route 46, East Paterson. The stated reason in the minutes of the meeting of October 16, 1968 was that "the Governing Body saw no reason to vary from its past decision of denying a license to the same premises based upon reasons set forth in a resolution dated May 17, 1966." The resolution of May 17, 1966 reads in pertinent part as follows:

"WHEREAS, it was noted and stipulated that the Borough Ordinance concerning the sale of alcoholic beverages does limit the number of Plenary Retail Consumption Licenses outstanding in the Borough of East Paterson at the same time to seventeen (17), and

"WHEREAS a large number of residents opposed to the issuance of the requested license did testify to the following facts and circumstances:

(1) The applicant's motel building is located in close proximity to the Gantner Avenue School, a public elementary school, with a portion of the motel building being only approximately 110 feet distant from said elementary school;

(2) The New Jersey State Legislature is currently considering new legislation increasing the required number of sleeping rooms for exemption from the provisions of R.S. 33:1-12.14 to one hundred in number; said proposed legislation being better attuned to the proper protection of health, safety and welfare of the inhabitants of the municipalities,

(3) The Borough of East Paterson has outstanding at the present time approximately seven (7) licenses more than would be permitted under State

Statutes for the service of the general public.

(4) The proposed service of liquor would not be restricted to the service of Motel room guests, creating an additional burden upon the local police department in the maintenance of law and order.

(5) The applicant is the original tenant and operator of the subject motel premises. When permission to construct the motel on the premises was granted, the residents who opposed same and the Board of Education of the Borough were assured that liquor would never be served on the premises and no application would ever be made for a liquor license for the premises.

"WHEREAS correspondence was received from the East Paterson Board of Education, the East Paterson, P.T.A. Council, the Gantner Avenue P.T.A. and Fire Company No. 3 opposing the granting of any license for the subject premises,

"THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of East Paterson does hereby decline to amend the current Borough Ordinance limiting the number of Plenary Retail Consumption Licenses to 17, and does further deny the application of Town House Motor Hotel, Inc. for a Retail Consumption License for its motel premises located at 50 Route 46, in the area of Roosevelt Avenue and Myl Street, said denials being in the best interests of the municipality and necessary to the protection of the health, safety, morals and welfare of the residents and their children."

The petition of appeal alleges that the action of the Council was erroneous for reasons which may be summarized as follows:

- (a) The Council refused to grant appellant a hearing;
- (b) The Council refused to consider "new and relevant evidence" bearing on the application;
- (c) A substantial change of conditions existed at the time of this application from the prior denial;
- (d) Appellant is a new party to the proceedings and should not be bound by the prior determination;
- (e) The denial imposes a hardship on appellant; grant of the application will promote community safety and benefits;
- (f) The denial was "improper, improvident and contrary to law."

The Council's answer denies the substantive allegations of the petition and sets forth separate defenses as follows:

- (a) Appellant is barred, either by the doctrine of res judicata or collateral estoppel, from bringing this appeal by reason of the Director's determination in Town House Motel Hotel, Inc. v. East Paterson, Bulletin 1743, Item 2;
- (b) No substantial change in conditions has taken place between the dates of the prior denial and the current application;

- (c) The State Limitation Law and the municipality's ordinance prohibit the grant of the said application;
- (d) Appellant has failed to make proper application and properly advertise the notice of same;
- (e) No hearing was required on the application pursuant to Rule 8 of State Regulation No. 2;
- (f) The Council acted in the proper exercise of its discretion and in the best interests of the community.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15.

I

Appellant seeks to argue that it was not granted a hearing on its application before the Council.

Rule 8 of State Regulation No. 2 provides:

"No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

No objections were filed with the Council and the Council decided on its own motion to deny the application. Accordingly, appellant was not entitled to be heard on its application before the Council.

II

The Council states that the same facts existed at the time of this appeal as existed at the time of the prior application by Town House Motor Hotel, Inc., wherein, after a public hearing on May 17, 1966, a similar application was denied. The only factual change was that a different applicant was involved. According to the record, no substantial change in the conditions has taken place with reference to appellant's premises between the dates of the prior denial and the current application. This is not seriously challenged by appellant, who insists, however, that it would agree to a special condition that its hours of operation at the said premises under a grant of a liquor license would be from 6 p.m. until closing. This does not constitute a change in conditions.

Further, the Council, which is constituted substantially as it was in 1966, determined that it was legally prohibited, both under State law and local ordinance, from granting the said application. Council argues that appellant is therefore barred under the doctrine of res judicata or collateral estoppel from making this application. I find that neither of these doctrines applies since appellant is a new party and it is entitled to make application for such license and to be considered subject, of course, to the applicable law. However, the local issuing authority may determine as a matter of policy that the issuance of such

license would be contrary to the public interest. Cf. Lubliner v. Paterson, 33 N.J. 428, 443 (1960).

III

At the conclusion of appellant's presentation, the attorney for Council made a motion to dismiss the appeal on the ground that under the existing ordinance and the State Limitation Law Council had no jurisdiction to approve the said application. I recommend granting the said motion and dismissing the within appeal for the following reasons:

(a) Under its numerical limitation ordinance the number of plenary retail consumption licenses in the Borough is limited to seventeen. There are presently seventeen such licenses issued and outstanding in the Borough and the population, according to the 1960 Federal census, is 19,344. Town House Motor Hotel, Inc. v. East Paterson, *supra*. The quota established by the limitation law has already been exceeded, except that those licenses are valid that were first issued before the 1960 amendment of R.S. 33:1-12.14 because R.S. 33:1-12.16 provides that "Nothing in this act shall prevent the renewal of licenses existing on the effective date (May 15, 1947) of this act, or the transfer of such licenses or the renewal of licenses so transferred." See also Chapter 359 of Laws of 1968 adding R.S. 33:1-12.20a.

The numerical limitation ordinance contains no exception in favor of one hundred room hotels, as now provided by the State law which will be discussed *infra*. Since the quota of plenary retail consumption licenses has already been filled, there is no vacancy for the issuance of an additional license. An ordinance, until repealed or set aside, is binding upon a municipal governing body. The Council therefore had no jurisdiction to issue the license sought by appellant. *Re Suskowitz*, Bulletin 534, Item 2, and cases cited therein; Parkway Exit #25 Motel, Inc. v. Upper, Bulletin 1816, Item 1; see Bachman v. Phillipsburg, 68 N.J.L. 552 (1902).

In the present status of the State law and the present ordinance, there can be no lawful grant of appellant's application for license.

Since the date of Council's determination, P.L. 1968, ch. 359 was enacted, effective January 1, 1969. This Act amends R.S. 33:1-12.20 to provide, with respect to the prohibition against the issuance of any new plenary or seasonal retail consumption license or any new plenary retail distribution license in excess of the State quota set forth in R.S. 33:1-12.14 as follows:

"Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel or motel containing 100 guest sleeping rooms or who may hereafter construct and establish a new hotel or motel containing at least 100 guest sleeping rooms."

Thus, even if the ordinance permitted an exception in favor of a fifty-room hotel (which it does not), appellant would be ineligible to obtain a license under the present law which requires that it have at least one hundred sleeping rooms, since appellant admits in the record that its motel contains

sixty-two sleeping rooms. Cf. Town House Motor Hotel, Inc. v. East Paterson, supra.

The status of the present State Limitation Law and the municipal ordinance at the time of the determination of this appeal, and not (as appellant contends) as of the time of the filing of the application, controls. Aiello v. West Milford, Bulletin 1741, Item 2; Roselle v. Wright, 37 N.J. Super. 507 (1955); Hohl v. Readington, 37 N.J. 271, 279 (1962).

Finally, my reading of the entire record persuades me that the Council acted reasonably, circumspectly and in the public interest in denying appellant's application for license. Such action was fully consistent with the statement of reasons as set forth in its resolution denying the prior application of Town House Motor Hotel, Inc.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent Council and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 12th day of March 1969,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

JOSEPH M. KEEGAN
DIRECTOR

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF "MOONSHINE" WHISKEY - MOTOR VEHICLE RETURNED TO INNOCENT OWNER - ILLICIT ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure	:	
on November 24, 1968 of a		
quantity of alcoholic beverages	:	Case No. 12,134
and a 1964 Oldsmobile at the		
34 Mile Post, northbound lane,	:	On Hearing
in Mount Laurel Township, County		
of Burlington and State of New	:	CONCLUSIONS AND ORDER
Jersey.		

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Robert Harvin, claimant, pro se
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey and State Regulation No. 28, to determine whether nine containers of alcoholic beverages and a 1964 Oldsmobile, four-door sedan, more particularly described in a schedule attached hereto and made part hereof, seized on November 24, 1968 at the 34 Mile Post, northbound lane, in Mount Laurel Township, New Jersey constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, Robert Harvin appeared and sought the return of the said motor vehicle. Forfeiture of the alcoholic beverages was unopposed.

Reports of ABC agents and other documents in the file, presented in evidence with the consent of the claimant herein, reflect the following: At about 11:30 A.M. on Sunday, November 24, 1968, a New Jersey State trooper, on routine patrol of traffic, stopped the motor vehicle in question on the New Jersey Turnpike aforesaid. The vehicle was being operated by a person who identified himself as Early Beard, and bore New York license plates No. QX2339, registered in the name of Carolyn Harvin of Jamaica, New York. The trooper asked Beard whether he was carrying contraband. Beard replied in the negative and opened the trunk of the car; whereupon, the trooper observed nine one-gallon jugs of "moonshine" whiskey. Beard stated that he did not know that he was in violation of the law and that he was taking the beverages home for his own use during the Christmas holidays.

The trooper took Beard into custody, took possession of the motor vehicle and the "moonshine", both of which he later turned over to an agent of this Division.

None of the aforesaid jugs and affixed to them any stamps indicating payment of taxes.

On December 4, 1968, a sample of the contents of one of the said jugs was analyzed by the Division chemist who reports that it is an alcoholic beverage, fit for beverage purposes, with an alcoholic content of 30.43%.

The seized alcohol is illicit because of the absence of a tax stamp on the said bottle. R.S. 33:1-1(i); R.S. 33:1-88. Such illicit alcohol and the Oldsmobile sedan in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66.

Robert Harvin, testifying in support of his claim for the return of the said motor vehicle gave the following account: He was a co-purchaser with his wife, Carolyn Harvin, of the motor vehicle, on April 28, 1964 for the sum of \$3600.00 and paid for the same on an installment basis, with his funds. The car was registered in his wife's name because he found that the cost of insurance would be less by so doing when, as a municipal employee, he had it issued through the Government Employees Insurance Co. He is employed as a kitchen helper in the Queens General Hospital and has been so employed since 1952. He has had occasion several times before this incident to loan this vehicle to Early Beard, a friend of his for the past four years. Early Beard would borrow the car for the purpose of doing some shopping in the neighborhood and would return it within a few hours.

On the Friday before the seizure Beard requested the use of the car because he wanted to visit his sick mother; and he promised to return it on the same day. When Beard did not return the car, Harvin was very upset and later learned that Beard had driven the car to Virginia to visit a relative of his. While in Virginia, he purchased this "moonshine" whiskey which was found in the subject motor vehicle.

The witness denied that he authorized the use of the car for inter-state travel and did not know that Beard would use the car for such unlawful purpose.

Early Beard corroborated the testimony of Harvin and admitted misrepresenting the purpose for which he intended to use the said vehicle. Beard stated that he borrowed the car when his own car was in disrepair. He further admitted that he borrowed this car on this occasion for the purpose of visiting relatives without informing Harvin that he intended to use the car for such purpose. Finally, he admitted purchasing the "moonshine" whiskey in Virginia and transporting it through New Jersey.

From the proofs in this case, there is nothing that would indicate knowledge of the presence of "moonshine" whiskey in the motor vehicle on the part of this claimant. I am satisfied, from the evidence presented, that the claimant acted in good faith, and did not know or have any reason to suspect that Beard would transport the said alcoholic beverages in his motor vehicle and that he would possess such illicit alcohol. Seizure Case No. 11,307, Bulletin 1594, Item 4; Seizure Case No. 11,164, Bulletin 1565, Item 5. I shall grant the return of the motor vehicle.

A Hearer's Report in this matter was expressly waived by the claimant herein.

Accordingly, it is on this 12th day of March 1969,

DETERMINED and ORDERED that the said motor vehicle shall be returned to Robert Harvin upon payment of the costs of seizure and storage; and it is further

DETERMINED and ORDERED that the said alcoholic beverages, as set forth in Schedule "A" attached hereto, constitutes unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R.S. 33:1-66, and shall 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 Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 9 - containers of alcoholic beverages
- 1 - 1964 Oldsmobile, 4-door sedan, N.Y. Registration QX2339.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS AND HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Jay Mar Tavern (A Corp.)
 717-719 Frelinghuysen Ave.
 Newark, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-862 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark

Pressler and Pressler, Esqs., by Maurice H. Pressler, Esq.,
 Attorneys for Licensee
 Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on divers dates between November 21 and December 3, 1968, it variously permitted acceptance of numbers and horse race bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days effective February 23, 1953, for sale to minors, and by the Director for ten days effective April 3, 1961, for possession of alcoholic beverages not truly labeled. Re Jay Mar Tavern, Bulletin 1386, Item 11.

The prior record of suspension of license for dissimilar violations occurring more than five years ago dis-

regarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Summer's End Lounge, Inc., Bulletin 1839, Item 4.

Accordingly, it is, on this 14th day of March, 1969,

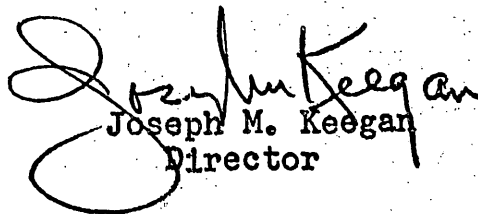
ORDERED that Plenary Retail Consumption License C-862, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Jay Mar Tavern (A Corp.) for premises 717-719 Frelinghuysen Avenue, Newark, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, March 18, 1969, and terminating at 2:00 a.m. Monday, May 12, 1969.

Joseph M. Keegan,
Director.

5. State Licenses - New Application Filed.

Bohl Beverage Company, Inc.
2321 Route 22
Union, New Jersey

Application filed May 8, 1969 for place-to-place transfer of State Beverage Distributor's License SBD-74 from 260 Crystal Street, North Arlington, New Jersey.


Joseph M. Keegan
Director