

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

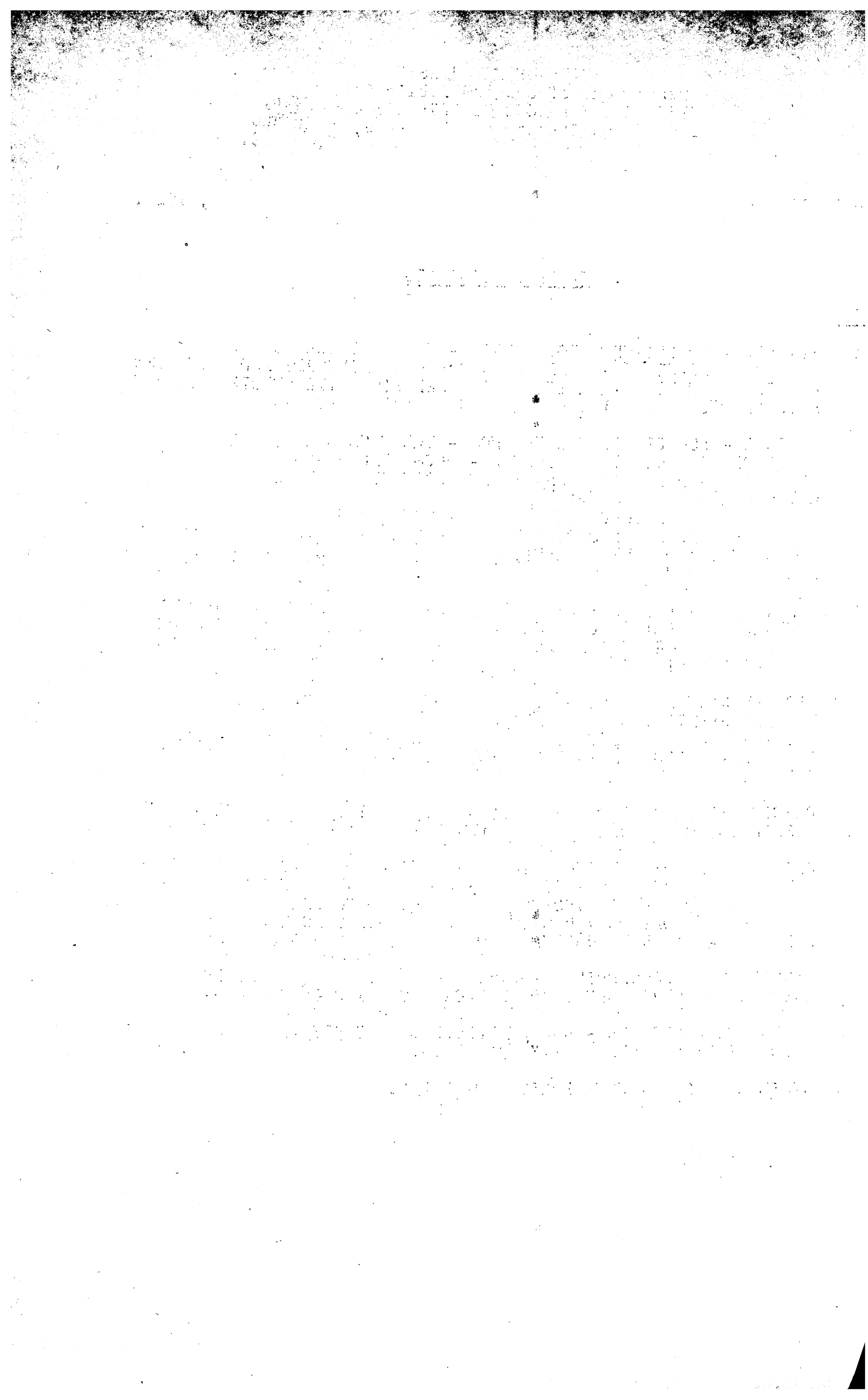
BULLETIN 846

JUNE 21, 1949.

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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street, Newark 2, N. J.

BULLETIN 846

JUNE 21, 1949.

1. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF HOMEMADE WINE IN RESTAURANT - WINE AND RESTAURANT FIXTURES AND EQUIPMENT ORDERED FORFEITED - MUSIC MACHINE AND CIGARETTE VENDING MACHINE RETURNED TO INNOCENT OWNERS.

In the Matter of the Seizure on)
March 15, 1949 of 3 one-gallon)
jugs of wine, a quantity of soda,)
and furnishings, fixtures and)
equipment, in a restaurant)
located at 102 Harrison Avenue,)
in the Town of Harrison, County)
of Hudson and State of New)
Jersey.)

Case No. 7404

ON HEARING
CONCLUSIONS AND ORDER

Samuel Voltaggio, Esq., Attorney for Luigi Falco.
Sol L. Kesselman, Esq., Attorney for Automatic Music Co.
Dierickx Vending Co., by Ray Keyes, Sales Manager.
Harry Castelbaum, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages, \$19.95 in cash, a quantity of soda, and furnishings, fixtures and equipment, itemized in a schedule attached hereto, seized on March 15, 1949 at Luigi Falco's restaurant located at 102 Harrison Avenue, Harrison, N. J., constitute unlawful property and should be forfeited.

It appears that the property was seized after Falco had, on the day in question, sold and served ABC agents with bottles of wine.

Luigi Falco 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.

When the matter came on for hearing pursuant to R. S. 33:1-66, Luigi Falco appeared with counsel and sought return of his property. Appearances were also entered by counsel for Automatic Music Co., which sought return of a music machine; and by Ray Keyes on behalf of Dierickx Vending Co., which sought return of a cigarette vending machine.

One of the ABC agents testified that while seated in the restaurant he observed the service of a glass of wine to another person eating there and at that point he asked Falco in both the Italian and English languages to serve each of the agents with a glass of wine. Falco went to the kitchen, came out with two beer bottles of wine, served them, and told the agent that the wine was homemade and very good. He asked Falco the cost of the wine and Falco told him 50¢ a bottle. Falco stated that the reason he was serving them with the wine was because the agent spoke to him in Italian; that he could not sell wine because he had no license. The agent then ordered two more bottles of wine which were served by Mr. Falco. He then asked Mr. Falco for the bill for the food and drinks which had been served to them. Falco presented a guest check totaling \$5.30, on which there was an item "4 coffees - \$2.00". Falco later admitted that such item really indicated the price of the wine.

Another ABC agent testified that he heard the first agent speak with Falco in Italian before the first service of wine. After such service he heard the other agent ask Falco in English the cost of the wine and Falco replied, "50¢ a bottle". This witness then discussed the quality of the food and wine with Falco and during such conversation Falco stated, "I tried to get a license (liquor) but it is a shame, they don't give to me."

The wine seized, and that served, had been made by Falco at his home without first obtaining a permit from the Division of Alcoholic Beverage Control authorizing such manufacture. Falco claims that he did not know that he was required to obtain such a permit.

According to Falco's testimony, he only had a few gallons of the wine when he opened the restaurant about a year ago. He brought this wine to the restaurant for his own use because he and his wife have their meals there. The gist of his defense to forfeiture is his claim that the service of the wine to the agents and his acceptance of payment therefor was a single, isolated incident, and was more in the nature of a friendly gesture to a guest of his own nationality than a business transaction. He says that, influenced by this friendly feeling, he expected to make no charge for the wine, and then accepted payment because the agent insisted upon some payment therefor. There is no evidence of such persuasion other than Falco's own statement.

Indeed, Falco demonstrates that he did not consider the agent a full-fledged guest. Falco claims that Vazzo, the person whom the agents observed served with wine, was his dinner guest and was served food and wine without charge. Falco says he would not have accepted money from Vazzo for such food and drinks even if offered. Similarly he says that he would not have accepted money from the agents if he had served them with wine at his home. Asked why, then, he accepted the money from the agents, he stated that it was because the transaction occurred in his place of business.

Falco's desire to obtain a liquor license and the service of wine to Vazzo as well as the agents indicate at least the probability that Falco made a practice of serving wine to his patrons.

It may be, as Falco says, that he has always been an industrious, law-abiding citizen, with this his first business venture; nevertheless, apparently hard pressed to make a success of his restaurant business, he resorted to the sale of wine to bolster his business. It appears likely that he may have been foolish, rather than unscrupulous, in violating the law; however, the only logical conclusion is that he actually sold the wine to the agents.

Falco has no justifiable complaint merely because the agent spoke with him in the Italian language. It is reasonable to assume that an operator of a speakeasy devises his own method in seeking to avoid detection. An efficient liquor law enforcement agent must adapt himself to the particular circumstances and cultivate a speakeasy operator's friendly attitude. Obviously, few, if any, speakeasies are so openly and notoriously conducted that all that is required is to enter and purchase a drink.

The seized wine is illicit because it was intended for unlawful sale. The wine is likewise illicit because manufactured without a permit and, further, because it is a sale of alcoholic beverages even if served with a meal without a separate charge for such beverages. R. S. 33:1-1(i). R.S. 33:1-1(w). Such illicit wine and all other personal property seized therewith in the restaurant is subject to forfeiture. R.S. 33:1-1(y). R.S. 33:1-2. R.S. 33:1-66.

I am not authorized to relieve Falco from forfeiture unless it is established to my satisfaction that he acted in good faith and unknowingly violated the law. R.S. 33:1-66(e). It is self-evident that he was fully aware that it was unlawful to sell wine or any other alcoholic beverages. Such sympathetic aspects as there may be in the case are similar to those urged, but rejected, in Seizure Case No. 7002, Bulletin 731, Item 2, and Seizure Case No. 7003, Bulletin 731, Item 3, and cannot serve to relieve Falco from forfeiture in the instant case. His application for return of the seized property is therefore denied.

The cigarette vending machine is the property of Dierickx Vending Co. and the music machine the property of Automatic Music Co. The cigarette machine was placed in the restaurant on February 12, 1948, and the music machine placed there on February 25, 1948. The place had the outward appearance of, and was actually a restaurant. Mr. Falco apparently has no previous criminal record. The machines were placed in the restaurant in the routine, normal course of business. The persons who placed and serviced the machines testified that they did not see any alcoholic beverages on their visits there or anything else to indicate that alcoholic beverages were being sold. I am satisfied that the claimants did not know or have any reason to suspect the unlawful liquor activities at the restaurant. Hence, I shall recognize the claims and return the machines to the respective claimants on payment of the costs of seizure and storage. R. S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 14th day of June, 1949, Dierickx Vending Co. and Automatic Music Co. pay the costs of the seizure and storage of the cigarette vending machine and music box respectively, the cigarette vending machine will be returned to Dierickx Vending Co. and the music box will be returned to Automatic Music Co.; and it is further

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

ERWIN B. HOCK
Director.

Dated: June 2, 1949.

SCHEDULE "A"

3 - 1-gal. jugs of wine	2 - counters
10 - cases of assorted soda	2 - coat hangers
1 - Coca Cola cooler	1 - maple desk
13 - tables	1 - electric clock
8 - booths	1 - Coolerator refrigerator
12 - chairs	1 - Belding Hall electric refrigerator
1 - Rockola music box, Serial #99407 and currency therein	1 - Philco deep freezer, Serial #51134
1 - National Cash Register, Serial #1287533-313 and currency therein	50 - glasses
1 - gum vending machine, Serial #39312	1 - oven
1 - cigarette vending machine and currency therein	2 - gas ranges
	1 - metal sink
	5 - wall mirrors
	Misc. restaurant equipment and supplies

2. SEIZURE - FORFEITURE PROCEEDINGS - UNLAWFUL SALE OF ALCOHOLIC BEVERAGES IN PRIVATE RESIDENCE - ALCOHOLIC BEVERAGES AND FURNITURE AND FURNISHINGS ORDERED FORFEITED - TELEVISION SET RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on
March 11, 1949 of a quantity of
alcoholic beverages, fixtures and
furnishings at 161½ Throckmorton
Street, in the Borough of Freehold,
County of Monmouth and State of
New Jersey.

Case No. 7397

ON HEARING
CONCLUSIONS AND ORDER

Baime, Furst & Kessler, Esqs., by William Furst, Esq., Attorney for
Willie Davis.

Abe Steinberg, appearing for Freehold Furniture Exchange.
Harry Castelbaum, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcoholic beverages and various articles of furniture and furnishings, itemized in a schedule attached hereto, seized on March 11, 1949 at 161½ Throckmorton Street, Freehold, N. J., constitute unlawful property and should be forfeited.

It appears that on March 3, 1949, while investigating alleged speakeasy activities at Mrs. Willie Davis' dwelling at the above address, an ABC agent purchased drinks of whiskey from her in her kitchen. On March 11, 1949, this agent returned with a companion and purchased, in the living room, drinks of alcoholic beverages for himself and his companion from one Helen Forman. Willie Davis was present at the time. Shortly thereafter other ABC agents entered the place and disclosed their identity.

Neither Mrs. Davis nor Helen Forman held any license authorizing either of them to sell or serve alcoholic beverages and the premises were not licensed for the sale of alcoholic beverages. Both of these persons were arrested on charges of violating the liquor laws. The agents seized twenty bottles of beer in an icebox and some wine and a small amount of whiskey, all of which were in the kitchen, and the furniture and furnishings of the living room and kitchen.

It further appears that Mrs. Davis was arrested in September 1938 at 26 Avenue C, Freehold, for selling alcoholic beverages without a license, pleaded guilty on December 23, 1938 and was fined \$100.00 and placed on probation for two years.

When the matter came on for hearing pursuant to R. S. 33:1-66, counsel entered an appearance for Mrs. Davis, and sought return of the furniture and furnishings. Abe Steinberg, who with his brother Jack Steinberg, does business as the Freehold Furniture Exchange, also appeared and sought return of a television set and a mirror.

It is urged on Mrs. Davis' behalf that the loss of her furniture will impose an undue hardship, in that it is represented that she has no means with which to buy other furniture, being employed as a day worker; that her son originally contributed a considerable portion of the purchase price of the furniture but has since married and is no longer in a position to help her to that extent.

Mrs. Davis does not deny the unlawful sale of alcoholic beverages in her home which brought about the seizure. The alcoholic beverages found there are illicit because intended for unlawful sale. R. S. 33:1-1(i). Such illicit alcoholic beverages, and all personal

property found therewith in the premises, are subject to seizure and forfeiture. R. S. 33:1-1(y), R.S. 33:1-2; R.S. 33:1-66.

The only authority I have to return property subject to forfeiture is where it is established to my satisfaction that the person seeking return acted in good faith and unknowingly violated the law. R. S. 33:1-66(e).

It is obvious that, at least from the time when Mrs. Davis was previously convicted for selling alcoholic beverages unlawfully in her home, she was fully aware that it was illegal to do so and hence she cannot be considered as having acted in good faith and unknowingly violated the law in the present instance. The furniture and furnishings seized were those which were in the two rooms in which the alcoholic beverages were sold and consumed.

While it possibly may be difficult for Mrs. Davis to replace the furniture, loss of these items is the natural and normal consequence of her persistence in carrying on speakeasy activities in her home. It is the penalty imposed by law, and she has no one but herself to blame. Accordingly, I am compelled to deny her request.

Abe Steinberg presented a conditional sales contract, dated February 7, 1949, covering an Admiral television set sold to Mrs. Davis. The purchase price was \$630.00, of which \$485.52 is the balance presently due.

Mr. Steinberg testified that he has been in the furniture business in Freehold for about twelve years, was acquainted with Mrs. Davis when she resided at 26 Avenue C, and in recent years employed her occasionally as a domestic. He swears that he did not know that she was arrested in 1938 for violating the liquor laws and that he had no reason to suspect that she was engaged in any activities other than that of working as a domestic and keeping a boarder.

I shall accept Mr. Steinberg's statement and accordingly find that he acted in good faith and did not know or have any reason to suspect that Mrs. Davis was carrying on speakeasy activities in her home. I shall therefore recognize the claim against the television set. R. S. 33:1-66(f).

The request for return of the mirror is denied because it appears from Mr. Steinberg's testimony that such mirror was sold by his firm on an open account, to be paid for at a later date, without any reservation of title in the vendor. Hence, the furniture company has no specific lien against or interest in the mirror.

I am satisfied that the amount of the lien claim and the costs of seizure and storage exceed what can be realized at a public sale of the television set. Hence, it will be returned to the claimant upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 14th day of June, 1949, Abe Steinberg and Jack Steinberg, partners, trading as The Freehold Furniture Exchange, pay the costs of its seizure and storage, the television set will be returned to them; and it is further

DETERMINED and ORDERED that the balance of 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 Director of Alcoholic Beverage Control.

Dated: June 3, 1949.

ERWIN B. HOCK
Director.

SCHEDULE "A"

- 20 - bottles of beer
- 1 - bottle of whiskey
- 2 - bottles of wine
- 1 - Coolerator Icebox
- 1 - cocktail set and stand
- 11 - chairs
- 1 - lamp
- 3 - mirrors
- 2 - davenport
- 1 - Firestone Radio Phonograph
- 1 - smoking stand
- 5 - tables
- 1 - RCA Radio
- 1 - Caloric Luxury Gas Range
- 1 - wall cabinet
- 1 - electric hotplate
- 6 - cabinets
- 2 - electric clocks
- 1 - desk lamp
- Miscellaneous articles

3. SEIZURE - FORFEITURE PROCEEDINGS - MOTOR VEHICLE USED TO TRANSPORT STOLEN ALCOHOLIC BEVERAGES IN VIOLATION OF ALCOHOLIC BEVERAGE LAW ORDERED FORFEITED - STOLEN ALCOHOLIC BEVERAGES RESTORED TO OWNER.

In the Matter of the Seizure on)
June 25, 1948 of a quantity of)
alcoholic beverages at 53 Roosevelt)
Avenue, in the Town of Bloomfield,)
County of Essex; the Seizure of a)
quantity of alcoholic beverages at)
18 Tower Drive in the Township of)
Springfield; and the Seizure of a)
Dodge sedan on Morrell Street, in)
the City of Elizabeth, both in the)
County of Union and State of New)
Jersey.)

Case No. 7280

ON HEARING
CONCLUSIONS AND ORDER

-----)
Eugene A. Liotta, Esq., Attorney for Frank Paladino.
Percy H. Penn, Esq., Attorney for Avon Delicatessen & Liquor, Inc.
Harry Castelbaum, 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 of the Revised Statutes, to determine whether certain alcoholic beverages and a Dodge sedan, described in a schedule attached hereto, seized on June 25, 1948, constitute unlawful property and should be forfeited.

It appears that there had been a theft of alcoholic beverages from the Avon Delicatessen & Liquor, Inc., a plenary retail distribution liquor licensee. ABC agents, during the course of their investigation of the case, talked with Frank Paladino, then the owner of a licensed tavern, and he admitted that he had purchased about 14 cases of the stolen liquor and named the two purchasers to whom he subsequently sold such liquor.

Paladino's version of what occurred, as set forth in a signed statement which he gave to the ABC agents, is as follows: A man whom he knew as "Jim" (later identified as one Walter Sabin) came to his tavern and asked him whether he would purchase a few cases of liquor which Sabin claimed to have obtained at a party. Sabin told Paladino he needed money. Paladino agreed to purchase the whiskey, which was in a car outside his tavern. Paladino, driving his Dodge sedan, told Sabin to follow him. They drove to Murray Street, nearby, and there the whiskey was transferred to Paladino's car. Paladino then transported the whiskey to the residence of one of his customers in Springfield where, by previous arrangement with his customer, he left seven cases of the whiskey. Paladino then drove to the residence of another customer in Bloomfield where, by the same arrangement, he left the other seven cases. Paladino then returned to his tavern and gave his bartender \$175.00 with instructions to pay it to one of Sabin's companions, who was waiting outside the tavern. A few days later Paladino collected about \$550.00 from his customers for this whiskey. Paladino acknowledges that he knew, as a retail liquor licensee, that it was unlawful for him to purchase alcoholic beverages from any source other than a licensed distributor or distillery; that he knew Sabin was not licensed to sell alcoholic beverages, but that knowing "Jim" and believing his story, he wanted to help him out; that he did not know the whiskey was stolen.

Paladino's two customers surrendered such whiskey to the ABC agents, upon demand. The agents also seized Paladino's Dodge sedan. Paladino was arrested on charges of violating the Alcoholic Beverage Law, and receiving stolen goods. Paladino has since paid a fine of \$500.00 in criminal court on the receiving stolen goods charge.

The stolen alcoholic beverages are illicit because they were purchased by Paladino from a person not licensed to sell alcoholic beverages. R.S. 33:1-1(i), R.S. 33:1-2. Illicit alcoholic beverages and the vehicle used to transport such beverages are subject to forfeiture, even though there were no alcoholic beverages in the vehicle at the time of its seizure. R.S. 33:1-66. Seizure Case No. 7070, Bulletin 768, Item 8.

These violations of the Alcoholic Beverage Law also subject Paladino's retail liquor license to suspension or revocation. Paladino has since pleaded non vult in disciplinary proceedings against his license on that score, and conclusions therein are being entered contemporaneously herewith.

It is urged that Paladino faces a threefold penalty, that is, the penalty against his license, transferred by him in the interim; the penalty in the criminal court, thereby possibly disqualifying him from further connection with the liquor industry; and the loss of his car, and hence that he is entitled to some relief.

The three penalties are independent, the cumulative effect of which is intended to discourage offenses of this nature. In any event, in forfeiture proceedings, my authority to return property subject to forfeiture is limited by R. S. 33:1-66(e) to a case where it is established to my satisfaction that the person requesting such return has acted in good faith and unknowingly violated the law.

Paladino, a liquor licensee, was under a special obligation to shy clear of any liquor transaction which smacked of illegality, especially where stolen alcoholic beverages are concerned. Paladino purchased alcoholic beverages from a person whom he knew was not authorized to sell them. He arranged for their delivery, on the street, from Sabin's vehicle to his own. He paid considerably below

the market value, thereby making an out-of-the ordinary profit of \$375.00. These are actions which negative good faith; on the contrary, they indicate that Paladino knowingly engaged in a shady liquor transaction outside the law. If Paladino did not actually know that it was stolen liquor, he should have at least suspected that fact, as would any reasonably prudent person under like circumstances.

The transportation of stolen alcoholic beverages is a serious violation of the law. Seizure Case No. 7070, supra, I have no legal basis upon which I can return the Dodge sedan to Paladino. Its forfeiture will follow as a matter of course.

Of the seized whiskey, four bottles labeled "Mt. Vernon", four bottles labeled "Philadelphia", 16 bottles labeled "Imperial", 12 bottles labeled "Lansdowne" and four bottles labeled "James Walsh" are not of the brands listed in Avon Delicatessen & Liquor, Inc.'s report of theft to the local police authorities and it does not ask for their return on that account. The other 116 bottles recovered by the ABC agents, also listed in Schedule "A" attached hereto, are similar in brand to those shown on the licensee's report to the police. There is no other definitive evidence of ownership available, since the serial numbers on the cartons have been obliterated. The persons arrested in the case for theft are those accused of robbery from the Avon Delicatessen premises, among other places. The insurance company whose policy covered the theft from the licensee consents to the return of the alcoholic beverages to its insured. These 116 bottles of alcoholic beverages will be returned to Avon Delicatessen & Liquor, Inc. after the criminal proceedings in the case have been terminated.

Accordingly, it is DETERMINED and ORDERED that the Dodge sedan and the 40 bottles of alcoholic beverages hereinabove enumerated, and listed in Schedule "A", constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66 and that such property 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: June 7, 1949.

SCHEDULE "A"

- 1 - 1947 two-door Dodge Sedan, Serial No. 30773987,
Engine No. D24131755
- 12 - 4/5 qt. bottles Calvert Reserve Whiskey
- 24 - 4/5 qt. bottles Kinsey Silver Label Whiskey
- 35 - 4/5 qt. bottles P. M. DeLuxe Whiskey
- 12 - 4/5 qt. bottles Seagram 7 Crown Whiskey
- 12 - 4/5 qt. bottles Four Roses Whiskey
- 17 - 4/5 qt. bottles Carstairs 1788 Whiskey
- 4 - 4/5 qt. bottles Mt. Vernon Whiskey
- 4 - 4/5 qt. bottles Philadelphia Whiskey
- 2 - 4/5 qt. bottles Gallagher & Burton Whiskey
- 16 - 4/5 qt. bottles Imperial Whiskey
- 12 - 4/5 qt. bottles Lansdowne Whiskey
- 2 - 4/5 qt. bottles Lord Calvert Whiskey
- 4 - 4/5 qt. bottles James Walsh Whiskey

4. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAIL LICENSEE FROM PERSON OTHER THAN A NEW JERSEY MANUFACTURER OR WHOLESALER - UNLAWFUL TRANSPORTATION OF ALCOHOLIC BEVERAGES - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FRANK ROBERT PALADINO)
T/a PALADINO'S)
147 Elmora Avenue)
Elizabeth 2, N. J.,)

Holder of Plenary Retail Consumption License C-147, issued by the)
Municipal Board of Alcoholic)
Beverage Control of the City of)
Elizabeth, and transferred during)
the pendency of these proceedings)
to)

SAROSE, INC.,)
for the same premises.)

CONCLUSIONS AND ORDER

Eugene A. Liotta, Esq., Substituted attorney for Defendant, Frank Robert Paladino.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

- "1. On or about April 24, 1948, you, a New Jersey retail liquor licensee, without authority of special permit, purchased alcoholic beverages from persons who were not the holders of any New Jersey manufacturer's or wholesaler's license, in that you purchased from Jerome Bonney, George Boucher and Walter Sabin, non-licensees, fourteen cases of assorted brands of whiskies, which alcoholic beverages had been stolen; such purchase being in violation of Rule 15 of State Regulations No. 20.
- "2. On the aforesaid occasion, you possessed, had custody of and sold illicit alcoholic beverages in that you transported and sold the aforesaid fourteen cases of assorted whiskey, all such alcoholic beverages being illicit under R. S. 33:1-1(i) since they had been transported in this State by and purchased from persons not licensed to transport or sell alcoholic beverages; your possession, custody and sale of said alcoholic beverages being in violation of R. S. 33:1-50(e)."

It appears from the file herein that on April 24, 1948, one Walter Sabin came to defendant's place of business and asked defendant if he would buy a few cases of liquor which Sabin said he "got at a party". Defendant agreed to buy the liquor. As a result of this conversation, fourteen cases of alcoholic beverages were transferred from an automobile owned by Sabin to an automobile owned by defendant. Defendant then delivered seven cases of the alcoholic beverages to one person, and the other seven cases of alcoholic beverages to another person, and collected the sum of approximately \$550.00 from these persons. The whiskey in question had been stolen from other licensed premises, although defendant alleges that he did not know that the liquor had been stolen.

These violations go to the very root of control. A licensee is not permitted to purchase alcoholic beverages except from a New Jersey manufacturer or wholesaler. Rule 15 of State Regulations No. 20. In the instant case the licensee purchased the alcoholic

beverages from an unlawful source under circumstances which make it difficult to believe that he did not at least suspect, if not actually know, that the vendors had obtained the liquor illegitimately. In fact, Frank Robert Paladino has since paid a fine of \$500.00 in a Criminal Court on a charge of receiving stolen goods.

I would, therefore, be inclined to revoke the license in the instant case if it were not for the fact that the licensee, Paladino, has held a liquor license for thirteen years without any prior record. Under the circumstances, I shall suspend the license for a period of sixty days, with a remission of five days for the plea, leaving a net suspension of fifty-five days. Re Bovino, Bulletin 678, Item 15.

Accordingly, it is, on this 7th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-147, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Frank Robert Paladino, t/a Paladino's, for premises 147 Elmora Avenue, Elizabeth, and transferred during the pendency of these proceedings to Sarose, Inc. for the same premises, be and the same is hereby suspended for the balance of its term, commencing at 2:00 a.m. June 15, 1949; and it is further

ORDERED that, if any license be issued to Sarose, Inc. or any other person, for the premises in question, for the 1949-50 licensing year, such license shall be under suspension until 2:00 a.m. August 9, 1949.

ERWIN B. HOCK,
Director.

5. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against
HENRY M. STAGG
T/a BROWNIES BAR & GRILL
457 Paterson Avenue
Wallington
P.O. East Rutherford, N. J.,
Holder of Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Wallington, and transferred during the pendency of these proceedings to
HENRY M. STAGG and
JAMES A. FERINO
T/a BROWNIES BAR & GRILL,
for the same premises.

CONCLUSIONS
AND ORDER

Joseph P. Winberry, Esq., Attorney for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging (1) that he concealed the interest of one James Anthony Ferino in the license issued to him, in violation of R. S. 33:1-25; and (2) that he knowingly aided and abetted said Ferino to exercise the rights and privileges of his said license, in violation of R. S. 33:1-52.

An examination of the evidence herein leads to the conclusion that since September 1, 1940, said Stagg and said Ferino have been equal partners in the business conducted under the privileges of the successive licenses issued to said Stagg.

While it appears that James Anthony Ferino has heretofore been convicted of the crime of assault and battery, such crime is not a crime that would, per se, disqualify him under the provisions of R. S. 33:1-25, which provides in part:

"....No license of any class shall be issued.....to any person who has been convicted of a crime involving moral turpitude...."

The license has now been transferred to the partnership of Stagg and Ferino. The application upon which transfer was granted discloses the aforesaid conviction of Ferino, misnamed therein as "atrocious assault and battery". Apparently the local issuing authority has decided that said conviction was not, in fact, the conviction of a crime involving moral turpitude. I shall accept their findings. See Bulletin 780, Item 6. All parties are apparently otherwise qualified to hold the license.

In view of the correction of the illegal situation, and considering the fact that the defendant has no prior adjudicated record of violations of the Alcoholic Beverage Law, the license will be suspended for thirty days, the minimum suspension when all parties are qualified but the undisclosed partner has a non-disqualifying criminal record or has had his disqualification removed. See Bulletin 742, Item 6.

Accordingly, it is, on this 9th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-31, issued by the Mayor and Council of the Borough of Wallington to Henry M. Stagg, t/a Brownies Bar & Grill, for premises 457 Paterson Avenue, Wallington, and transferred during the pendency of these proceedings to Henry M. Stagg and James A. Ferino, t/a Brownies Bar & Grill, for the same premises, be and the same is hereby suspended for the balance of its term, effective at 3:00 a.m. June 15, 1949; and it is further

ORDERED that if any license be issued to the said licensees, or to anyone else, for the premises in question for the 1949-50 fiscal year, such license shall be under suspension until 3:00 a.m. July 15, 1949.

ERWIN B. HOCK
Director.

6. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JULIUS MAGYAR)
584-586 Amboy Avenue, and)
rear of 582 Amboy Avenue)
Perth Amboy, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consump-)
tion License C-31 issued by the)
Board of Commissioners of the)
City of Perth Amboy.)

-----)
Julius Magyar, Defendant-licensee, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that, in violation of Rule 28 of State Regulations No. 20, he possessed one 4/5 quart bottle labeled "Fine Arts A Blend of Straight Whiskies", which bottle bore a label which did not truly describe its contents.

On May 13, 1949, an ABC agent, during the course of a routine inspection at defendant's premises, seized the bottle mentioned in the charge because the contents thereof did not appear to be genuine as labeled. Subsequent analysis by the Division chemist established that the contents of the seized bottle varied substantially in acids, solids and color from the contents of a genuine sample of the same product.

At the time of the seizure defendant denied that he or his bartender had tampered with the contents of the seized bottle. Nevertheless, a licensee is responsible for any "refills" found in his stock of liquor.

Defendant has no prior record. I shall suspend his license for the minimum period of fifteen days, less five days for the plea, leaving a net suspension of ten days. See Bulletin 839, Item 5.

Accordingly, it is, on this 9th day of June, 1949,

ORDERED that Plenary Retail Consumption License C-31, issued by the Board of Commissioners of the City of Perth Amboy to Julius Magyar, for premises 584-586 Amboy Avenue, and rear of 582 Amboy Avenue, Perth Amboy, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 21, 1949, and terminating at the expiration of said license, namely, at midnight, June 30, 1949.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 REQUIRING BONA FIDE INVOICES OR MANIFESTS COVERING SHIPMENT - SALE OF ALCOHOLIC BEVERAGES AT PLACE OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WALTER MAX FOERSTER)
Voorhees Road)
Kinnelon Borough)
P.O. Jacksonville Road)
Towaco, N. J.,)

CONCLUSIONS AND ORDER

Holder of Limited Retail Distribution License DL-1, issued by the Mayor and Council of the Borough of Kinnelon.)
-----)

Walter Max Foerster, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has offered a plea of non vult to charges (1) that he delivered alcoholic beverages in his licensed vehicle without accompanying invoices or manifests, in violation of Rule 3 of State Regulations No. 17; and (2) he sold alcoholic beverages in a manner outside the scope and terms of his limited retail distribution license, in violation of R. S. 33:1-2.

The alleged violations occurred on April 30, 1949. On that day, an agent of the State Division of Alcoholic Beverage Control placed an order for one case of beer with defendant's employee at defendant's market in Pequannock. The market is not licensed; in fact defendant's licensed premises are in Kinnelon. R.S. 33:1-26 provides that the operation and effect of every license is confined to the licensed premises. The acceptance of the order at the unlicensed market constituted a sale which was not within the terms of defendant's license.

Shortly after the above incident, the defendant stopped his delivery truck outside the market. An examination of the truck, duly licensed to transport alcoholic beverages, and bearing transportation insignia, disclosed 18½ cases of beer. Defendant, who was in charge of the truck, did not have any invoices covering the load. He did, however, have a list containing the names of the customers and the kind of beer but not the quantity of beer to be delivered to each.

The Regulation requires:

"No licensee privileged to sell alcoholic beverages directly to a consumer shall use his licensed vehicle bearing transportation insignia to deliver alcoholic beverages unless the driver of the vehicle has in his possession bona fide invoices or manifests stating the names of the purchaser of each item of alcoholic beverages and the kind and quantity of the alcoholic beverages being delivered in said vehicle to each of said purchasers..." (Italics added.)

Such a list, if it complies otherwise with the Regulations, is sufficient. Under the facts of the present case, the list was not a sufficient compliance therewith. I find defendant guilty as charged.

Defendant has no prior adjudicated record. I shall suspend the license for ten days on Charge 1. Re Kucinski, Bulletin 839, Item 1, and for ten days on Charge 2. Remitting five days because of the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 13th day of June, 1949,

ORDERED that Limited Retail Distribution License DL-1, issued by the Mayor and Council of the Borough of Kinnelon to Walter Max Foerster, Voorhees Road, Kinnelon Borough, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. June 16, 1949, and terminating at the expiration of the license, namely, at midnight, June 30, 1949.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - EFFECTIVE DATE FIXED FOR SUSPENSION PREVIOUSLY IMPOSED UPON REOPENING OF BUSINESS.

In the Matter of Disciplinary Proceedings against)
VINCENT PETER McCARTHY)
T/a THE ALOHA)
15th Ave. & Ocean Ave.)
Belmar, N. J.,)

O R D E R

Holder of Seasonal Consumption License CS-6 (for period from May 1 to November 1, 1948), and now holder of Seasonal Consumption License CS-6 (for period from May 1 to November 1, 1949), both issued by the Board of Commissioners of the Borough of Belmar.)

BY THE DIRECTOR:

It appearing that, by Order dated February 8, 1949, the license held by the above named defendant, for the period from May 1 to November 1, 1948, was suspended for ten days, and that subsequent order was to be entered fixing the suspension period after defendant obtained a renewal of said license for the period commencing May 1, 1949 (Re McCarthy, Bulletin 832, Item 10), and

It further appearing that defendant has obtained a renewal of his license and that defendant's premises have been reopened for business;

It is, on this 13th day of June, 1949,

ORDERED that seasonal consumption license CS-6, for the period from May 1 to November 1, 1949, issued by the Board of Commissioners of the Borough of Belmar to Vincent Peter McCarthy, t/a The Aloha, for premises at 15th Avenue and Ocean Avenue, Belmar, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. June 20, 1949, and terminating at 2:00 a.m. June 30, 1949.

ERWIN B. HOCK
Director.

9. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. JERSEY CITY AND LEWIS.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and MILTON R. LEWIS,)
Respondents.)

-----)
Samuel Moskowitz, Esq., Attorney for Appellant.
Charles A. Rooney, Esq., by Edward M. Malone, Esq., Attorney for Respondent Board of Commissioners of the City of Jersey City.
Samuel H. Stein, Esq., Attorney for Respondent Milton R. Lewis.

BY THE DIRECTOR:

Appellant appeals from the action of respondent Board of Commissioners in granting a person-to-person and place-to-place transfer of a plenary retail distribution license from Weston & Co. to respondent Milton R. Lewis, and from premises 310 Central Avenue to premises 242 Railroad Avenue, Jersey City.

The validity of the transfer in question is directly challenged by appellant upon the ground that said transfer was granted in violation of Section 5 of an ordinance adopted by respondent Board on October 5, 1937, amended on April 1, 1941, which provides:

"No Plenary Retail Distribution License, excepting renewals and transfers from person to person, shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred and fifty (750) feet, and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Distribution License. In the event a licensee desires to transfer to another premises, he shall be permitted to do so within seven hundred and fifty (750) feet of the premises wherein he is located at the time of said transfer, but shall comply with the provision aforementioned when transferring to premises in excess of seven hundred and fifty (750) feet from the premises from which a transfer is sought."

The premises known as 242 Railroad Avenue are substantially in excess of 750 feet from the premises known as 310 Central Avenue. The evidence submitted in the instant case discloses that, by measuring in the manner set forth in the ordinance, the main entrance to the premises known as 242 Railroad Avenue is 590 feet and 637 feet, respectively, from the entrance to two other plenary retail distribution licensed stores known as 242 Newark Avenue and 124 Brunswick Street. (The premises at 242 Railroad Avenue have an entrance in addition to the main entrance. Under the ordinance's method of measurement, the distance between this second entrance of 242 Railroad Avenue and the entrance of 242 Newark Avenue is 566 feet; and the distance between the second entrance of 242 Railroad Avenue and 124 Brunswick Street is 635 feet.)

It is evident that respondent Board granted the transfer after it had caused measurements to be made along the sidewalks and in the normal way that a pedestrian would properly walk from 242 Railroad Avenue to the two other plenary retail distribution places mentioned in the preceding paragraph. Measured in this manner, the main

entrance to 242 Railroad Avenue is 862 feet and 905 feet respectively from the entrances to the two other plenary retail distribution licensed premises. However, under the circumstances of this case, the method of measurement adopted by respondent Board is clearly improper. Burns v. Elizabeth, Bulletin 794, Item 5. In that case, an ordinance of the City of Elizabeth provided, in effect, that no licenses should be granted for any premises within the area of a circle having a radius of 1500 feet and having as its central point an existing licensed premises. Although the evidence indicated that the appellant's premises were within 1153 feet of an existing licensed premises if measured in the manner set forth in the ordinance, appellant contended that his premises were in fact more than 2,000 feet from the existing licensed premises if measured in the normal way that a pedestrian would properly walk from one licensed premises to the other. In his Conclusions and Order, affirming the action of respondent in denying appellant's application, the Commissioner said:

"...The mere fact that appellant's premises are more than 1500 feet from other licensed premises if measurements are made in a manner different from that specifically set forth in the ordinance does not entitle appellant to relief."

The ordinance considered herein has been found to be reasonable and valid with respect to its general 750-foot ban. See Zahorbenski v. Jersey City et al., Bulletin 702, Item 7; Tube Bar, Inc. et al. v. Jersey City et al., Bulletin 808, Item 1. Inasmuch as the ordinance in question has heretofore been construed to be binding upon the municipality, respondent Board may not grant any license or transfer contrary to the terms thereof. Tube Bar, Inc. et al. v. Jersey City et al., supra.

Since the transfer of the license was permitted in direct violation of a valid ordinance of the municipality, I have no alternative other than to reverse the action of respondent Board of Commissioners.

Accordingly, it is, on this 13th day of June, 1949,

ORDERED that the action of respondent Board of Commissioners of the City of Jersey City is hereby reversed, effective at 10:00 p.m. June 16, 1949; and it is further

ORDERED that said transfer be and hereby is set aside and declared null and void, and respondent Lewis is ordered to cease all activities at the premises to which the license was transferred, effective at 10:00 p.m. June 16, 1949.

ERWIN B. HOCK
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

Almet Transport, Inc.
388 Seventh St.
Jersey City, N. J.

Application for Transportation License filed June 16, 1949 for period expiring June 30, 1949.

Erwin B. Hock
Director.