

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

BULLETIN 385

FEBRUARY 16, 1940.

1. TIED HOUSES - REORGANIZATION AGREEMENTS OF INTERLOCKING HOLDING COMPANIES - DISINTEGRATION EFFECTED BY STIPULATIONS FORBIDDING RETAILERS TO CARRY MERCHANDISE SOLD OR SPONSORED BY WHOLESALER.

February 13, 1940

Osborne, Cornish & Scheck, Esqs.,
Newark, N. J.

Gentlemen: Re: Park & Tilford Import Corporation;
D. A. Schulte, Inc.; Huyler's.

It appears that all of the stock of Park & Tilford Import Corporation, holder of License No. W-89, is owned by Park & Tilford, Inc., a Delaware corporation; all of the stock of D. A. Schulte, Inc., a New York corporation, holding various plenary retail distribution licenses, is owned by Schulte Retail Stores Corporation, a Delaware corporation; and all of the stock of Huyler's, a New York corporation, holding a plenary retail consumption license in the City of Newark, is owned by Huyler's of Delaware, Inc.

On June 3, 1936, petitions under Section 77(b) of the Bankruptcy Act were filed in the United States District Court for the Southern District of New York by Schulte Retail Stores Corporation and D. A. Schulte, Inc., as subsidiary debtor, and by Huyler's of Delaware, Inc. and Huyler's, a New York corporation, as subsidiary debtor. In said proceedings the debtors were continued in possession under the supervision of the Court and its Special Master.

In Re Scheck, Bulletin 179, Item 9, it was ruled that, so long as judicial control over the activities of D. A. Schulte, Inc. continues, said D. A. Schulte, Inc. is not disqualified from holding retail licenses solely because of its relationship with Park & Tilford Import Corporation, which then appeared to involve common officers, directors and stockholders.

It is necessary to consider now whether Park & Tilford Import Corporation, D. A. Schulte, Inc. and Huyler's, a New York Corporation, may continue to hold licenses if and when the proposed plan of reorganization is approved and the Schulte and Huyler corporations released from judicial control.

Under the proposed plan of reorganization, David A. Schulte will be a director and stockholder in Park & Tilford, Inc. and merely a stockholder in Schulte Retail Stores Corporation and Huyler's of Delaware, Inc.; Arthur D. Schulte and John S. Schulte will have an indirect interest in the stock of Park & Tilford, Inc. by reason of the fact that they will be interested in the income of David A. Schulte Trust, a majority stockholder of said corporation, and at the same time they will be officers, directors and stockholders in Schulte Retail Stores Corporation. Arthur D. Schulte will also be a stockholder and director in Huyler's of Delaware, Inc.

It thus appears that none of the officers or directors of Park & Tilford, Inc. will be officers or directors of Schulte Retail Stores Corporation or Huyler's of Delaware, Inc. The question is, therefore, narrowed to a consideration of simultaneous ownership of stock in the corporation which indirectly holds the wholesale license and in the corporations which indirectly hold the retail licenses.

In Re Bardusch, Bulletin 255, Item 1, I reviewed at length the previous rulings referring to prohibited interests in wholesaling and retailing of alcoholic beverages, but concluded that it had never been the intent of the Legislature that R. S. 33:1-43 should apply to the situation considered therein.

The present case is distinguishable from Re Bardusch because it is possible that the Schultes, by reason of their extensive holdings in both the wholesaling and retailing corporations, may well control the policies of these organizations even in the absence of interlocking directors and officers. If this were all, I would conclude that the common ownership of stock in the corporations considered herein would constitute a violation of R. S. 33:1-43.

However, according to your letter, it is further proposed that the wholesale licensee shall enter into an agreement with the retail licensees wherein and whereby the retailers will agree that neither of them will carry any of the merchandise in New Jersey which is sold or sponsored by the wholesaler.

If, in any given case, I found that such an agreement was proposed merely to circumvent the law, I would refuse to give my approval. In the present case, however, the Schulte family has, for many years, been interested in all the corporations mentioned and the plan of reorganization appears to be a bona fide attempt to permit the retail licensees to continue in business. The agreement, if executed and faithfully honored, will prevent any question of a tied house and hence will eliminate any evil which the Legislature intended to prohibit. The intent, not the letter of the statute, constitutes the law.

Accordingly, if the proposed plan of reorganization is completed and the agreement referred to in the preceding paragraph is executed as soon as the Court proceedings are terminated, I shall rule that the wholesale license and the retail licenses referred to herein may continue in effect or be renewed so long as said agreement remains in effect and is faithfully and fully performed.

Please furnish me with a copy of the agreement as soon as executed.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. BARTENDERS - FEMALE MAY BE PROHIBITED IN A SPECIFIC ESTABLISHMENT IF REASONABLE GROUND EXISTS AND IF PROPERLY IMPOSED BY SPECIAL CONDITION DULY APPROVED BY THE COMMISSIONER - IF PROHIBITED IN ALL ESTABLISHMENTS, A GENERAL REGULATION IS REQUIRED.

February 13, 1940

Charles P. Van Allen,
Borough Clerk,
Glen Rock, N. J.

My dear Mr. Van Allen:

I have before me yours of January 23rd and resolution adopted by the Council on January 22nd, extending plenary retail consumption license #2 to Cornelius Yonkers, Executor of the Estate of Peter Yonkers, until July 1, 1940.

I note that the extension is subject to the special provision that no beverages be dispensed at the bar by females.

According to my records, there was no such condition upon the Yonkers license as originally issued, or upon the license of Nick Pepines, the only other plenary retail consumption licensee in the Borough. I, furthermore, do not find any such general regulation in the resolutions or ordinances concerning alcoholic beverages you have submitted.

The Council has the power, subject to the Commissioner's approval, to impose such conditions upon particular licenses as it deems necessary and proper to accomplish the objects of the Act and to secure compliance with the provisions thereof. It is conferred by R. S. 33:1-32. If, therefore, you will describe for me the circumstances which have led the Council to take this action and the particular situation involving this licensee which the condition is designed to overcome, I shall be glad to consider it.

If, on the other hand, it was the thought of the Council that in the Borough of Glen Rock all female bartenders should be prohibited, then it must, of course, apply to all licensees without exception and in such case should be in the form of a general regulation rather than a special condition. Perhaps that was what you had in mind. If so, I recommend the amendment of the resolution of January 22, 1940 to strike out the condition, and its enactment in a general ordinance. I shall be glad to go over such ordinance prior to introduction if it is the Council's wish.

I shall take no action either to approve or disapprove the condition until I hear from you.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

3. SEIZURES - CONFISCATION PROCEEDINGS - PADLOCK LIFTED.

In the Matter of the Seizure	)	Case 5413
of a still at 823 Bridge Avenue,)	
in the City of Camden, County of	)	ON HEARING
Camden and State of New Jersey.	)	CONCLUSIONS AND ORDER
-----)	

C. Richard Allen, Esq., Attorney for Louis L. Dorflinger, Agent.
 Harry Castelbaum, Esq., Attorney for State Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

On June 24, 1939, Conclusions were entered herein wherein, among other things, it was ordered that the dwelling in which the still was found, located at 823 Bridge Avenue, Camden, should not be used or occupied for a period of six months, commencing the 30th day of June, 1939. Upon receipt of notice of the padlock order, Louis L. Dorflinger, renting agent for Davis Wilkens, owner of said property, petitioned for vacation of the padlock order on the ground that he and the owner of the property were entirely innocent, and on the further ground that the Emergency Relief in the City of Camden had placed a new tenant in the property on June 1, 1939.

At the hearing held herein, Louis L. Dorflinger testified that for five years prior to the seizure he had acted as the renting agent of the property. There is no evidence that the owner, who resides in Medford, New Jersey, had anything to do with the renting of the property, and hence the sole question to be considered is whether the agent was guilty of negligence in permitting the operation of the still on the premises or in renting the property without proper investigation.

Louis L. Dorflinger testified that on April 25, 1939 he rented the premises to one Joseph Smith, who had been sent to him by a tenant in an adjoining property; that the rental was fixed at \$12.00 per month and that the first month's rent was paid; that the agent visited the premises twice during the following week but was unable to obtain admittance and that he had no knowledge of the presence of the still until after the seizure had been made. It further appears that one Joseph Williams was arrested and charged with possession of the unregistered still, but the criminal case against him was dismissed for lack of evidence. Dorflinger was unable to identify Joseph Williams as the person who had rented the property.

It appears that the agent was negligent in renting the property without investigating the tenant. He attempts to explain this by stating that the property is "low class". This is not an excuse for failure to investigate. However, there is nothing in the present case to show that proper investigation would have disclosed that the tenant had a criminal record. In view of this and particularly because a new tenant was placed in possession of the premises by the relief authorities on June 1, 1939, I shall lift the padlock.

Accordingly, it is ORDERED that that portion of the order entered on June 24, 1939 which padlocked the dwelling located at

823 Bridge Avenue, Camden, for a period of six months, be and the same is hereby vacated. In all other respects said order is hereby confirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 10, 1940.

4. APPELLATE DECISIONS - HOLZBERG v. ORANGE.

MAX HOLZBERG,)	
)	
Appellant,)	
)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
)	
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF ORANGE,)	
)	
Respondent)	
-----)	

Lawrence E. Burns, Esq., and Nathan L. Jacobs, Esq.,
for the Appellant.
Edmond J. Dwyer, Esq., for the Respondent.
Edward L. Davis, Esq., for the Objectors.

BY THE COMMISSIONER:

Appellant appeals the denial of his application for renewal of plenary retail consumption license for premises 297 Hayward Street, Orange, for the year 1939-40.

On June 14, 1939, Holzberg filed application for renewal of his license. On July 6, 1939, charges in disciplinary proceedings were preferred against him alleging that on June 2 and 3 he permitted a disturbance and brawl to occur with resulting unnecessary noises and that on June 11th he permitted the serving of liquor off the licensed premises, both in violation of local ordinance. On July 11th, the date fixed for hearing, a third charge was made, viz., that during the license year 1938-39 he permitted lewdness and immoral activities, brawls, disturbances and unnecessary noises on the licensed premises, and conducted the licensed place of business in such manner that it became a nuisance, in violation of State Regulations 20, Rule 5. The licensee was found guilty on all charges except as to permitting lewdness and immoral activities on the licensed premises, whereupon the Board, in lieu of any suspension and in consideration of two previous violations by the licensee, viz., sale during prohibited hours in 1934 and rebottling an alcoholic beverage for sale in 1936, denied the application for renewal.

The finding that violations of the liquor law or regulations had been committed during the preceding license year, if warranted by the evidence, would be sufficient to justify denial of renewal. Kaplan v. Newark, Bulletin 269, Item 6; Orsi v. Newark, Bulletin 352, Item 2; Beam v. Caldwell, Bulletin 380, Item 3.

However, the violations of the licensee in 1934 and 1936, standing alone, would not be sufficient cause for denial of the application for license for the year 1939-40 since renewals were granted for the years 1937-38 and 1938-39, despite those violations. Zicherman v. Newark, Bulletin 227, Item 7; Sudol v. Wallington, Bulletin 276, Item 7; Cicalese v. Newark, Bulletin 280, Item 9.

Hence this appeal involves only the propriety of the findings of the Board in the 1939 disciplinary proceedings. The question is, therefore, was Holzberg guilty of the violations charged?

As to the first alleged violation: The charge preferred reads:

"1. On Friday, June 2nd, 1939 and Saturday, June 3rd, 1939, you, your servant, agent or employee, did allow, permit, and suffer at the licensed premises located at #297 Hayward Street, Orange, New Jersey, a disturbance and brawl to occur with resulting unnecessary noises, disturbing to the citizens of the City of Orange, in violation of Section 9 of the ordinance of the City of Orange, entitled, 'An ordinance to regulate the sale and distribution of alcoholic beverages and fixing a penalty for violation of the provisions thereof' adopted July 7th, 1936, which said section provides as follows:

"Section 9. No licensee, his servant, agent or employee, shall allow, permit or suffer in or upon the licensed premises any disturbance, brawl or unnecessary noise, or suffer or permit the said licensed premises to be conducted in such a manner as to become disorderly."

It may be noted that while the licensee was charged with permitting the brawl, disturbance and unnecessary noise "at" the licensed premises, the ordinance prohibits such conduct "in or upon" the licensed premises. The charge can be no broader than the regulation. "In and upon the licensed premises" means one thing -- "at the licensed premises" means quite another. "At" includes the surrounding vicinity, as to which the ordinance is silent. To the extent that the charge is broader than the regulation it was improper, although it might stand to the extent that it charges the prohibited conduct in and upon the licensed premises. But testimony in support dealt only with a disturbance on the street. There was no competent evidence of any brawl, disturbance or unnecessary noise in and upon the licensed premises on June 2 or 3, 1939, the dates charged.

As to the second alleged violation: The licensee was charged as follows:

"2. On Sunday, June 11th, 1939 you, your servant, agent or employee did permit, countenance and allow the serving of liquor off the licensed premises, namely, to persons seated or gathered about cars parked on the exterior of the licensed premises in violation of Section 13 of the ordinance of the City of Orange entitled, 'An ordinance to regulate the sale and distribution of alcoholic beverages and fixing a penalty for violation of the provisions thereof' adopted July 7th, 1936, which said section provides as follows:

"Section 13. Alcoholic beverages may be sold to be consumed on the licensed premises during the hours when the said license premises may be opened as described in Section 11 of this Ordinance, at a bar, counter or similar contrivance so long as such bar, counter or similar contrivance is used for the conduct of the business of the said licensed premises, and is used for drinking purposes; and any such bar, counter or similar contrivance shall be so arranged and situated that a view of the same may upon inspection be had from a sidewalk or a public thoroughfare, or from any thoroughfare of ingress and egress to which the public is freely admitted."

But the quoted section of the ordinance does not prohibit "the serving of liquor off the licensed premises". What it does is permit the maintenance of bars on licensed premises provided the bar is so situated that public view of it may be had from a sidewalk or public thoroughfare. As to service at bars, the section is permissive merely, which is a far cry from being prohibitory as to service elsewhere. The charge being improper, the finding of guilt is nugatory.

As to the third violation: The charge preferred reads:

"3. That during the licensed year from July 1, 1938 to June 30, 1939, the licensee did allow, permit or suffer in or upon the licensed premises disturbances, acts of lewdness, immoral activities, brawls and unnecessary noises, and did allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance, in violation of Regulation 20, Paragraph 5 of the Rules and Regulations, State of New Jersey Department of Alcoholic Beverage Control, which said section provides as follows:

"5. No licensee shall allow, permit or suffer in or upon the licensed premises any disturbances, lewdness, immoral activities, brawls, or unnecessary noises, or allow, permit or suffer the licensed place of business to be conducted in such a manner as to become a nuisance."

Again it may be noted that as to the disturbances, lewdness, immoral activities, brawls and unnecessary noises, the State Regulation prohibits such conduct in or upon the licensed premises. At the hearing on appeal no competent evidence of any brawls, disturbances or unnecessary noises in or upon the licensed premises was adduced, and as previously indicated, the licensee was found not guilty of permitting lewdness and immoral activities.

However, as to the charge that during the license year 1938-39 the licensee permitted the licensed place of business to be conducted in such manner as to become a nuisance, objectors produced testimony of neighboring residents from which I am convinced that appellant catered to a class of patrons who were accustomed to visit the licensed premises (the only business place in an otherwise residential vicinity) and consume drinks obtained

therein in their cars parked for long periods on the street outside the licensed premises, with resulting traffic congestion. Although there is no evidence that the licensee or his employees served alcoholic beverages to patrons in the parked cars, the evidence is sufficient to indicate that beer and other beverages were permitted to be carried outside, both in glasses and bottles, and there consumed. Loud laughter, talking and profanity resulted. Bottles were smashed in the street. Urination occurred on the street and neighboring properties. On one occasion, the screaming of a woman was heard throughout the neighborhood. On another, a party of nine persons bred an argument which resulted in a fist fight. Music from an electric phonograph pervaded the neighborhood. In fine, as one of the objectors' witnesses characterized it, the patrons made the street an open air beer garden.

I referred hereinbefore to Zicherman v. Newark, Bulletin 227, Item 7. That case held that offenses once condoned by the granting of a renewal license could not be resurrected as cause in themselves for denial of a still later renewal. That does not mean, however, that offenses forgiven must necessarily be forgotten. The test of unworthiness in such a case is future behavior. In that decision, after holding that a license issuing authority could not dig up and utilize an old offense as cause of itself for later denial, after condoning it by renewal, I went out of my way to say: "If coupled with new offenses, either of the same or a different kind, it may, of course, be reverted to as a link in the proof-chain of general unworthiness."

So, in the instant case, it was competent and appropriate for the respondent to take into consideration the whole record of the licensee in determining whether or not he was worthy of a renewal.

It is true that with the exception of the noise of the victrola (which at the time of the hearing had been discontinued), all the noise, disturbance and disorder occurred on the street outside the licensed premises. Some noise, of course, is necessarily attendant upon the conduct of the licensed business. To the extent that it is reasonable, it must be borne by neighboring residents. Where, however, the noise and disturbance is unreasonable, and the licensee has permitted it to continue by failing to conduct his licensed business so that noise and disturbance are minimized, it is his own fault if the municipal issuing authority refuses to renew his license.

I find as the fact that this licensee permitted or suffered his licensed place of business to be conducted in such manner as to become a nuisance.

The action of the respondent is therefore affirmed.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 13, 1940.

5. APPELLATE DECISIONS - HOWELL v. BRANCHVILLE.

ADA B. HOWELL,)	
)	
Appellant,)	
)	
-vs-	)	ON APPEAL
	)	CONCLUSIONS
)	
COMMON COUNCIL OF THE BOROUGH)	
OF BRANCHVILLE,)	
)	
Respondent)	
-----)	

Albert Silverman, Esq., Attorney for Appellant.
 Peter Friedman, Esq., by Ackerson J. Mackerley, Esq.,
 Attorney for Respondent.

BY THE COMMISSIONER:

Appellant, the holder of a plenary retail consumption license for premises located on Broad Street, Branchville, appeals from a suspension of said license for ninety (90) days.

Respondent, at a hearing duly held, imposed this punishment after finding licensee guilty on a charge of selling alcoholic beverages to minors.

By consent, a transcript of testimony taken below was introduced into evidence at the hearing on the appeal. From this transcript it appears that on August 12, 1939 the licensee sold two cans of beer at ten cents a piece to two boys who were members of a C.C.C. Camp and each of whom was sixteen years of age. The sale was corroborated by the testimony of one of the boys and two investigators of this Department who were present in the licensed premises at the time the sale was made. It further appears that at the hearing below licensee admitted that, at the time of making the sale to the boys, she had not inquired as to their ages and testified that she had not done so because her bartender had told her that, on a previous visit to the licensed premises, the boys had represented to him that they were over the age of twenty-one. This was no excuse. The evidence clearly shows that the licensee was guilty as charged.

Appellant contends, however, that, since this is a first offense, the suspension imposed is unreasonable. In his brief, the attorney for appellant refers to forty-five cases reported in the bulletins, in none of which was a penalty in excess of forty days imposed for a first offense of selling to minors. The penalty to be imposed after a finding of guilt is largely within the discretion of the body which makes the finding of guilt and may vary in different municipalities and according to the circumstances surrounding the offense. The punishment, however, should not be unreasonable. In Ziomek v. Clementon, Bulletin 381, Item 3, I concluded that a four months' suspension for a first offense of selling to minors between the ages of eighteen and twenty years was excessive and reduced the penalty to thirty days. The present case involved sales to minors of the age of sixteen years. Allowing reasonable latitude for differences of opinion, forty-five days would appear to be ample for a first offense of this kind.

The action of respondent in suspending the license is affirmed. The period of suspension is hereby reduced to forty-five (45) days.

D. FREDERICK BURNETT,
 Commissioner.

Dated: February 12, 1940.

6. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on	)	Case 5575
September 28, 1939, of a Hupmobile)	
Coupe and twelve 5-gallon cans of	)	ON HEARING
alcohol contained therein, on	)	CONCLUSIONS AND ORDER
Black Horse Pike, south of Oaklyn)	
Road, in the Township of Haddon,)	
County of Camden and State of)	
New Jersey.)	
-----)	

Harry Castelbaum, Esq., Attorney for the Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On September 28, 1939, New Jersey State Troopers seized a Hupmobile Coupe and a quantity of alcohol found therein on Black Horse Pike, Camden County. The automobile bore Pennsylvania registration issued to William Jackson of 2016 Christian Street, Philadelphia, covering a Hudson Coupe. Herbert Peel, the driver, was arrested and charged with possession and transportation of illicit alcoholic beverages in violation of R. S. 33:1-50. Thereafter, the seizure was adopted by this Department.

At a hearing held to determine whether the seized property should be confiscated, no one appeared to contest the forfeiture. The evidence shows that the cans of alcohol bore no tax stamps and hence the alcohol is prima facie illicit. The vehicle in which the alcohol was being transported is subject to forfeiture. R. S. 33:1-66(c). Hence it is determined that the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the property set forth in Schedule "A" be and hereby is forfeited 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 Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 11, 1940.

SCHEDULE "A"

- 12 - 5 gallon cans of alcoholic beverages
- 1 - 1935 Hupmobile Coupe, Serial #F-10122,
Engine #10147, Pennsylvania
Registration 8NU34.

7. SEIZURES - CONFISCATION PROCEEDINGS - AUTOMOBILE RETURNED, OTHER PROPERTY FORFEITED AND PADLOCK GRANTED.

In the Matter of the Seizure of a)	
Reo Truck and a Chevrolet Sedan in	)	Case 5298
the vicinity of Kelley and Thomas)	
Streets on March 16, 1939, and the	)	ON HEARING
seizure of an unregistered still on	)	CONCLUSIONS AND ORDER
March 17, 1939 in a dwelling at or)	
near the intersection of Kelley and)	
Thomas Streets, both in the Township)	
of Wayne, County of Passaic and)	
State of New Jersey.)	
-----))	

Saul Schutzman, Attorney for Stephen Churlin.
 Bono Grbovac, Pro Se.
 Abraham Merin, Esq., Attorney for the Department of
 Alcoholic Beverage Control.

BY THE COMMISSIONER:

On March 16, 1939, at about 8:30 P.M., Officers Anderson and Brower of the Wayne Township Police observed a Chevrolet Sedan in a lonely section of the township. As they approached, the car was driven away towards a dead end street, and the officers halted it upon its return. In the car were three men (later identified as Stephen Churlin, Louis Palumbo, and Philip Cocuzza), who were taken to police headquarters for questioning.

The officers then returned to the vicinity where they had first seen the car, and discovered Louis Palumbo's Reo Truck bogged in a nearby muddy road. Seventeen empty barrels (of the type used for mash) were on the truck. The truck and sedan were taken to police headquarters, and this Department was notified.

On the following day, investigators of this Department and other officers searched the neighborhood for a still, and found it in a dwelling at the intersection of Kelley and Thomas Streets, a few blocks from where the Chevrolet Sedan had first been observed.

They seized the still equipment and a quantity of mash, took possession of the truck and sedan, and arrested Churlin, Palumbo and Cocuzza.

The still and its equipment were not registered with this Department, and the truck was evidently being used in connection with the operation of the still. Hence the still, its equipment, and the truck, constitute unlawful property. R. S. 33:2-2. Forfeiture of these articles is not contested.

As to the Chevrolet: Stephen Churlin, its owner, claims that it does not constitute unlawful property, hence it should be returned to him.

A vehicle found on still premises, or found elsewhere and used in connection with the still, or used or intended to be used in the transportation of illicit alcoholic beverages is declared to be unlawful property. R. S. 33:2-2, R. S. 33:1-1(y), R. S. 33:1-66.

Churlin's car was not found on the still premises, did not contain any alcohol or still equipment, and while the circumstances are suspicious, there was no evidence that it was used or intended to be used to transport illicit alcoholic beverages. Consequently, no legal authority exists to order the forfeiture of the vehicle.

As to padlocking: Bono Grbovac is the owner of the realty, and his address as it appeared on the Tax Collector's records was 50 Yale Avenue, Jersey City. His nephew, Stephen Churlin, a former liquor violator, pleaded guilty in the criminal proceedings to the charge that he possessed and operated the still in question. Churlin, at the time of the seizure, resided at the Yale Avenue address.

These circumstances cast suspicion upon Grbovac's claim of innocence, and warrant the denial of his request that the premises should not be padlocked. Moreover, even if his story is considered in the most favorable light, and assuming that he did not personally participate in the illegal activities, nevertheless, it shows that he made little, if any, effort to see that no illegal use was made of his property. He says that he did not visit the premises for some eight or nine months prior to the seizure; that it was vacant during that period, and he could not find a tenant. He cannot neglect his property, and then, when an illicit still is found therein, avoid padlocking.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A", annexed hereto, except the Chevrolet Sedan, be and hereby is forfeited, 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 Commissioner.

It is further ORDERED that the building located at the intersection of Kelley and Thomas Streets, in the Township of Wayne, being the premises owned by Bono Grbovac, and in which the illicit still was found, shall not be used or occupied for any use whatsoever for a period of six months commencing March 13, 1940.

D. FREDERICK BURNETT,
Commissioner.

Dated: February 13, 1940.

SCHEDULE "A"

Seized in Kelley Street Premises

1 - 250 gallon copper cooker	4 - bags rye
1 - copper gooseneck	20 - empty 5 gallon cans
1 - 100 gallon galvanized cooler	1 - can molasses
1 - copper coil	1 - boiler
3 - bags sugar	3 - 200 gallon barrels with mash

Seized on Meadow Road

17 - 50 gallon barrels
 1 - Reo Truck, Serial DFX145, Engine #CBl1638
 New Jersey 1938 Registration X30101
 1 - Chevrolet Sedan, Serial #2DA0764912, Engine #4494877
 New Jersey 1938 Registration H19094
 Miscellaneous personal property

8. SIXTH CLASS COUNTIES - AN ORDINANCE MADE EFFECTIVE AND THE LICENSING FUNCTION THEREBY CONSUMMATED.

TRANSFERS - REGULATIONS NO. 3 HEREBY REVISED.

February 13, 1940

C. A. Heil, Jr.,
City Clerk,
Wildwood, N. J.

My dear Mr. Heil:

I note that the Board of Commissioners now has before it an application for the transfer of a license from person to person.

Pursuant to Notice of January 12, 1940 (Bulletin 376, Item 6), I now rule that your Ordinance No. 402, adopted January 16, 1940, fixing the annual fees for plenary retail consumption, plenary retail distribution and club licenses, is effective immediately and supersedes to this extent the County regulations. The County regulations will otherwise continue in effect, as indicated in the Notice, until June 30, 1940, or until local municipal regulations have been duly adopted and made effective in accordance with the Notice, if the latter takes place prior to June 30, 1940.

I have ruled in Re Tanner, Bulletin 379, Item 6, that the respective municipalities in Cape May and Ocean Counties will perform their normal licensing functions under the Alcoholic Beverage Law except as otherwise expressly provided by Chapter 1, P. L. 1940.

It follows that it is now within the jurisdiction of your Board to entertain the application for the transfer. The procedure is set out in detail in Regulations No. 3, which you will find in the Pamphlet Rules commencing on page 39. The only change is that brought about by the return of the licensing function to the respective municipalities in Cape May and Ocean Counties as a result of which we shall henceforth read Rules 5, 8 and 25 as if all reference to the respective Judges of the Courts of Common Pleas in Cape May and Ocean Counties were omitted.

The person to whom the license is to be transferred files his application on the same form used in connection with the issuance of new licenses. The fee of ten per cent of the annual fee must be paid at the time the application is filed. Notice must be advertised in accordance with the Rules. It is the duty of the Board to investigate the applicant and the premises and to determine whether or not the applicant is qualified and the premises are suitable and whether the transfer should be granted or denied. If the former, the Board will then so determine by proper resolution and direct the Clerk to make appropriate endorsement upon the license. This is all covered in the Regulations. If there are any questions, I shall expect you to write me further.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. APPELLATE DECISIONS - ZAGER V. PASSAIC

HYMAN ZAGER and
SIGMUND SCHERAGA, :
Appellants :
- vs - : On Appeal
BOARD OF COMMISSIONERS OF : CONCLUSIONS
THE CITY OF PASSAIC, :
Respondent :
. :

Tipping & Schneider, Esqs., by C. Conrad Schneider, Esq., for
the Appellants
Thomas E. Duffy, Esq., for the Respondent
Stanley Polack, Esq., for the Objectors, Passaic Retail Licensed
Beverage Association, Inc., and
Passaic Retail Package Store Owners'
Association

BY THE COMMISSIONER:

Appellants appeal the denial of two applications, one for transfer of a plenary retail consumption license to them and to premises 838 Main Avenue, and the other for renewal of the license for the same premises.

The premises sought to be licensed comprise a one-story stucco building presently connected by large double doors with a three-story building operated as a super market by the Guarantee Meat Market of Passaic, Inc., which corporation is wholly owned by appellants.

The application for transfer was denied by respondent for the reasons (1) that the premises sought to be licensed were within 250 feet of premises for which a plenary retail consumption license was outstanding; (2) that the premises sought to be licensed were either to be operated as a food market or to be openly connected with a food market; (3) that appellants contemplated the operation of a package goods business under a plenary retail consumption license.

Objectors opposed the licensing of the premises for the same reasons assigned by respondent and for the additional reasons that: (4) the filing of simultaneous applications for transfer and renewal of license was improper; (5) neither application was signed; (6) it would be ultra vires for the Guarantee Meat Market of Passaic, Inc., a corporation, to engage in the tavern business; (7) no plans or specifications showing proposed separation of the premises sought to be licensed from premises of the Guarantee Meat Market were ever filed with the municipal authorities; (8) no health or police report as to the condition of the premises sought to be licensed had ever been made; (9) the licensing of the premises would affect the morals of minors entering and leaving the Guarantee Market.

1. The objection that the premises sought to be licensed were within 250 feet of an existing similarly licensed premises is based upon the provisions of Section 5 of ordinance adopted May 23, 1939, which provides:

"No Plenary Retail Consumption License, or Plenary Retail Distribution License shall be issued for, or transferred to any premises within 250 feet of any other premises for which a Plenary Retail Consumption License or a Plenary Distribution License is outstanding. This shall not prevent the renewal for the same premises of Plenary Retail Consumption or Plenary Retail Distribution Licenses outstanding at the time of the adoption of this regulation. The said 250 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed, in conformity with the procedure established pursuant to R.S. 33:1-76."

The premises sought to be licensed is on the opposite side of Main Avenue from premises of Everready Social Club, the holder of a plenary retail consumption license for premises 861 Main Avenue. Measured in conformity with the procedure established pursuant to R.S. 33:1-76, the distance is approximately 300 feet. Accordingly the 250 feet limitation would not be violated.

2. While it is true that the premises sought to be licensed presently give access to the premises of the Guarantee Market, and while R.S. 33:1-12 prohibits the issuance of a plenary retail consumption license for premises on which there is conducted (with certain exceptions not here material) any other mercantile business, appellants have signified their willingness to wall up the doorway now existing. If that is done, the premises sought to be licensed will be entirely separate from the premises on which the food market is conducted and will have separate access from the street. So separated, the premises may be licensed. Re Hershenstein, Bulletin 330, item 7.

3. The objection that appellants contemplate the operation of a package goods store under a plenary retail consumption license is based on a misconception of the law. Assuming they do, what of it? The holders of plenary retail consumption licenses may sell alcoholic beverages for on-premises consumption and off-premises consumption, or either. That is the privilege which R.S. 33:1-12 confers and municipalities may not diminish. Re Lee, Bulletin 232, item 8; Re Altman, Bulletin 248, item 8; Re Berla, Bulletin 304, item 10; Re Whitman, Bulletin 312, item 6; Re Hershenstein, supra.

I come now to the points raised by the rival licensees.

4. The objection that it was improper for appellants to file simultaneous applications for transfer and renewal of the license is answered as was a similar objection in Poppolardo et al. vs. Massimino and Newark, Bulletin 286, item 4, where I said:

" . . . The mere fact that two applications are made by the licensee, one for renewal of his license and the other for transfer of the license when granted, is not only not objectionable, but on the contrary, is vitally necessary if he wishes to preserve his license from lapsing. If application were made merely for the issuance of a license for the new premises for the ensuing fiscal year, it would not be an application for a renewal but for a new license. The term 'renewal' connotes continuity of person, premises and type of license. Where the issuance of new licenses is prohibited by reason of an existing limitation, the transfer of a license at the end of the licensing year necessitates either the transfer of the old license during its term to new premises and its renewal for those premises, or the renewal of the license for the old premises and its transfer to the new premises."

5. The objection that neither application was signed is true but immaterial. Appellants did sign the affidavit incorporated in each application, in which they both swore under oath that all of the answers, statements and declarations in the application for license were true. In view of the affidavit, the lack of signature in the body of the application may be rectified at any time.

6. It is unnecessary to consider whether or not it would be ultra vires for the Guarantee Meat Market of Passaic, Inc., a corporation, to engage in the tavern business. The applicants are individuals. It is they, not the corporation, who are applying for the license for premises which they lease from Guarantee Meat Market. The solicitude of the objectors, battling for the Attorney General, lest the corporation transcend its chartered powers is thus allayed!

7. Appellants' failure to file plans and specifications respecting the contemplated alteration of the premises sought to be licensed, in order to separate it from the premises of the Guarantee Meat Market, is another grasp at straws. Of course they will have to be filed before the work is done. That, however, is not the present question.

8. Although it was claimed that no police or health report was ever made with respect to the premises sought to be licensed "contrary to the practice established by the local governing body", no testimony was adduced. Furthermore, respondent admitted that if the license were granted, there would be no objection to the sanitary conditions.

9. I cannot understand how the licensing of these premises would impair the morals of minors entering or leaving the Guarantee Market. Why should they be more susceptible than those who pass by the licensed premises of the objectors? The piety of protesting licensees passeth understanding!

The action of the respondent is reversed and respondent Board of Commissioners of Passaic is directed to grant the transfer of the license and the renewal license applied for, provided, however, that appellants shall first erect a permanent wall blocking the opening presently connecting the premises sought to be licensed with the premises of the Guarantee Market.

D. Frederick Burnett

Commissioner.

Dated: February 14, 1940