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

BULLETIN 880 JUNE 26, 1950.

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - TOLEN v. KEARNY AND MOONEY.

ROBERT P. TOLEN, Appellant, v. MAYOR AND COUNCIL OF THE TOWN OF KEARNY, and JOHN A. MOONEY, JR., trading as JACK'S BAR AND GRILL, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Wimmer & Chasnoff, Esqs., by Sol J. Chasnoff, Esq., Attorneys for Appellant.
Robert J. McCurrie, Esq., Attorney for Respondent Mayor and Council.
Charles F. Paulis, Jr., Esq., Attorney for Respondent John A. Mooney, Jr.

BY THE DIRECTOR:

This is an appeal from the action of respondent Mayor and Council whereby it transferred a plenary retail consumption license held by respondent John A. Mooney, Jr., from 96 Kearny Avenue to 467 Kearny Avenue, Kearny.

Appellant, who is the owner of 465 Kearny Avenue, alleges that the action of respondent Mayor and Council was erroneous because (1) the Conclusions and Order entered in a previous appeal, entitled Mooney v. Kearny, are still in full force and effect; (2) the section to which the license was transferred is devoted partly to business purposes and partly to residential purposes, and no licenses have been issued in that section of the town for a period of fifteen years; (3) the new location is opposite the War Memorial Park and Community House, and there are ten churches within a radius of six blocks of the licensed premises. Other reasons for reversal are set forth in petition of appeal but, since no substantial evidence was presented in support of any of the additional reasons, they will be considered as abandoned.

The records of this Division show that on September 22, 1948, respondent, Mayor and Council, denied a previous application filed by John A. Mooney, Jr. for a transfer of his license from 96 Kearny Avenue to 467 Kearny Avenue. At the time this application was considered, four councilmen voted to deny the application, four councilmen voted to grant the application, and the Mayor cast the deciding vote whereby the application was denied. On appeal taken to the Director, an order was entered on January 19, 1949, affirming the action of the Mayor and Council. Mooney v. Kearny, Bulletin 830, Item 6. After obtaining a renewal of his license for the present licensing year at 96 Kearny Avenue, John A. Mooney, Jr. filed a second application to transfer his license to 467 Kearny Avenue. Written objections to the transfer were filed with the Mayor and Council by appellant and others. After hearing held on February 13, 1950, at which all objectors were given an opportunity to be heard, and petitions for and against the transfer were considered, respondent Mayor and Council granted said application to transfer the license. Appellant thereafter filed this appeal.

There has been no substantial change in the character of this section of Kearny Avenue and the surrounding area since the previous appeal was decided. As indicated in the previous appeal, Kearny Avenue is the principal business street of the town, and the northerly section of Kearny Avenue is devoted partly to business purposes and

is partly residential in character. There has been no change in the location of the Memorial Park or any of the ten churches mentioned therein. A large number of the objectors reside on the side streets, which are unquestionably residential in character.

The evidence herein discloses that, between the time the first application was denied and the second application granted, the membership of respondent Mayor and Council has been almost completely changed. Councilman Healey, who voted in favor of the first application, has since been elected Mayor of the town, replacing Mayor Gilzean who cast the deciding vote denying the first application. Councilman MacPhail, who voted to deny the first application, is still a member of respondent Mayor and Council and voted to deny the second application. Seven new councilmen have been elected to replace seven former councilmen. All of the new councilmen, except Councilman Zachau, voted to grant the second application. Thus it appears that the second application was granted by a vote of seven-to-two, with only Councilmen MacPhail and Zachau voting in the negative.

The decision in the former appeal is not binding upon respondent Mayor and Council as presently constituted. Each application is a separate application, and must be decided in the sound discretion of the local issuing authority as constituted at the time the application is considered. In the prior appeal the burden was upon the appellant, John A. Mooney, Jr., to show that the discretionary power of the local issuing authority in denying his application had been unreasonably exercised. In the present appeal the situation is reversed. The burden is now upon appellant herein to show that the action of the local issuing authority was arbitrary or unreasonable. Unless that burden is met, the action of the issuing authority must be considered reasonable, at least in the absence of any proof of bad faith against any member of the issuing authority. Hearty v. Liberty and Jamison, Bulletin 671, Item 5.

At the hearing held herein, Mayor Healey and each of the councilmen, except Councilman Zachau, testified under oath and subject to cross-examination. Councilman MacPhail testified, in substance, that he was opposed to the transfer of the license to the northerly section of Kearny Avenue because of the character of the neighborhood and because numerous residents objected to the transfer. Mayor Healey and six councilmen testified, in substance, that they considered the business character of this section of Kearny Avenue, the proximity of the War Memorial and Community House, and the petitions filed, and concluded that, under all the circumstances, the application for transfer should be granted. At least three of the Councilmen are war veterans. Unquestionably there are a large number of business places in the immediate vicinity of the premises to which the license was transferred. On the same side of Kearny Avenue, between Quincy Avenue and Pavonia Avenue, the following businesses are presently located: automobile show-room, candy shop, super market, beauty parlor, mattress company, and service station. On the opposite side of Kearny Avenue, between Quincy Avenue and Oakwood Avenue, the following businesses are presently located: service station, laundry, plumber, barber shop, meat market, shoe repair shop, radio store, and gas station. While there are some residences on Kearny Avenue, and while there are apartments located above these various places of business, the section must be classified as being of a mixed business and residential character. Where a vicinity is of such mixed character, it is within the local issuing authority's sound discretion to determine whether an alcoholic beverage license should be permitted there. McDuffy v. Morris and Martin, Bulletin 771, Item 3, and cases therein cited.

No church is within two hundred feet of 467 Kearny Avenue. See R.S. 33:1-76.

There is no evidence that any member of the local issuing authority was improperly motivated.

Upon the evidence presented herein, I conclude that appellant has failed to sustain the burden of proof in showing that respondent Mayor and Council abused its discretionary power in transferring the license from place to place. Hence, the action of respondent Mayor and Council will be affirmed. Northend Tavern Inc. v. Northvale, Bulletin 493, Item 5.

Accordingly, it is, on this 15th day of June, 1950,

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

ERWIN B. HOCK
Director.

2. APPELLATE DECISIONS - HAEFLIGER v. ALLAMUCHY.

EDWARD HAEFLIGER, trading as VILLAGE INN,
Appellant,
v.
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ALLAMUCHY,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

James R. Giuliano, Esq. and Sidney Simandl, Esq., Attorneys for Appellant.

Claude E. Cook, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for transfer of his plenary retail consumption license from premises on Main Street to premises to be erected on Warren County Highway, Township of Allamuchy.

The appellant has been conducting his licensed business ever since July 1944 at its present location which, together with a general store, post office and public garage, virtually comprises the "business center" of this rural community. Because the building, which he now leases, is old and in need of repair, he has purchased some land approximately one and a half miles from his present location and he intends, if granted permission to transfer, to erect a modern structure with adequate restaurant facilities which, he testified, is sorely needed in the community.

Two of the three members of the Township Committee, which voted unanimously to deny the application, testified at the appeal hearing. One of them expressed his conviction that the license, presently situated in the midst of the "business center", should remain there since it has existed in that vicinity for some sixty years. When asked, however, whether he had considered the issue of public necessity and convenience when casting his vote, he answered in the negative. The other Committeeman testified that he had relied solely upon a protesting petition that was filed against the application and he frankly admitted that he had not taken into consideration any other issue, including that of public necessity and convenience.

A decision of a local issuing authority totally disregarding the paramount issue of public necessity and convenience, such as is involved in connection with the discretionary function of transfer of a liquor license, cannot sustain the local action. Indeed, it is tantamount to a failure to discharge the responsibility which, under the provisions of the Alcoholic Beverage Law (R.S. 33:1-1, et seq.), is vested in each issuing authority in the first instance, to determine within its sound discretion whether a license shall be issued or transferred. Passarella v. Board of Commissioners, 1 N.J. Super. 313 (App. Div. 1949). Where such discretion has been exercised, review by the State Director is limited to a determination whether such discretion has been abused and, in the absence of such abuse, the Director is powerless to substitute his judgment for that of the issuing authority. Hudson Bergen, etc., Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

In the present posture of the record, the cause must be remanded to the respondent with direction that reconsideration be given to the application and that, consistent herewith, the issue of public necessity and convenience, as applied to the respective locations and facilities of the existing and proposed premises, be determined by each member of respondent Committee prior to voting upon such reconsideration.

Accordingly, it is, on this 13th day of June, 1950,

ORDERED that the within application be and the same is hereby remanded to the respondent for its further action consistent with this opinion.

ERWIN B. HOCK
Director.

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENTS IN LICENSE APPLICATION CONCEALING MATERIAL FACTS - AIDING AND ABETTING NON-LICENSEE (A DISQUALIFIED PERSON) TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against HELEN M. VAN VOLKOM, 455 Valley Brook Avenue Lyndhurst, New Jersey, Holder of Plenary Retail Consumption License C-20, issued by the Board of Commissioners of the Township of Lyndhurst.	CONCLUSIONS AND ORDER

Bivona and Bogle, Esqs., by William L. Bivona, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges as follows:

"1. In your application dated June 3, 1949, filed with the Board of Commissioners of the Township of Lyndhurst, upon which you obtained your current plenary retail consumption license, you falsely stated 'No' in answer to Question 30, which asks: 'Has any individual..., other than the applicant, any interest, directly or indirectly, in the license applied for or in the business to be conducted under said license?', whereas in truth and fact Arthur J. Vallery was so interested as a real and beneficial owner of the licensed business; said false statement being in violation of R.S. 33:1-25.

"2. In your aforesaid application for license, you falsely stated 'No' in answer to Question 31, which asks: 'Have you agreed to pay any employee, or other person, any percentage of the profits derived from the business to be conducted under the license applied for?', whereas in truth and fact you had agreed to permit Arthur J. Vallery to retain all of the profits derived from the licensed business; said false statement being in violation of R.S. 33:1-25.

"3. From June 30, 1949, until the present time, you knowingly aided and abetted Arthur J. Vallery to exercise, contrary to R.S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; in violation of R.S. 33:1-52."

On February 4, 1949, the plenary retail consumption license then held by one Arthur J. Vallery for premises at 455 Valley Brook Avenue, Lyndhurst, New Jersey, was suspended for the balance of its term, effective February 10, 1949, with leave reserved to a qualified person to apply for the lifting of such suspension after the expiration of ninety days from the effective date of the suspension herein. Such suspension was based upon Vallery's plea of non vult to a charge alleging that he had falsely stated in his application for the aforesaid license that he had not been convicted of any crime when in fact he had been convicted of burglary in 1934. Re Vallery, Bulletin 832, Item 5. Thereafter, on April 12, 1949, Vallery was found guilty on a charge that he had violated the local curfew ordinance. As a result the reservation included in the Order of February 4, 1949 to permit a qualified person to apply for lifting of the suspension after ninety days from the effective date thereof was set aside and the license was unqualifiedly suspended for the full balance of its term. Re Vallery, Bulletin 841, Item 3. Simultaneously with the latter proceeding a petition by Vallery for removal of the statutory disqualification resulting from his conviction of burglary in 1934 was dismissed because of the above-mentioned violations committed by him while a licensee. Case 724, Bulletin 841, Item 4.

In May, 1949, the license was transferred to the defendant herein subject to the suspension then in force. Thereafter the defendant obtained renewal of her license for the current licensing year commencing July 1, 1949. In her application for the current license defendant declared, under oath, that no person other than herself had any interest in the license applied for or in the business to be conducted thereunder and that she had no agreement to pay any person any percentage of the profits of said business. She admits, however, in a sworn statement given to agents of this Division that the aforesaid Arthur J. Vallery is and always has been the real owner of the license and the business conducted thereunder, that Vallery retained all the monies received, paid all the bills for liquor and other expenses and charges, and that the transfer of

license from Vallery to the defendant and the renewal thereof were in name only to protect the license for the benefit of said Arthur J. Vallery.

It is clear from the statement given by Helen M. Van Volkom that she never exercised the rights and privileges of the license and that such rights and privileges were, in fact, exercised by Arthur J. Vallery, a person disqualified by statute to hold any interest in a license. In fact, it is apparent that the said Arthur J. Vallery deliberately set up the "front" to deceive the local issuing authority and the Director, and that the business conducted under the said license remained his property, contrary to statutory interdiction and the express order of the Director. Cf. Re Vallery, supra. It is also clear that he was aided and abetted in his illegal activity by defendant.

It is obvious that the fraud was deliberate. Under the circumstances I shall revoke defendant's license.

Accordingly, it is, on this 14th day of June, 1950,

ORDERED that Plenary Retail Consumption License C-20, issued by the Board of Commissioners of the Township of Lyndhurst to Helen M. Van Volkom, for premises 455 Valley Brook Avenue, Lyndhurst, be and the same is hereby revoked, effective June 19, 1950, at 2 a.m.

ERWIN B. HOCK
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN BARBER SHOP - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS ORDERED FORFEITED.

In the Matter of the Seizure on March 19, 1950 of a quantity of alcoholic beverages, and various barber shop furnishings, fixtures and equipment at 323 Mulberry Street, in the City of Newark, County of Essex and State of New Jersey.	)	Case No. 7600 ON HEARING CONCLUSIONS AND ORDER

Nathan Reuben, Esq., Attorney for Benjamin Walter Robinson.
Consolidated Laundries Corporation, by Ralph Rettino, Sales Manager.
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, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, and various barber shop fixtures, furnishings, and equipment, described in a schedule attached hereto, seized on March 19, 1950, at 323 Mulberry Street, Newark, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made by ABC agents because of alleged unlawful sales of alcoholic beverages at the barber shop.

When the matter came on for hearing, pursuant to R.S. 33:1-66, Benjamin Walter Robinson, the owner of the barber shop, appeared with counsel and sought return of the barber shop equipment and fixtures. An appearance was also entered on behalf of Consolidated Laundries Corporation, which sought return of towels seized in the place.

The facts, as testified to by various ABC agents, are that on Sunday, March 12th, an ABC agent, investigating a complaint of illegal sales of alcoholic beverages on Sundays in the vicinity of the barber shop, contacted two men in the immediate neighborhood. One of the men, with a dollar bill furnished by the agent, entered the barber shop while the agent kept the place under observation from across the street. Within a few minutes the man emerged and returned to the agent with a pint bottle of "Vino Vinci" Pure California Port Wine and indicated that he had purchased the wine in the barber shop for seventy-five cents, and gave the agent twenty-five cents in change. On Sunday, March 19th an ABC agent entered the barber shop, and observed one Walter Hale, who was operating the bootblack stand there, sell a bottle of wine to a person in the shop. The latter person, according to the agent, gave Hale some money, who then "went to the cash register and deposited same and took money from the cash register and returned it to the buyer." Thereafter the agent purchased a bottle of "Vino Vinci" wine from Hale. The agent testified that upon giving Hale money in payment for the wine, this money "was also placed in this cash register." Other ABC agents then entered, placed Hale under arrest, and seized six bottles of "Vino Vinci" wine which were in a hamper in the barber shop. They also seized $19.78 in cash, part in a cash register, and part turned over to them by Hale. There were about 35 empty beer cans and a few empty wine bottles in an adjoining room.

Walter Hale gave the agents a signed statement in which he declared that he had been operating the bootblack stand at the shop for about a year and admitted that he had been selling wine for about a month and that he sold the agent a bottle of wine that morning. Benjamin Walter Robinson testified that he has known Hale for about three and one-half or four years, confirmed the fact that Hale had been operating the bootblack stand for the period named and said that he gave Hale the keys to the shop. Robinson further testified "--fellows comes in there (the shop) with their wine and drink in there." Asked if there was much drinking going on in the place, he answered, "Not a lot of it, too much for me. I got so I put signs that don't allow to bring no bottles and no drinking in there."

Neither Benjamin Walter Robinson nor Walter Hale held any license authorizing either of them to sell or serve alcoholic beverages.

The six bottles of wine seized in the place are illicit alcoholic beverages because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit alcoholic beverages, and all personal property seized therewith in the barber shop, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

I have the discretionary authority to relieve Robinson from forfeiture of his equipment if he establishes to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which his property was put or of such facts as would have led a person of ordinary prudence to discover such use. R.S. 33:1-66(f).

However, Robinson, as proprietor of a business establishment where alcoholic beverages were sold unlawfully, cannot escape forfeiture of the equipment of his place merely by professing ignorance of such sales. A person who entrusts his business establishment to another is responsible, in forfeiture proceedings, for the unlawful sale of alcoholic beverages therein by such person. See Seizure Case No. 7438, Bulletin 862, Item 1. In the instant case, it appears that Hale operated the bootblack stand in the shop for about a year; that Robinson gave Hale keys for the shop; that alcoholic beverages were sold there by Hale over a period of at least a month; that there was a practice of drinking alcoholic beverages in the barber shop, as evidenced by Robinson's testimony and by the empty wine and beer

containers found by the agents on the premises, and that receipts from the sales of alcoholic beverages were deposited in Robinson's cash register.

These are significant highlights, and indicate that Robinson knew or should have known of the unlawful sale of alcoholic beverages in his barber shop. Robinson's statement to the contrary, unsupported and uncorroborated, is not convincing. It is the obvious response in a situation of this nature. Logic dictates that Robinson's disclaimer should not be accepted. Merely posting a sign of the nature described by Robinson cannot, of itself, excuse him from any further responsibility for whatever unlawful alcoholic beverage activities took place in his establishment nor warrant closing his eyes to such activities. Otherwise the operator of a speakeasy of the most aggravated type could seek immunity from forfeiture by adopting the simple expedient of personally abstaining from selling alcoholic beverages at his establishment, meanwhile professing ignorance of such sales. It is obvious that such a claim should be rejected.

For the reasons above stated Robinson's application for return of the equipment of his barber shop is denied.

Consolidated Laundries Corporation seeks return of such towels, marked with its name, as were seized in the barber shop. The person who serviced the barber shop on behalf of the laundry for the past three years states that he did not observe any sales or consumption of alcoholic beverages while there and that there were no alcoholic beverages visible. The towels will be returned to the laundry.

Accordingly, it is DETERMINED and ORDERED that if on or before the 26th day of June, 1950, Consolidated Laundries Corporation pays the costs of seizure and storage of the seized towels, such articles will be returned to it, 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 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 Director of the Division of Alcoholic Beverage Control.

Dated: June 14, 1950

ERWIN B. HOCK
Director.

SCHEDULE "A"

6 - pint bottles of wine
1 - 3 mirror marble wall fixture
6 - mirrors
3 - barber chairs
1 - 2 chair bootblack stand
1 - steel sink
1 - National Cash Register - No. S-95513-317
1 - Florence Oil Burner
3 - clocks
1 - steam towel atomizer
1 - glass show case
4 - steel chairs
1 - hat rack
4 - vibrators
14 - hair clippers
1 - electric fan
$19.78 in cash
Miscellaneous barber shop and shoe shine equipment

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES AND FURNISHINGS ORDERED FORFEITED - MUSIC BOX RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on April 23, 1950 of a quantity of alcoholic beverages and various furnishings, fixtures and equipment at premises located at 1140 Springwood Avenue, in the City of Asbury Park, County of Monmouth and State of New Jersey	Case No. 7616 ON HEARING CONCLUSIONS AND ORDER

Sol Kesselman, Esq., Attorney for Casino Amusement Company.
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, Revised Statutes of New Jersey, to determine whether a quantity of alcoholic beverages, and various furnishings, fixtures and equipment, described in a schedule attached hereto, seized on April 23, 1950 at the quarters of the Krazy Kats Social Club, located at 1140 Springwood Avenue, Asbury Park, New Jersey, constitute unlawful property and should be forfeited.

It appears that the seizure was made by ABC agents because of a series of alleged unlawful sales of alcoholic beverages at the premises.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Casino Amusement Company, which sought return of a music box. No one else appeared to contest forfeiture of the balance of the seized property.

It was established at such hearing that on April 20, 21, 22, and 23, 1950 two ABC agents, accompanied by two agents of the C.I.D., U.S. Army, purchased alcoholic beverages at the club quarters, and observed other persons purchase alcoholic beverages. On April 23rd, the ABC agents disclosed their identity, and seized the alcoholic beverages and furnishings and equipment in the premises. There were forty cans of beer on ice in a cooler in one of the rooms, and twenty-four cans of beer and four bottles of whiskey elsewhere in the room, and three bottles of whiskey and four cans of beer in another room.

The Krazy Kats Social Club did not hold any license authorizing the sale or service of alcoholic beverages at the premises. Inez H. Lester and Reginald Pleasant, the persons who sold alcoholic beverages there, likewise did not hold any such license.

The seized beer and whiskey are illicit alcoholic beverages because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit alcoholic beverages, and all personal property seized therewith in the club quarters constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

The Casino Amusement Company seeks return of a music machine seized in the place on the claim that it did not know or have any reason to suspect that alcoholic beverages were being sold there. It presented documentary evidence establishing that it is the owner of the machine in question. It presented further evidence that it has dealt with the club since 1942, having placed various machines there from time to time, and that the seized machine was placed there in February 1950; that at first it was a shoe shine parlor and soft drink establishment, and recently was converted into a res-

taurant. The person who serviced the various machines testified that no alcoholic beverages were visible at any time when he visited the premises nor was there any other indication that alcoholic beverages were being sold at the premises.

I am satisfied that the amusement company acted in good faith and had no knowledge of, or reason to suspect the illegal liquor activities at the establishment. Accordingly, I shall recognize its claim, pursuant to R.S. 33:1-66(f).

Accordingly, it is DETERMINED and ORDERED that if on or before the 15th day of June, 1950, Casino Amusement Company pays the costs of seizure and storage of the music machine, more particularly described in Schedule "A" attached hereto, such machine will be returned to it; and it is further

DETERMINED and ORDERED that the balance of the seized property described in Schedule "A", including the cash receipts and currency in the music machine, constitutes 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 Director of the Division of Alcoholic Beverage Control.

ERWIN B. HOCK
Director.

Dated: June 5, 1950

SCHEDULE "A"

68 - cans of beer
7 - bottles of other alcoholic beverages
34 - bottles of soda
1 - bar
1 - pool table and equipment
4 - kerosene heaters
1 - paper towel dispenser
1 - Seeburg Music Box Serial #120897F 102295-146S & currency therein
1 - ice box
1 - bread box
1 - Norge Gas Stove
1 - National Cash Register #4256944
1 - gas plate
1 - pie case
16 - chairs
1 - clothes tree
7 - stools
2 - tables
2 - benches
1 - exhaust fan
5 - neon ceiling lights
3 - mirrors
1 - coca cola cooler
1 - Frigidaire Deep Freeze
2 - show cases
1 - display case
1 - electric toaster
$16.00 in cash
Miscellaneous foodstuffs and pots and pans, utensils and other equipment

6. DISCIPLINARY PROCEEDINGS - SUFFERING CONSUMPTION OF ALCOHOLIC BEVERAGES ON LICENSED PREMISES AND FAILING TO KEEP LICENISED PREMISES CLOSED DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

FRANCIS J. & LAURA M. BRENNAN, T/a BRENNANS BAR & GRILL, 132 South Broadway, South Amboy, New Jersey,

Holder of Plenary Retail Consumption License C-7, issued by the Common Council of the City of South Amboy.

CONCLUSIONS AND ORDERS

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David T. Wilentz, Esq., by Henry M. Spitzer, Esq., Attorney for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to charges alleging that (1) on Sunday, March 5, 1950, and on Sunday, March 26, 1950, they suffered the consumption of alcoholic beverages on their licensed premises, in violation of local ordinance; (2) on March 5, 1950, March 26, 1950 and April 16, 1950, they failed to keep their entire licensed premises closed, in violation of local ordinance; and (3) on Sunday, April 16, 1950, they hindered and failed to facilitate an investigation then being made by agents of the State Division of Alcoholic Beverage Control, in violation of R.S. 33:1-35.

The municipal ordinance of the City of South Amboy in question prohibits the sale, service, delivery or consumption of alcoholic beverages between the hours of 2 a.m. and 1 p.m. on Sundays and provides that the entire licensed premises shall be closed between the hours of 2 a.m. and 1 p.m. on Sundays.

On Sunday mornings, March 5 and 26, 1950, ABC investigators observed that defendants' licensed premises were not closed until 2:10, i.e., ten minutes after the closing hour provided for in the local ordinance. On Sunday morning, April 16, 1950, at about 2:30 a.m., two ABC agents observed a dim light in defendants' licensed premises. They kept the premises under observation, and at 2:45 a.m. a man and woman were seen leaving by way of the front entrance. At 3:30 a.m. the two agents, after trying both the front and side doors of the licensed premises, observed through the glass in the front door that there were seven patrons seated at the bar. One of the agents knocked on the front door and a man responded to his knock. The agents told this person that they were from the Alcoholic Beverage Control Division and requested him to unlock the door. Instead of doing this, he walked over to the bartender, who was subsequently identified as one of the licensees, and the licensee came to the door and asked what the agents wanted. The agents held their badges to the window and ordered him to unlock the door and admit them to the premises. However, the licensee made no attempt to open the door but hurried back to the bar and was then observed directing the patrons into a back room which was in complete darkness. The agents continued to knock on the door but the licensee did not open the door. A short time thereafter the ABC agents were joined by two local policemen and the four proceeded down an alley from which a man and woman had just come a short time before. Near a rear door which led to a kitchen a man and woman were seen. The agents returned to the front entrance and at about

3:50 a.m. defendant Francis J. Brennan opened the door and permitted them to enter. The ABC agents observed that a cigarette with lipstick thereon was still burning or smoldering in one of the ash trays.

The interference with the orderly process of law enforcement will not be countenanced.

Defendants have no prior record. Under all of the circumstances in this case, and considering the plea entered herein, I shall impose a suspension of thirty days, less five days' remission for the plea, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 13th day of June, 1950,

ORDERED that Plenary Retail Consumption License C-7, issued by the Common Council of the City of South Amboy to Francis J. & Laura M. Brennan, t/a Brennans Bar & Grill, for premises 132 South Broadway, South Amboy, be and the same is hereby suspended for the balance of its term, effective at 2 a.m., June 19, 1950; and it is further

ORDERED that, if any license be issued to these licensees or any other person for the premises in question for the 1950-51 licensing year, such license shall be under suspension until 2 a.m., July 14, 1950.

ERWIN B. HOCK
Director.

7. DISCIPLINARY PROCEEDINGS - SLOT MACHINES - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EAST CAMDEN POST #705 VETERANS OF FOREIGN WARS OF THE U.S., 2808 Federal Street, Camden, New Jersey,

Holder of Club License CB-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

CONCLUSIONS AND ORDER

Finnegan & Mohrfeld, Esqs., by John H. Mohrfeld, III, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it possessed, allowed, permitted and suffered on its licensed premises, three slot machines, in violation of Rule 8 of State Regulations No. 20.

On May 22, 1950, an agent of the State Division of Alcoholic Beverage Control, during an inspection of the defendant's licensed premises, found on said premises three slot machines of the type commonly referred to as "one-arm bandits." The machines were found in a cabinet located in a rear room of the licensed premises, in such a position that they could be readily played.

Defendant has a prior adjudicated record. Effective June 2, 1947, its license was suspended by me for a period of ten days after a conviction of selling to non-members. Re East Camden Post #705 VFW, Inc., Bulletin 766, Item 11. The minimum penalty indicated for possession of a slot machine is ten days. Re Phil Sheridan Knights of Columbus Bldg. Assn., Bulletin 670, Item 11. Taking into consideration defendant's prior record, I shall suspend the license for fifteen days. Remitting five days for the plea will leave a net suspension of ten days.

Accordingly, it is, on this 15th day of June, 1950,

ORDERED that Club License CB-8, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to East Camden Post #705 Veterans of Foreign Wars of the U.S., for premises 2808 Federal Street, Camden, be and the same is hereby suspended for a period of ten (10) days, commencing at 2 a.m., June 21, 1950, and terminating at the expiration of the license, namely, at midnight, June 30, 1950.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - TRANSPORTATION OF ALCOHOLIC BEVERAGES, IN VIOLATION OF RULE 3 OF STATE REGULATIONS NO. 17 - STORAGE OF ALCOHOLIC BEVERAGES ON PREMISES OTHER THAN LICENSED PREMISES, IN VIOLATION OF RULE 25 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against NORMAN KROUK, T/a HOME BEVERAGE, 1216 Union Street, Linden, New Jersey, Holder of Limited Retail Distribution License DL-1, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden.	CONCLUSIONS AND ORDER

Norman Krouk, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging (1) that on various days between June 14, 1948 and March 16, 1950, he transported alcoholic beverages in his licensed vehicle, bearing transportation insignia, without accompanying bona fide invoices, in violation of Rule 3 of State Regulations No. 17; and (2) that he stored alcoholic beverages on premises other than his licensed premises or a licensed public warehouse, without special permit, in violation of Rule 25 of State Regulations No. 20.

As to charge one it appears from the record that the defendant when making deliveries of malt alcoholic beverages to consumers in his licensed vehicles, utilized cards in place of bona fide invoices. Such cards clearly failed to carry the full information as required in Rule 3 of State Regulations No. 17.

With respect to charge two, the defendant also made a practice of storing malt alcoholic beverages at premises at 307-9 Walnut Street, Elizabeth, which premises are not covered by the defendant's license. It appears that the defendant operates a soda bottling plant at the Walnut Street premises from which he delivered both soda water and beer. The storage of malt alcoholic beverages at the Walnut Street premises was improper since the privileges granted under the license held by him are confined to the premises at 1216 Union Street, Linden, New Jersey.

Under all of the circumstances I shall suspend the license for a period of fifteen days, remitting five days for the plea entered herein and leaving a net suspension of ten days.

Accordingly, it is, on this 16th day of June, 1950,

ORDERED that Limited Retail Distribution License DL-1, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Norman Krouk, t/a Home Beverage, for premises 1216 Union Street, Linden, be and the same is hereby suspended for a period of ten (10) days, commencing at 9 a.m., June 21, 1950, and terminating at the expiration of the license, namely, at midnight, June 30, 1950.

ERWIN B. HOCK
Director.

9. DISQUALIFICATION - PREVIOUS PETITION DENIED - APPLICATION HEREIN GRANTED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.	)	CONCLUSIONS AND ORDER
Case No. 843	)	

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BY THE DIRECTOR:

In March 1924, petitioner was convicted of the crime of unlawful registration upon an indictment containing two separate counts charging the applicant with having voted illegally. The gravamen of the offense in both counts was the false swearing by the applicant of his proper voting address.

On September 17, 1945, the Commissioner dismissed a prior petition filed by petitioner herein because he was not satisfied that petitioner had conducted himself in a law-abiding manner for a period of five years prior to the filing thereof. (Case No. 425, Bulletin 679, Item 6). In said conclusions, the Commissioner was of the opinion that the crime of which petitioner was convicted in March 1924 involved the element of moral turpitude.

On November 18, 1946, a subsequent petition filed by petitioner was dismissed on the basis of the finding on September 17, 1945.

On October 28, 1947, another petition seeking the said relief was denied, with permission to file a new petition for removal of any existing disqualification on or after March 4, 1950.

On March 18, 1949, relief was again denied to petitioner, and it was reiterated at that time that he might, if he so desired, file a new petition for relief after March 4, 1950.

Petitioner has now reapplied to have his disqualification removed. It appears that he has not been convicted of any crime since denial of the prior petition on November 18, 1949.

Three witnesses (an advertising manager for a newspaper, a retired county employee, and a contractor) testified that they had known petitioner twenty or more years and that he has a reputation for being a law-abiding person in the community in which he resides.

The Police Department of the municipality in which petitioner lives has indicated that there are no complaints or investigations pending involving petitioner.

Petitioner testified that he has been taking care of his brother's real estate for the past two years and that he has not been associated in any manner whatsoever with the alcoholic beverage industry.

From the evidence, I conclude that petitioner has conducted himself in a law-abiding manner during the five years last past and that his association with the alcoholic beverage industry will not be contrary to public interest.

Accordingly, it is, on this 9th day of June, 1950,

ORDERED that petitioner's statutory disqualification because of the convictions of crime mentioned in Case No. 425, supra, be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

ERWIN B. HOCK
Director.

10. MORAL TURPITUDE - UNDER CIRCUMSTANCES, CRIME OF RECEIVING STOLEN GOODS INVOLVES MORAL TURPITUDE.

June 8, 1950.

Re: Case No. 620

On May 12, 1950, subject was placed on probation for a period of two years and fined $200 by a County Judge, as a result of his plea of non vult to the crime of receiving stolen goods.

It appears from the testimony of subject that he made arrangements with a man who had stolen liquor in his possession to meet subject's brother so that the latter could purchase the stolen merchandise. Petitioner further testified that when the man who had the stolen liquor in his possession offered the bottles of liquor at such a low price, subject knew "there was something fishy about it."

The crime of receiving stolen goods ordinarily involves moral turpitude. Re Case No. 424, Bulletin 506, Item 3; Re Case No. 304, Bulletin 363, Item 7; Re Case No. 231, Bulletin 271, Item 10. Nothing appears in the instant case to free subject's conviction of that element. Although he claims that he was actually innocent, he may not here collaterally attack his own confessive plea or the merits of his conviction in the criminal court. See Re Case No. 173, Bulletin 504, Item 7, and cases therein cited.

I recommend, therefore, that subject be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude and that, in the opinion of the Director, any li-

censee who employs him or permits him to be connected in any capacity with his business would subject his license to suspension or revocation. R.S. 33:1-25,26.

APPROVED:
ERWIN B. HOCK
Director.

Clarence E. Kremer
Attorney

11. DISQUALIFICATION - REAPPLICATION FOR RELIEF - UNLAWFULLY ENGAGING IN ALCOHOLIC BEVERAGE BUSINESS WHILE DISQUALIFIED - APPLICATION TO LIFT DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.	)	CONCLUSIONS
	)	AND
	)	ORDER
Case No. 829.		

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BY THE DIRECTOR:

It has heretofore been ruled that petitioner has been convicted of a crime involving moral turpitude. Re Case No. 724, Bulletin 841, Item 4.

Since the dismissal of his former application for relief, Re Case No. 724, supra, he has apparently deliberately engaged in the alcoholic beverage business under a license issued to one Helen M. Van Volkom, Cf. Re Van Volkom, decided concurrently herewith.

His continued disregard for law makes it impossible for me to find that the statutory requirement requisite to removal of his disqualification under the provisions of R.S. 33:1-31.2, i.e., that "the applicant has been conducting himself in a law-abiding manner" for the past five years, or that "his association with the alcoholic beverage industry will not be contrary to the public interest." In the absence of any such finding, I have no authority to grant the relief sought. Re Case No. 346, Bulletin 642, Item 4.

Accordingly, it is, on this 14th day of June, 1950,

ORDERED that the petition herein be and the same is hereby dismissed.

Erwin B. Hock
Director.