

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

BULLETIN 363

NOVEMBER 22, 1939

1. AMERICAN FLAG - DISPLAY BY LICENSEES - RULES.

November 18, 1939

Mr. John Yeaggogulu,
T/a Dreamland Grill,
Newark, N. J.

Dear Sir:

It is reported to me that, during the course of a recent routine inspection of your premises by my staff, an American flag was found draped over a piano in the rear room and a sign advertising beer was placed on top of the flag; that at the investigators' request the bartender immediately removed the flag and put it away.

There is nothing in my Rules and Regulations concerning the display of the American flag on licensed premises. However, at a conference called at Washington, in June 1923, to draw up a code covering proper civil use of the flag, fifteen rules were promulgated. The following appear pertinent:

"3. Do not place any other flag or pennant above or to the right of the flag of the United States.

"4. Do not let the flag of the United States touch the ground or trail in the water.

"5. Do not place any object or emblem of any kind on or above the flag of the United States.

"6. Do not use the flag as drapery; use bunting.

"7. Do not fasten the flag in such manner as will permit it to be easily torn.

"14. Do not use the flag of the United States in any form of advertising nor fasten an advertising sign to a flagpole.

"15. Do not display, use or store the flag in such a manner as will permit it to be easily soiled or damaged."

It should be the joy of all licensees to revere and respect our national flag.

I believe the incident mentioned was mere thoughtlessness and am glad to learn of your prompt compliance.

In order to make the foregoing "Don'ts" a duty as well as a privilege, they are hereby promulgated as rules of the Department, effective immediately.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

2. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED TOGETHER WITH STORE FIXTURES AND HOUSEHOLD FURNITURE.

In the Matter of the Seizure of)	Case 4919
31 bottles of beer, a pint of rye)	
whiskey, a pint of wine, and cer-)	
tain store fixtures and household)	ON HEARING
furniture, from James Y. Christmas)	CONCLUSIONS AND ORDER
at 445 North Maryland Avenue, in)	
the City of Atlantic City, County)	
of Atlantic and State of New Jersey.)	
-----))	

William B. Surran, Esq., Attorney for James Y. Christmas
 Harry Castelbaum, Esq., Attorney for the Department of Alcoholic
 Beverage Control.

BY THE COMMISSIONER:

On July 25, 1938 police officers, accompanied by investi-
 gators of this Department, searched James Y. Christmas' restaurant
 at 445 North Maryland Avenue, Atlantic City, and seized 31 bottles
 of beer, a pint of rye whiskey, a pint of wine, and the furniture,
 fixtures and equipment found on the premises, as set forth in
 Schedule "A" annexed hereto.

Christmas was arrested and later convicted of possessing
 illicit alcoholic beverages and of selling alcoholic beverages with-
 out a license.

At the hearing held herein, Christmas claimed that he was
 the owner of only six bottles of beer and the rye whiskey; that the
 remainder of the beer, stored for convenience in his ice box, be-
 longed to Captain Washington, one of his customers; that the wine
 belonged to his nephew, George Walls, who boarded with him.

I am not impressed with his attempt to shift ownership
 of part of the beer and the wine. Captain Washington squarely
 contradicts him and says that it is not his beer. His nephew,
 George Walls, claims both the beer and the wine. The natural pre-
 sumption would be that the alcoholic beverages found on his premises
 belonged to Christmas. In view of the conflict in the testimony,
 I conclude that the presumption has not been overcome and find as
 a fact that the alcoholic beverages belonged to Christmas.

His disclaimer of any intention to sell the alcoholic
 beverages is hardly consistent with his conduct in the past. In
 1935, while the holder of a limited distribution license issued by
 the City of Atlantic City, he pleaded guilty, in a disciplinary
 proceeding, to a charge of possessing illicit alcoholic beverages,
 and his license was suspended for seven days. He was convicted
 once in 1936, and twice in 1937, in criminal proceedings wherein
 he was charged with possessing illicit alcoholic beverages and
 selling alcoholic beverages in his restaurant without a license.

His inclination to indulge in unlicensed sales of alco-
 holic beverages is thus abundantly established. Indeed, the evi-
 dence shows that he sold beer and whiskey in his unlicensed res-
 taurant on a number of occasions in July 1938, shortly before his
 instant arrest. He claims, however, that he did not sell liquor
 to his customers but merely accommodated them by ordering it from
 a nearby liquor dealer. When it was delivered, he paid the dealer,
 and then turned it over to and collected from his customers.

In view of his past record, I do not believe his story. Even if true, it would of itself constitute unlicensed sales of alcoholic beverages. Cf. Re Vaccaro, Bulletin 87, Item 2; Re Schuyler, Bulletin 136, Item 8; Re Bashover, Bulletin 184, Item 2; Re Kashner, Bulletin 199, Item 12.

For these reasons, I am satisfied that the seized alcoholic beverages were possessed by Christmas with intent to sell. Hence they constitute illicit alcoholic beverages. R. S. 33:1-1(i). The alcoholic beverages and all personal property found on the same premises are unlawful property subject to seizure and confiscation. R. S. 33:1-1(y), R. S. 33:1-66(b).

Accordingly, it is ORDERED that the seized property 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 Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 17, 1939.

SCHEDULE "A"

- 31 - bottles beer
 - 1 - bottle whiskey
 - 1 - bottle wine
 - 1 - bottle glycerine
 - Store fixtures consisting of:
 - 1 - refrigerator case
 - 1 - show case
 - 2 - cash registers
 - 1 - electric stove
 - Various tables and chairs and other miscellaneous furniture
- And a number of tables, chairs, scales and other miscellaneous furniture
 - Various household furniture consisting of:
 - 1 - buffet
 - 1 - ice box
 - 1 - bedstead
 - 1 - electric lamp

3. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure)	Case 5507
on July 25, 1939, of a quantity)	
of wine and beer at 36½ Park)	
Avenue, in the City of Newark,)	ON HEARING
County of Essex and State of)	CONCLUSIONS AND ORDER
New Jersey.)	
-----)	

Joseph L. Magrino, Esq., Attorney for Michael Cardinale.
Harry Castelbaum, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

On July 25, 1939, investigators of this Department seized the items described in Schedule "A" annexed hereto as unlawful property. The seizure took place two days after Investigator Wagi of this Department allegedly purchased three bottles of beer and a bottle of wine at the grocery and delicatessen store conducted by Michael Cardinale at the premises mentioned above. Michael Cardinale had no license to sell alcoholic beverages.

At a hearing herein, it was admitted that the seized wine was manufactured by Michael Cardinale in the Fall of 1938 without

a permit. Analysis disclosed that said wine was fit for beverage purposes and had an alcoholic content of 14.05% by volume. Clearly, the wine was illicit since it was manufactured without a permit and, under the circumstances, the beer which was seized in the same building in which the wine was found is also unlawful property and subject to forfeiture. R. S. 33:1-66(b).

These facts would be sufficient to dispose of this case but I shall consider the question of the alleged sale because a determination on that question may be material in deciding whether any wine permits should be issued to Michael Cardinale in the future. Investigator Wagi testified that on the afternoon of July 23, 1939 he purchased some groceries, three bottles of beer and a bottle of wine in Cardinale's store; that he received an itemized bill totaling \$2.02, which he paid. Cardinale admits that the item of thirty cents appearing on said bill represented the purchase price of the three bottles of beer and that the item of fifty cents represented the purchase price of the bottle of wine. The evidence is convincing that there was a sale of beer and wine to the investigator.

I find no evidence of entrapment. Even if it is admitted that the investigator represented that he wished to purchase the wine for his sick son, which testimony Wagi denied, the evidence would fall far short of showing entrapment.

I find that all of the seized property constitutes unlawful property.

Accordingly, it is ORDERED that the seized property set forth in Schedule "A", annexed hereto, 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 Commissioner.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 16, 1939.

SCHEDULE "A"

3 - 50 gallon barrels of wine
19 - jugs of wine
16 - quart bottles of wine
5 - bottles of beer

4. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED.

In the Matter of the Seizure on)
May 6, 1939, of Edna Bryant's)
Chevrolet Coupe and two jugs of)
alcohol found therein, on Plain-)
field Avenue, in the Township of)
Scotch Plains, County of Union)
and State of New Jersey.)

Case 5388

ON HEARING
CONCLUSIONS AND ORDER

Edna Bryant and Foss M. Bryant, Pro Se.
Harry Castelbaum, Esq., Attorney for the Department of
Alcoholic Beverage Control.

BY THE COMMISSIONER:

On May 6, 1939, Foss M. Bryant drove away, in his wife's Chevrolet Coupe, from his home in Vaux Hall. Investigators of this Department followed him because he was suspected of engaging in illicit liquor activities. He came to a stop on Plainfield Avenue, in the Township of Scotch Plains, and was apprehended as he was about to remove a five gallon jug of alcohol from the vehicle. The investigators ascertained that said jug, and another jug of alcohol which they found in the vehicle, bore no tax stamps or other indication that the alcohol was tax-paid, and that the motor vehicle was not licensed to transport alcoholic beverages. Thereupon they arrested Foss M. Bryant and seized the motor vehicle and the alcohol. The alcohol was subsequently analyzed by the Department's Chemist and found to be fit for beverage purposes, having an alcoholic content of 41.05% by volume.

At a hearing held to determine whether the Chevrolet Coupe and alcohol should be forfeited, Foss M. Bryant and his wife, Edna Bryant, appeared and sought the return of the motor vehicle.

Foss M. Bryant did not deny the fact that he had transported illicit alcoholic beverages. He claims that while driving on the highway, he met a man known to him as "Red", whose car had broken down, and that at "Red's" request he transferred the jugs from "Red's" car to his, and agreed to deliver them to a designated address on Plainfield Avenue. The investigators who followed him from his home do not report any such occurrence.

I find that the seized alcoholic beverages are illicit, and were transported in violation of rules and regulations. Hence the alcoholic beverages and the vehicle containing the same are unlawful property subject to forfeiture. R. S. 33:1-66(b) and (c).

Edna Bryant, the owner of the car, requests that the car be returned to her because she acted in good faith and had no knowledge of her husband's wrongdoing.

Such a contention must be established by convincing proof. In the instant case, Mrs. Bryant testified that she did not know what was going on, because she was in bed when her husband informed her that he was going to Westfield with their two children to spend the weekend.

It appears, however, that Mrs. Bryant has only a nominal interest in the motor vehicle, because the evidence shows that it was bought and paid for by her husband, title being placed in her name merely for convenience. In view that her husband was the real owner of the car, the innocence of the wife, even if established, would not be a sufficient reason for ordering the return of the car. Her application is therefore denied.

Accordingly, it is ORDERED that the Chevrolet Coupe, described in Schedule "A" annexed hereto, hereby is forfeited in accordance with the provisions of R. S. 33:1-68, and that it be retained for the use of hospitals and State, County and municipal institutions. It is further ORDERED that the illicit alcohol be destroyed.

D. FREDERICK BURNETT,
Commissioner.

Dated: November 17, 1939.

SCHEDULE "A"

- 1 - 5 gallon jug alcohol
- 1 - 1 gallon jug alcohol
- 1 - Chevrolet Coupe, Serial 2AE55116,
Engine 2573768, New Jersey
1939 Registration NE211

5. MUNICIPAL REGULATIONS - HOURS - SPECIAL EXEMPTIONS FOR PARTICULAR GROUPS OR SPECIAL OCCASIONS - CONSIDERATIONS APPLICABLE.

November 18, 1939

Milton A. Weiss, Esq.,
Attorney, Borough of Rocky Hill,
Somerville, N. J.

My dear Mr. Weiss:

I have before me proposed ordinance pertaining to alcoholic beverages which passed first reading on October 25 and will be further considered on December 4.

* * * * *

(6) The exception, in Section 2, for Christmas and New Year's Eves is acceptable. But the further exception for the nights on which the Rocky Hill Fire Company holds its annual carnival is much too indefinite. The adequacy of a regulation of this kind is measured not only by its enforceability or the facility with which it may be administered, but also by its application. Now the Rocky Hill officials may have ready knowledge of the nights during which the carnival is held but how are my men to know. If you were to specify the particular days it would be one thing, but as it now stands who is to say when the carnival is officially under way, how long it officially continues, and when it officially commences and ends. If the Fire Company should decide to hold more than one carnival in subsequent years, which will be the "annual" one? And why this special permission only for the Fire Company? Isn't one group just as entitled to it, all things being equal, as another? How, furthermore, does it affect your two licensees? Is it primarily for the benefit of one, or will both profit from it? If all of these matters are carefully thought out and contemplated in the regulation, I shall be glad to reconsider it. As it now stands, I could not approve it. As a general proposition, it seems to me that except for occasions such as Christmas and New Year's, which are recognized as special by all, it is poor policy and inadvisable to provide for any such extensions.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

6. ADVERTISING - DISTRESS SIGNS IMPLYING REDUCTIONS IN PRICE ARE PROHIBITED IF ON OR VISIBLE FROM THE EXTERIOR OF THE PREMISES.

November 20, 1939

Mutual Wine Stores,
Jersey City, N. J.

Gentlemen:

I have yours of November 14 submitting for my consideration a proposed sign reading:

"Forced to vacate. Must make room for contractors. Every bottle of Imported and domestic Wines and liquors must go. Stock up now for the holidays. It will pay you to shop here for your Wines and Liquors."

The proposed sign is an indirect advertisement of price in excess of the allowable size and is, therefore, disapproved. It sounds like a fire sale. The implication from distress signs of this sort is that the proprietor is losing his business or his shirt and so the fire water is being offered at substantial reductions in price.

Its use will be cause for the suspension of your license.

You are prohibited by Rule 3 of Regulations No. 21 (Pamphlet Rules, page 66) from advertising, directly or indirectly, the price of any alcoholic beverage on the exterior of your premises, or in the show window or door, or in the interior when visible from the street, excepting only by $1\frac{1}{2}$ " x $1\frac{1}{2}$ " cards in the show window bearing prices of merchandise being sold in original containers for off-premises consumption.

Mind you, also, that there may be no sales or offers of sale at less than the Fair Trade minimums unless you have first obtained a special permit authorizing such sales pursuant to Rule 7 of Regulations 30. A copy of Regulations No. 30 is enclosed. Information regarding application for such permit is available on request.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

7. ELIGIBILITY - MORAL TURPITUDE - FACTS EXAMINED - CONCLUSIONS.

November 20, 1939

Re: Case No. 304

Applicant seeks a determination of his eligibility to be employed on licensed premises notwithstanding conviction of crime.

On November 27, 1929, in the Passaic County Court of Special Sessions, applicant, then twenty-one years old, pleaded non vult to two indictments, one charging breaking, entering, larceny, receiving, and the other carrying concealed weapons. Sentence was suspended on the latter charge, but on the former, applicant was sentenced to Rahway Reformatory, from which he was paroled on October 24, 1930. His parole expired on December 4, 1936, but in the meantime he was arrested in August 1932 and charged with larceny (stealing gasoline from a parked automobile), as a result of which he pleaded non vult and received a suspended sentence in the Second Criminal Court of Passaic County in November 1932. Again in June 1934 he was arrested and charged with manslaughter (traffic accident), which charge was dismissed in the Second District Criminal Court of Bergen County in August 1934. Applicant also admits a conviction in the Bloomfield Police Court in May 1939 for reckless driving, for which he was fined \$25.00 and \$5.00 costs and at the same time \$3.00 and \$2.00 costs for "sarcasm to an officer."

Applicant's present version of the circumstances under which he committed the crimes in 1929 is at sharp variance with the story he gave at the time. Then he said that he met two other persons and suggested that the three of them hold up a lunch wagon, whereupon he went to a garage where he knew the night man to be asleep and took a car, thereafter going home to procure a revolver and some shells, intending to commit the holdup. At the hearing he claimed that he had found a gun while at work; that it didn't work but he cleaned it up because "I guess I read too many dime novel and I felt good to own a gun"; that on the night he was arrested he had borrowed a car from and with the consent of his friend, the night man at the garage, and had taken two of his friends to his home to get the gun and some shells, intending to go to a woods and find out whether the gun would work. This around midnight!

As to the conviction for larceny of stealing gasoline from a parked automobile, applicant claims he was driving a friend home at four in the morning when, on a street in Clifton, he stopped at the request of the friend, who got out of the car and was in the act of picking up a can into which gasoline had been siphoned, whereupon both were arrested by waiting police. Applicant said nothing at the hearing about the several radiator caps and used tires in his car, which he admitted to the police that he stole.

The crimes of breaking, entering, larceny and receiving ordinarily involve moral turpitude. Applicant's explanation of the circumstances surrounding the commission of the crimes in 1929 and 1932 is unworthy of belief.

It is recommended that applicant be advised that he is ineligible to be employed on licensed premises.

APPROVED:
D. FREDERICK BURNETT,
Commissioner.

Emerson A. Tschupp,
Attorney.

8. REFERENDA - SPECIFIED HOURS FOR SUNDAY SALES - EFFECT OF NEGATIVE VOTE - HEREIN OF THE DIFFERENCE IN RESULT OF A NEGATIVE VOTE TO A QUESTION PUT AS TO WHETHER THERE SHOULD BE ANY SALES ON SUNDAYS.

November 20, 1939.

Mr. Neil F. Deighan, Pres.
N. J. Licensed Beverage Assn.
R. F. D. Palmyra, N. J.

My dear Mr. Deighan:

I have yours of November 9th and do not yet have from the Clerk of Riverside Township an official certification of the referendum.

On the basis of the information you have given, I take the facts to be as follows: A question was submitted to the electorate under R. S. 33:1-47.1 whether the sale of alcoholic beverages at retail should be permitted on certain specified hours on Sundays; that the vote was in the negative; that previously to and in force at the time of the referendum there was an ordinance which permitted clubs - but clubs only - to sell on certain specified hours on Sundays.

You ask whether the negative vote on the referendum supersedes such previous ordinance.

It does not.

The reason is that the statute under which this referendum was held has expressly prescribed just what effect an affirmative or a negative vote shall have, viz.:-- if affirmative, "thereafter the retail sale of alcoholic beverages may be made only within the hours fixed by such referendum"; if negative, "thereafter the hours between which the sale of alcoholic beverages at retail may be made may be regulated as theretofore in such municipality".

It is therefore clear that while an affirmative vote would have definitely fixed the only hours of sale on Sunday in that municipality and that any inconsistent ordinance would be automatically superseded, yet, on a negative vote, the hours of sale may be regulated "as theretofore" which means just as if there had never been any referendum.

In brief, the negative vote has no effect whatsoever on the existing regulations which continue in force until altered, amended or repealed by the Township Committee.

You also ask is it within the jurisdiction of the Township Committee to adopt an ordinance permitting clubs to operate during the hours set forth in the referendum.

The answer is in the affirmative for the same reason aforesaid.

The statutory effect of a referendum, as in the instant case concerning specified hours for Sunday selling, held under R. S. 33:1-47.1 is quite different from one concerning any and all Sunday sales held under R. S. 33:1-47; i.e., where the question put is: "Shall the sale of alcoholic beverages be permitted on Sundays in this municipality?"

*Par 2-0975 }
3-2600 }
H.H.H.*

In the latter case, if there is a negative vote, the statute prescribes that "thereupon it shall be unlawful for any person to sell alcoholic beverages in such municipality on Sundays." If this had been the question put to the electorate and the vote had been in the negative, the previous ordinance would have been automatically superseded and no new one could lawfully be enacted to confer authority upon any licensee to sell at retail at any time on Sundays.

As it is, the Township Committee are left with complete power to regulate the traffic.

So much for the power. As a matter of policy, the Township Committee would be well advised to give careful consideration to the voice of the people as heard in this referendum.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

9. HOURS OF SALE - REQUEST FOR SUNDAY OPENING TO CELEBRATE NEW YEAR'S EVE - NO STATE-WIDE DISPENSATION TO BE MADE.

Dear Mr. Burnett:

I would appreciate hearing from you with reference to a ruling on taverns in regard to opening Sunday, December 31, for New Year's Eve.

We are interested in knowing whether there will be a State ruling for the taverns that are closed on Sundays in varied communities in the State.

Very truly yours,
Devin Products Co.

November 20, 1939

Devin Products Co.,
Trenton, N. J.

Gentlemen:

There will be no dispensation by me authorizing taverns to open on Sunday, December 31st for New Year's Eve. Each community determines for itself whether taverns shall be open or closed on Sundays. It would defy the first principles of Home Rule to allow taverns to open on a Sunday if the local sentiment was against it.

Hence, if there is to be any change, it can be accomplished only by formal ordinance duly adopted by the municipal governing body unless, of course, the hours have been fixed by referendum, in which event there can be no change except by subsequent referendum.

Very truly yours,
D. FREDERICK BURNETT,
Commissioner.

10. DISCIPLINARY PROCEEDINGS - SALE OF ILLICIT BEVERAGES - 30 DAYS.

In the Matter of Disciplinary Proceedings against)

HELEN PUCOVIC, 141 White Horse Pike, Berlin, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Berlin)

Frank M. Lario, Esq., Attorney for the Licensee. Stanton J. MacIntosh, Esq., Attorney for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Charge was served upon the licensee alleging that:

"On or about January 27, 1939, you possessed three quart bottles labeled Three Feathers Blended Whiskey, Calverts Special Blended Whiskey, and Wilson That's All Blended Whiskey, containing illicit alcoholic beverages, in violation of R.S. 33:1-50."

On January 27, 1939, Junior Inspectors Wilkey and Tears of the Alcohol Tax Unit, United States Department of Internal Revenue, seized, in the barroom of the licensed premises, the three bottles mentioned in the charge. Subsequent analysis disclosed that the solid content of the liquor contained in the seized bottles was two-thirds, three-fourths and one-half, respectively, of that contained in genuine samples; that the contents of the "Three Feathers" and "Calverts" bottles had only a small proportion of artificial coloring and the contents of the "Wilson" bottle had no artificial coloring whereas most of the coloring of the genuine samples is artificial. The chemist concludes that the contents of the three bottles are not genuine as labeled. I find as a fact that the three bottles contained illicit alcoholic beverages.

Licensee contends that each bottle was a "refill". She alleges that she is personally innocent and puts the blame on a former bartender, William Clevenger, who had been in her employ for about seven months and whom she discharged on the date the violation was discovered. The seizure took place on a Friday. Clevenger testified that on the previous Sunday morning, while cleaning up the premises, he had poured into the seized bottles the contents of a number of glasses of whiskey which had been left by patrons when the premises closed. I doubt his story because the "Wilson"

knew for twelve years and who was employed as a truck driver. Comer claims that he was not responsible for the presence of the still, and that he did not detect any odor or observe any suspicious activities to indicate that the still had been installed in his own cellar; that he has never been previously arrested.

It appears that Comer is eighty-four years of age and lives alone in the dwelling which he owns and in which he has resided for many years. His sole income consists of a pension of \$22.00 a month, and what little he earns from time to time by huckstering. Out of his income he pays \$15.00 a month to the Building & Loan Association which holds a mortgage on the property. He states that he has no other assets, and if evicted will have no place to live.

While I have grave doubts as to Comer's innocence, I cannot bring myself to padlock his home in his advanced age. He may remain where he is. He must not, however, allow this to happen again.

I find that the property described in Schedule "A" is unlawful property. R. S. Title 33, Chapter 2.

Accordingly, it is ORDERED that the seized property be and hereby is forfeited in accordance with the provisions of R. S. Sec. 33:2-5, 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: November 19, 1939.

SCHEDULE "A"

- 1 - Copper cooker
- 1 - Copper dephlegmator
- 1 - Copper preheater
- 1 - Copper gooseneck
- 1 - Galvanized cooker and copper coils
- 3 - bags coke
- 1 - 100 lb. bag sugar
- 1 - Gould hand force pump
- 1 - Titan electric pump
- 1 - 30 gallon pressure tank
- 25 - 50 gallon barrels with mash
- Miscellaneous personal property.

12. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY RELEASED.

In the Matter of the Seizure of)	Case 5036
a wine press, a quantity of wine)	
and miscellaneous personal prop-)	
erty from Joseph Poma, at 322)	ON HEARING
Cohansey Street, in the City of)	CONCLUSIONS AND ORDER
Bridgeton, County of Cumberland)	
and State of New Jersey.)	

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

BY THE COMMISSIONER:

On September 19, 1938, investigators of this Department seized from Joseph Poma the items described in Schedule "A", annexed hereto, as unlawful property. The seizure took place the day after one William Wilson allegedly purchased a pint of wine from Joseph Poma at the premises mentioned above. Poma had no license to sell alcoholic beverages.

At a hearing held herein, Joseph Poma testified that he had purchased the seized jug of wine at a licensed liquor store, and produced a bill from the dealer. No other alcoholic beverages were seized. Poma denied that he had sold Wilson or anyone else any wine or other alcoholic beverages, and requested the return of the articles seized from him.

Joseph Poma was arrested at the time of the seizure, charged with possession of illicit alcoholic beverages and the unlicensed sale of alcoholic beverages, but the Grand Jury passed the case because of lack of evidence, and the prosecutor has advised that he does not intend to present the case again.

The jug in which the wine was contained bore a label which indicated that the contents had been tax paid. The Department's chemist analyzed the wine in the jug and the wine in the pint bottle, which the police had taken from Wilson, and found them to be entirely different in character.

The complaint against Joseph Poma furnished ample ground for the seizure pending further investigation. However, the evidence herein does not show that Poma possessed the wine for purpose of sale, or that the wine was illicit in origin.

It is therefore ORDERED that the property seized herein be returned to Joseph Poma.

Dated: November 19, 1939.

D. FREDERICK BURNETT,
Commissioner.

SCHEDULE "A"

- 9 - Empty wood barrels
- 3 - Empty 10 gallon jugs
- 1 - Wine press (complete)
- 3 - Funnels
- 1 - 1/2 gallon bottle of wine
- 1 - pint bottle of wine

13. SEIZURES - CONFISCATION PROCEEDINGS - PROPERTY FORFEITED -
PADLOCK DENIED.

In the Matter of the Seizure on)	Case 5392
May 11, 1939 of a number of still)	
parts, at 23 Beers Street in the)	ON HEARING
Borough of Keyport, County of)	CONCLUSIONS AND ORDER
Monmouth and State of New Jersey.)	

Mary Rapolla Toggia, Pro Se.
 Harry Castelbaum, Esq., Attorney for the Department of
 Alcoholic Beverage Control.
 BY THE COMMISSIONER:

Investigators of this Department seized the unregistered still parts set forth in Schedule "A" annexed hereto, which they found in the cellar of premises known as 23 Beers Street, Keyport.

Mary Rapolla Toggia, owner of the realty, appeared at the hearing herein and sought to avoid padlocking of the premises. Forfeiture of the still parts was not contested.

The evidence shows that Mrs. Toggia, who resides in New York, inherited the property from her mother; that the premises were rented to one Pasquale Leonette about two and a half years prior to the seizure; that on her infrequent visits to Keyport, Mrs. Toggia had no occasion to visit the premises since the rent was forwarded to her, and consequently she did not know that Leonette had the still parts on the premises. It further appears that Leonette has since vacated the premises. In view of the foregoing, good cause has been shown why a padlocking penalty should not be imposed.

It is determined that the seized property constitutes unlawful property. R. S. 33:2-2.

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: November 20, 1939.

SCHEDULE "A"

- 1 - 75 gallon copper cooker
- 1 - 10 gallon cooler and coil
- 1 - copper dephlegmator

14. AUTOMATIC SUSPENSION - SALES TO MINORS - APPLICATION TO LIFT - GRANTED.

In the Matter of a Petition by)
ERIE'S GARDEN, INC.,)
535 Ridge Road,)
Lyndhurst, New Jersey,)

CONCLUSIONS
AND ORDER

To Lift the Automatic Suspension)
of Plenary Retail Consumption)
License No. C-16, issued by the)
Board of Commissioners of the)
Township of Lyndhurst.)

William H. J. Ely, Esq., Attorney for Petitioner.

BY THE COMMISSIONER:

After Gerald Vickers, former Treasurer of petitioner herein, was found guilty on an indictment for selling alcoholic beverages to a minor and sentenced to pay a fine of \$50.00, the license of petitioner was picked up on November 17, 1939, as a result of its automatic suspension because of said conviction. R. S. 33:1-31.1.

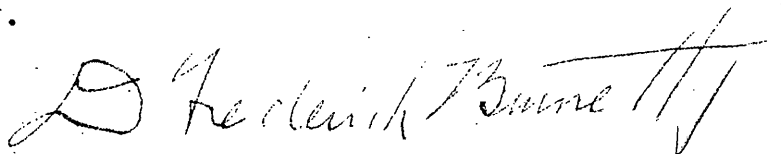
A license formerly held by petitioner had been suspended for ten days (August 25, 1937 to September 3, 1937, both inclusive) by the local issuing authority for the violation upon which the indictment and conviction were based.

A review of the synopsis of the case forwarded to the local issuing authority, upon which the charges in the disciplinary proceeding were based, shows that a young man, aged 19, had been served three glasses of beer at the licensed premises by Gerald C. Vickers.

This is licensee's first offense of record. Including the ten-day suspension imposed in August 1937, it has suffered a total suspension of thirteen days. That is enough.

Accordingly, it is, on this 20th day of November, 1939,

ORDERED, that the automatic suspension of the license be lifted, effective immediately.



Commissioner.