

Director Davis
Sent to Regular Mailing List
STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1044

DECEMBER 30, 1954.

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GENERAL INVESTIGATIVE DIVISION
DEPARTMENT OF JUSTICE
WASHINGTON, D. C. 20535

MEMORANDUM FOR THE DIRECTOR, FBI

INTERNAL SECURITY - R

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

BULLETIN 1044

DECEMBER 30, 1954.

1. COURT DECISIONS - PETRANGELI v. BARRETT ET ALS. - ORDER OF
DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-390/53

NESTORE PETRANGELI,)
Appellant-Respondent,)
-vs-)
JOSEPH BARRETT, trading as)
DELAVUE GRILL, PHYLLIS K.)
SCIAROTTA, trading as CLUB 88,)
and the TOWNSHIP COMMITTEE OF)
THE TOWNSHIP OF EWING, MERCER)
COUNTY, NEW JERSEY,)
Respondent-Appellants.)

CIVIL ACTION
OPINION

Argued November 22, 1954. Decided December 17, 1954.

Before Judges Goldmann, Freund and Schettino.

Mr. Samuel Leventhal argued the cause for respondent-appellants, Mr. William Abbotts and Mr. Samuel Leventhal, attorneys; Mr. John Abbotts, on the brief.

Mr. George Pellettieri argued the cause for appellant-respondent.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for State of New Jersey, Division of Alcoholic Beverage Control; Grover C. Richman, Jr., Attorney General.

The opinion of the court was delivered by

SCHETTINO, J.S.C.

Appeal is taken from an order of the Division of Alcoholic Beverage Control reversing the action of the Township Committee of Ewing Township in granting appellants, Joseph Barrett and Phyllis Sciarrotta, reciprocal transfers of plenary retail consumption licenses from person-to-person and place-to-place.

From Sciarrotta and her premises at 200 Ewingville Road to Barrett and his premises on River Road there was transferred a plenary retail consumption license with broad package privileges. At the same time from Barrett and his premises to Sciarrotta and her premises, there was transferred a plenary retail consumption license without broad package privileges. Under the license transferred, Barrett intends to sell alcoholic beverages for off-premise consumption from a liquor store instead of from his public barroom to which such sales were restricted under his original license. N.J.S.A. 33:1-12.23. Also located on River Road are the premises of Nestore Petrangeli and Jules Gasparri, holders of plenary retail consumption licenses. The premises of Barrett, Petrangeli, and Gasparri lie within a distance of 1000 feet total.

When the applications for transfers were filed with the township committee, Petrangeli filed an objection on the ground that the proposed transfer would be in direct violation of the provisions of an existing ordinance of the Township of Ewing forbidding transfers of such licenses to premises within 1000 feet of existing licensed premises, and that such transfer would cover a portion of Barrett's premises not previously licensed. The ordinance, so far as is here pertinent, provides:

"1. No plenary retail consumption license or plenary retail distribution license shall be issued for or transferred to premises within one thousand (1,000) feet of any other premises licensed under a plenary retail consumption or plenary retail distribution license; provided, however, that nothing in this ordinance shall prevent renewal, for the premises now licensed or person-to-person transfer of licenses existing at the time of the effective date of this ordinance; provided further, that nothing in this ordinance shall prevent the transfer of any such licensed premises or structure which may be taken for public use or destroyed to a location within one thousand (1,000) feet of its present location provided that such new location is not prohibited by any statute of the State of New Jersey or other ordinance or regulation of the Township of Ewing."

A hearing was held on the application by the township committee on December 11, 1953, at which time the applicants -- appellants, Barrett and Sciarrotta -- and Petrangeli appeared. At the conclusion of the hearing the township committee granted the applications for transfer. The mayor stated the reasons for the township committee's action as follows:

"The purpose or the intent of the Township Committee in the passage of the ordinance was to eliminate the ganging up of taverns. The feeling being it would prevent the extraordinary police problems which seem to arrive when liquor establishments are concentrated in a small area. It was not the intention of the Township Committee to prevent this sort of transfer or exchange. Both licenses have the same privileges of selling package goods for off premises consumption.

"We consider this to be nothing more than an application for the exchange of an existing premises, a privilege which has been and may be granted to licenses. We do not believe the general welfare of the community will be adversely affected by the granting of this application."

The ordinance provides escape clauses for certain hardship cases, but they are not pertinent here, and it is not contended that the transfers in question come within these provisos.

On December 14, 1953 Petrangeli appealed the action of the township committee to the Director of the Division of Alcoholic Beverage Control. Hearing was held, and on March 11, 1954 the Director filed his conclusions and order reversing the action of the township committee. On March 12, 1954 appellants filed an appeal with this court. Shortly thereafter our Supreme Court handed down the decision of Mazza v. Cavicchia, 15 N. J. 498 (1954). By reason thereof, this court remanded the matter to the Division of Alcoholic Beverage Control for the purpose of allowing the parties in interest to examine and make objections to, if any, and for argument concerning the hearer's report in accordance with the Mazza case opinion. Further proceedings were then had, with the result that the Director affirmed his prior conclusions and order reversing the township action.

Appellants argue that the purpose of enacting the ordinance was the protection of public welfare. This contention is based on the statement of the mayor that the ordinance was passed to prevent the ganging up of liquor establishments and to keep them spaced apart in order to expedite policing practices. It is not doubted that considerations of general welfare prompted the legislation, but N.J.S.A. 33:1-40 is the apparent legislative authority here. Aside from the weight to be accorded the mayor's statement, which will be discussed at a later point, the language of the ordinance is unambiguous and its purpose seems to be to limit the number of licensed premises, not merely to spread them out.

Originally N.J.S.A. 33:1-12(1) allowed holders of plenary retail consumption licenses broad package privileges. Package goods could be sold from portions of the licensed premises other than the public barroom and from a separate liquor store with or without a bar. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940). Subsequent legislation changed this. Effective May 28, 1948, L. 1948, c. 98, p. 552, sec. 1 (N.J.S.A. 33:1-12.23) restricts such licensees to the sale of package goods in the public barroom only, except in those places where, prior thereto, package goods were sold in another portion of the licensed premises. A license with a broad package provision is distinct from one without such privilege and grants the holder thereof more extensive rights. Since the Alcoholic Beverage Law does not provide for the exchange of existing licenses, both applications here must be considered as applications for transfers within the provisions of N.J.S.A. 33:1-26.

The right of the legislature or of municipalities or of other authority under legislative power given to regulate the sale of intoxicating liquors at retail is within the police power of the State. Meehan v. Board of Excise Commissioners of Jersey City, 73 N.J.L. 382 (Sup. Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908). The legislative authority for the enactment of the ordinance here involved is N.J.S.A. 33:1-40, which expressly authorizes municipalities to limit by ordinance the number of licenses to sell alcoholic beverages at retail in the community. When a governing body adopts an ordinance which specifies the minimum space between licensed premises, its result is to limit the number of licenses, since the greater the intervening distance that must separate one licensed premises from another, the fewer the number of licenses that may exist within the municipality. Dal Roth, Inc. v. Division of Alcoholic Beverage Control, 28 N. J. Super. 246 (App. Div. 1953).

Under N.J.S.A. 33:1-19 the governing body here is given the jurisdiction to administer the issuance of retail liquor licenses. N.J.S.A. 33:1-26 authorizes the municipal governing body to transfer licenses from one person or premises to another, but its action in refusing to grant or granting any application for transfer is subject to review by the Director. Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (App. Div. 1952). A municipality has wide discretion in the issuance and transfer of liquor licenses, Passarella v. Board of Commissioners of Atlantic City, 1 N.J. Super. 313 (App. Div. 1949), but such authority is not unrestricted.

It has long been established that a local governing body has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Town of Phillipsburg, 68 N.J.L. 552 (Sup. Ct. 1902). The rule is aptly stated in Tube Bar Inc. v. Commuters Bar, Inc., supra (18 N. J. Super., p. 354):

"When a commission, board, body or person is authorized by ordinance, passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial. 9 McQuillin, Municipal Corporations (3d ed. 1950), § 26.73; Bohan v. Weehawken, 65 N.J.L. 490, 493 (Sup. Ct. 1900). Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law. Public Service Ry. Co. v. Hackensack Imp. Com., 6 N. J. Misc. 15 (Sup. Ct. 1927); 62 C.J.S. Mun. Corp. § 439."

As in the case of statutes, the guide in construing an ordinance is to learn and give effect to the legislative intention. Wright v. Vogt, 7 N.J. 1, 5 (1951). Ordinances are to receive a reasonable construction, and primarily the intention expressed in an ordinance is to be gleaned from the language employed. Where the language is unambiguous and clearly expresses the intent of the legislative body, there is no room for judicial construction. The rule is well settled and axiomatic. Preziosi v. Buonaccorsi, 16 N.J. Super. 15, 21 (App. Div. 1951).

The clear and unequivocal language of the present ordinance permits of only one meaning -- that no plenary retail consumption license can be transferred to premises within 1,000 feet of any other premises licensed as specified. The ordinance expressly prohibited the transfers attempted to be effected here. Where there is no ambiguity, we cannot impress the rule of construction.

Appellants claim the Director improperly construed the ordinance by not giving weight to the views expressed by the mayor on behalf of the township committee. The mayor stated that it was not the intention of the governing body "to prevent this sort of transfer or exchange." This they considered "to be nothing more than an application for the exchange of an existing premises."

The exposition of the mayor cannot be accorded any weight. First, the wording of the ordinance is plain, simple, clear and unambiguous, and this court is not free to indulge in a presumption, arising from a subsequent extrinsic exposition, that the local governing body intended something other than what was expressed. Bass v. Allen Home Improvement Co., 8 N. J. 219, 226 (1951). The language must be given its ordinary meaning. Secondly, the mayor's interpretation is not the "contemporary exposition" referred to in Offhouse v. State Board of Education, 131 N.J.L. 391, 395 (Sup. Ct. 1944), and relied upon by appellants. Aside from the fact that an exposition is considered only where the language of the municipal regulation is ambiguous, we emphasize it must be contemporaneous. Contemporaneous meaning of an ordinance is that which it possesses when enacted. 6 McQuillin, Municipal Corporations (3d ed. 1949), § 20.45, p. 107. What basis is there for the mayor's statement? We are shown none -- it might well be a mere opinion upon later reflection. As the court stated in Keyport and Middletown Point Steamboat Co. v. Farmers Transportation Company of Keyport, 18 N.J. Eq. 13, 24 (Ch. 1856), affirmed 18 N.J. Eq. 511 (E. & A. 1856), "If the legislator who enacted the law should afterwards be the judge who expounds it, his own intention, which he had not skill to express, ought not to govern." Our courts will interpret and enforce the legislative will as written and not according to some supposed unexpressed intention. Camden v. Local Government Board, 127 N.J.L. 175, 178 (Sup. Ct. 1941).

Appellants see in the Director's action here a substitution of his will for that of the local governing body. Is that the issue

present? We think not. Rather the question is whether the governing body had authority to grant the transfers in question. As previously pointed out, a municipality may not disregard its own ordinance and, if it does, the Director must reverse such violative action. Tube Bar, Inc. v. Commuters Bar Inc., supra; Dal Roth, Inc. v. Division of Alcoholic Beverage Control, supra. It matters not that the objector, Petrangeli, may obtain, incidentally, a pecuniary advantage by obtaining the prohibition of the transfers. Hudson Bergen County Retail Liquors Store and Assoc. v. City of Hoboken, 135 N.J.L. 502, 510 (E. & A. 1947).

The Director correctly interpreted the ordinance, and the township committee acted in violation of it. The order of the Director is affirmed.

2. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT STILL IN DWELLING - ILLICIT STILL ORDERED FORFEITED - PADLOCKING WAIVED.

In the Matter of the Seizure on August 25, 1954, of a still and appurtenant equipment in and upon premises located on the North side of Broadlane Road, in the Township of Monroe, County of Gloucester and State of New Jersey.)	Case No. 8691
)	ON HEARING
)	CONCLUSIONS AND ORDER

 Elizabeth Williams, Pro Se.
 John Mack and Nannie Mack, Pro Se.
 I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 2, Revised Statutes of New Jersey, to determine whether a still, appurtenant equipment and a quantity of mash, described in a schedule attached hereto, seized on August 25, 1954 in and about a dwelling occupied by John Mack and Nannie Mack, his wife, located on Broadlane Road, Monroe, New Jersey, constitute unlawful property and should be forfeited, and further to determine whether the premises should be padlocked.

On August 25, 1954 ABC agents and local police officers executed a search warrant for the premises. The warrant had been obtained on the basis of information that an illicit still was located at the premises. The agents found a still part in the kitchen of the dwelling, and discovered in an outbuilding in the yard about 300 gallons of corn mash and other still parts.

The still was not registered with the Director of the Division of Alcoholic Beverage Control as required by R.S. 33:2-1. Such still and the other property found therewith constitute unlawful property and are subject to forfeiture, and the premises are subject to padlocking. R.S. 33:2-2, R.S. 33:2-5.

When the matter came on for hearing pursuant to R.S. 33:2-4, an appearance was entered by Elizabeth Williams, the owner of the premises, and by John Mack and Nannie Mack, the tenants thereof. These persons sought to avoid padlocking of the premises. They did not seek recovery of the seized property.

Elizabeth Williams testified that she rented the premises to John Mack when he was recommended to her by the person from whom she purchased the property; that since then she has been at the

premises once or twice and did not observe "anything wrong"; and that she did not know that Mack had ever violated the Alcoholic Beverage Law. She has owned the premises for four or five years, and resided there for over three years, although employed for about thirteen years as a laundress in a hospital located in Philadelphia. Finding such residence inconvenient in connection with her employment, she rented the dwelling. Her first tenant paid a rental of \$40.00 a month, and Mack paid \$25.00. She would prefer to permit him to remain, since the place was idle for a considerable length of time before she could find the first tenant, and for about three months before she rented it to Mack.

John Mack testified that he is receiving a pension for a 60 per cent service-connected disability received when he was in the U. S. Army, and that he would find it difficult to find other living quarters. He placed the still on the premises because "I tried to help myself along a little bit". He was convicted in November, 1953 for aiding and abetting the operation of an illicit still on premises of one Claude Hogan located in Camden County. He is unemployed, his wife works seasonably on a farm, and as a domestic. The family financial resources are meager.

Mack offers the assurance that he will not again resort to any illicit still activities; that through experience he has learned that you cannot violate the law. His wife, Nannie Mack, testified to like effect as to his background, and expressed her belief that he would not again violate the liquor law.

Although John Mack's conduct is not to be condoned, I shall accept his assurance that he will not again violate the Alcoholic Beverage Law, especially since Mrs. Williams prefers to retain him as a tenant with full knowledge that thereby she is exposed to having her property padlocked if he is again caught with an illicit still. Under the circumstances in this case, I shall therefore waive padlocking. Forfeiture of the seized property follows as of course.

Accordingly, it is DETERMINED and ORDERED that 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. 33:2-5, 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 Director of the Division of Alcoholic Beverage Control.

WILLIAM HOWE DAVIS
Director.

Dated: November 19, 1954.

SCHEDULE "A"

- 1 - set of copper coils
- 1 - copper gooseneck
- 1 - wooden cooker
- 6 - 50-gallon barrels with mash
- 1 - 100-gallon steel drum
- 1 - iron grate
- 2 - funnels
- 1 - rubber hose

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES - ALCOHOLIC BEVERAGES ORDERED FORFEITED - ONE MOTOR VEHICLE RETURNED TO OWNER UNAWARE OF PRESENCE OF ALCOHOLIC BEVERAGES IN CAR - OTHER MOTOR VEHICLE FORFEITED BECAUSE OF OWNER'S FAILURE TO ESTABLISH GOOD FAITH AND UNKNOWING VIOLATION.

Case No. 8693

In the Matter of the Seizure on August 22, 1954, of one pint bottle of alcohol and a Ford sedan at the intersection of Delsea Drive and High Street, in the Borough of Glassboro, County of Gloucester and State of New Jersey.

ON HEARING

Case No. 8694

CONCLUSIONS AND ORDER

In the Matter of the Seizure on August 22, 1954, of one pint bottle of alcohol and a Ford sedan on the premises occupied by Lazarus Wilson, located at Fourth and Market Streets, in the Borough of Glassboro, County of Gloucester and State of New Jersey.

Tommy Moore and Myrtle Moore, Pro Se. Lazarus Wilson, Pro Se.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

These are related matters, were consolidated for hearing, and will be decided together.

Such matters come before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether Myrtle Moore's Ford sedan, and a pint bottle of alcohol, seized on August 22, 1954 at the intersection of Delsea Drive and High Street; and Lazarus Wilson's Ford sedan and a pint bottle of alcohol seized on the same day at his home located at Fourth and Market Streets, both in Glassboro, New Jersey constitute unlawful property and should be forfeited.

Local police officers halted Tommy Moore driving the Ford sedan on the above date and location while checking traffic on the highway. The motor vehicle bore Pennsylvania license plates and Moore did not have a driver's license in his possession. The officers took Moore and the car into custody, and thereafter discovered a pint bottle of alcoholic beverages in the trunk of the car, in a basket with fruits and vegetables.

During the course of his conversation with the police, Moore requested that they take him to the home of his brother-in-law Lazarus Wilson. The officers agreed, went to Wilson's home and, while there, found another pint bottle of alcoholic beverages in Wilson's Ford sedan. Thereupon they seized his car and the pint bottle of alcoholic beverages. The Division of Alcoholic Beverage Control was notified and both cars and bottles of alcoholic beverages were turned over to its agents.

The contents of both pint bottles were analyzed by the Division chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 40.3 per cent in the

bottle found in Moore's car, and 41.4 per cent in the bottle taken from Wilson's car. There was no label, or stamp indicating the payment of tax on alcoholic beverages, on either bottle.

When the matter came on for hearing pursuant to R.S. 33:1-66, Myrtle Moore and Tommy Moore appeared and sought return of the Ford sedan, and Lazarus Wilson appeared and sought return of his Ford sedan. Forfeiture of the alcohol was not opposed.

The alcohol is illicit by reason of the absence of any labels or tax stamps on the bottles. R.S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, and the motor vehicles in which it was transported and found, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

However, Tommy Moore claims that he did not know the pint of alcohol was in his car, and is unable to account for its presence there.

Moore resides in Philadelphia, and is employed as a laborer. His wife is employed as a domestic. He has no previous criminal record for violating any liquor laws. According to his account, he drove to New Jersey on the day in question to visit his brother-in-law and other relatives.

During the course of such visit he and his relatives had food and apparently drank moonshine liquor, and gathered fruit, some of which was placed in the Moore car.

I will give Moore the benefit of doubt, and accept his claim that he was not aware that the moonshine was in the car. Cf. Seizure Case No. 8284, Seizure Case No. 7204, Bulletin 797, Item 13.

The motor vehicle will therefore be returned to Myrtle Moore on payment of the costs of its seizure and storage.

Lazarus Wilson stands on a quite different footing. He, too, makes the same claim as Moore. However, the local police previously suspected that he was operating a speakeasy at his home. At the hearing he repeatedly stated that such an accusation was unfounded. However, a local police officer testified that a short time before the seizure, while he had Wilson's home under surveillance, he heard a conversation between Wilson and an unidentified woman, wherein this woman sought to purchase alcoholic beverages from Wilson and he told her that he had none at that moment, but would obtain a supply which would be available soon. Wilson did not endeavor to contradict the testimony when it was presented.

The reasonable conclusion from the evidence presented is that Wilson sold moonshine liquor from time to time, and when Moore, his relative, was at his home on a family visit, placed the pint of moonshine in Moore's basket as a friendly gesture. The overtones of illegal alcoholic beverage activity by Wilson compel the conclusion that he is not, like Moore, an innocent victim of circumstances. I am not satisfied that Wilson acted in good faith, or unknowingly violated the law. His Ford sedan will not be returned.

Accordingly, it is DETERMINED and ORDERED that if on or before the 6th day of December, 1954, Myrtle Moore pays the costs incurred in the seizure and storage of her Ford sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to her; and it is further

DETERMINED and ORDERED that the Ford sedan owned by Lazarus Wilson and the two pint bottles of alcohol described in the aforesaid

Schedule "A" constitute unlawful property, and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they 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.

WILLIAM HOWE DAVIS
Director.

Dated: November 24, 1954.

SCHEDULE "A"

DESCRIPTION OF PROPERTY SEIZED AT DELSEA DRIVE & HIGH STREET.

- 1 - one pint bottle of alcohol
- 1 - Ford sedan, Serial & Engine No. 98HA66220, 1954 Pennsylvania Registration No. K324L.

DESCRIPTION OF PROPERTY SEIZED AT FOURTH & MARKET STREETS.

- 1 - one pint bottle of alcohol
- 1 - Ford sedan, Serial & Engine No. 1GA91203, N. J. Registration ZBA 66.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT OWNER (DAUGHTER WHO MADE CAR AVAILABLE FOR FAMILY USE).

In the Matter of the Seizure on August 12, 1954 of 96 two-quart glass jars of alcohol and a Chevrolet sedan, on the northbound lane of the New Jersey Turnpike, in Washington Township, County of Mercer and State of New Jersey.)	Case No. 8680
)	ON HEARING
)	CONCLUSIONS AND ORDER

Margulies & Kaplowitz, by Leo Kaplowitz, Esq., Attorney for Hattie Faison Bridges.

I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether 96 two-quart jars of alcohol, and a Chevrolet sedan, described in a schedule attached hereto, seized on August 12, 1954 on the northbound lane of the New Jersey Turnpike, in Washington Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R.S. 33:1-66, an appearance was entered by Hattie Faison Bridges, who sought return of the motor vehicle. No one opposed forfeiture of the alcohol.

The file herein, admitted in evidence with consent of counsel for Mrs. Bridges, discloses that a sample of the alcohol was analyzed by the Division chemist, who reports that it is an alcoholic beverage containing alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 49.4 per cent; and that the alcohol is illicit because there were no labels on the jars, or stamps indicating the payment of tax on alcoholic beverages.

R.S. 33:1-1(i), R.S. 33:1-88. It further appears that the illicit alcoholic beverages were transported by James Lee Faison, brother of Hattie Faison Bridges.

The illicit alcohol and the motor vehicle in which it was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

A person who has established to my satisfaction that he had acted in good faith and had no knowledge of the unlawful use to which his property was put, or knowledge of such facts as would have led a person of ordinary prudence to discover such use, may obtain return of property subject to forfeiture. R.S. 33:1-66(f).

The Certificate of Title of the Department of Motor Vehicles of North Carolina for the Chevrolet sedan in question was issued on July 6, 1950, to Hattie Faison of 3006 Seaboard Street, Goldsboro, North Carolina.

Hattie Faison resided in the family home in Goldsboro, North Carolina. The family then consisted of her mother, nine children, and a number of grandchildren. Hattie Faison has been employed as a school teacher for about six years in Virginia and one year in Georgia. Previous to the purchase of the Chevrolet sedan, the family had an old Dodge sedan purchased by one of her brothers. None of the other members of the family of working age living at home were steadily employed. Hence, Hattie Faison decided to provide the family with a new car. She left the car at home for use of the family. Some member of her family drove her to the school where she was employed and called for her at the conclusion of the school term.

At the vacation period of 1954, Miss Faison came home to Goldsboro. After a few days she decided to visit New York City, where one of her sisters resided. This sister told her that she might be able to obtain a position in a local hospital. During her visit north, Hattie Faison was married and presently resides in Philadelphia.

Her car remained in Goldsboro for the convenience of her family. In her words, "If you had a mother who had worked as hard as my mother with thirteen children, wouldn't you try to give her the things that she would have liked to have?"

Some of Hattie Faison's sisters were employed part time in a tobacco factory. Another sister resided in Philadelphia, a brother resided and was employed in Richmond, Virginia, and another brother resided and was employed in Rochester, New York. James Lee Faison, the brother who transported the illicit alcohol which resulted in the seizure of the car, is 29 years of age. In 1954 he graduated from the State Teachers College in Fayetteville, North Carolina. From his home in Goldsboro, he moved to Clinton, North Carolina where he qualified as some sort of probationary or special police officer. By this time he had married and was in need of money. According to his account he met some stranger in Goldsboro, who persuaded him to transport the illicit alcohol in his sister's car, for which he was promised \$150.00.

So far as appears, there was nothing in the background of Hattie Faison's family from which she could have anticipated that her brother James Lee Faison would use the car to transport illicit alcohol. While at first impression it might be considered that she surrendered all use and control of the car, in reality it was praiseworthy conduct by a dutiful daughter. She had the means to furnish the family with a car; the other members of her family did

not. She had some use of the car. Under the circumstances it does not denote carelessness and indifference to the use of the car of such character as should lead to the rejection of her claim. Cf. Seizure Case No. 8638, Bulletin 1038, Item 3, Seizure Case No. 8544, Bulletin 1020, Item 4. It would be patently unfair to deprive Hattie Faison (Bridges) of whatever present value the car has, which is actually her property, merely because heretofore she made it available for family use and may perhaps decide again to make it available for that purpose in the future.

Accordingly, it is DETERMINED and ORDERED that if on or before the 16th day of December, 1954, Hattie Faison Bridges pays the costs of seizure and storage of the Chevrolet sedan, said sedan will be returned to her; 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.

WILLIAM HOWE DAVIS

Dated: December 6, 1954.

Director.

SCHEDULE "A"

- 96 - two quart jars of alcohol
- 1 - Chevrolet sedan, Serial No. 14HKF-100285
Engine No. NAD 698478, 1954 North Carolina
Registration No. 398861.

5. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN CLUB - STOCK OF ALCOHOLIC BEVERAGES AND EQUIPMENT AND FURNISHINGS OF CLUB ORDERED FORFEITED.

In the Matter of the Seizure on)	Case No. 8656
July 20, 1954, of a quantity of)	
alcoholic beverages, furniture,)	
fixtures and equipment, in the)	ON HEARING
club quarters of the Anthony F.)	CONCLUSIONS AND ORDER
Damato Democratic Association,)	
located at 521 Monroe Street, in)	
the City of Hoboken, County of)	
Hudson and State of New Jersey.)	

Stephen Mongiello, Esq., Attorney for Anthony F. Damato
Democratic Association.

Andrew J. Cusimano, President, Anthony F. Damato Democratic
Association.

I. Edward Amada, Esq., appearing for the Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, and further pursuant to a stipulation signed by Andrew J. Cusimano, as President and on behalf of Anthony F. Damato Democratic Association, on July 22, 1954, to determine whether a quantity of alcoholic beverages, \$33.85 in cash, and various articles of furniture, fixtures and equipment, described in a schedule attached hereto, seized on July 20, 1954 at the club quarters of Anthony F. Damato Democratic Association located at 521 Monroe Street, Hoboken, New Jersey, constitute unlawful property and should be forfeited.

Pending hearing in the case Andrew J. Cusimano, as president of the Anthony F. Damato Democratic Association, deposited \$400.00 under protest, pursuant to R. S. 33:1-66, with the Director of the Division of Alcoholic Beverage Control, representing the appraised retail value of all the seized property, excepting the alcoholic beverages and \$33.85 in cash, and thereupon obtained return of such property. Mr. Cusimano has stipulated on behalf of the aforesaid Association that such Director should determine in the present proceedings whether such sum should be forfeited, or returned to the Association.

At the seizure hearing held pursuant to R.S. 33:1-66, and the aforesaid stipulation, an appearance was entered by Andrew J. Cusimano on behalf of the Anthony F. Damato Democratic Association, which sought return of the deposit of \$400.00. No one opposed forfeiture of the alcoholic beverages.

It appears from reports of ABC agents and other documents in the file, admitted into evidence with the consent of Mr. Cusimano, that the Division of Alcoholic Beverage Control received information that alcoholic beverages were being sold at the club quarters without a license.

Accordingly, one of the ABC agents visited the premises on July 9, 1954 and observed from a point of observation on the exterior of the premises that a number of men were sitting at a bar in the club drinking beer. On July 20, 1954 three other agents visited the premises. One of the agents entered the club, became acquainted with other men who were there, and played a game with six of the men. At the conclusion of each game, the losers purchased six bottles of beer from Joseph Bruno, who was acting as bartender.

Thereafter another agent entered the club, and went to the bar, at which the first agent was standing, drinking beer. The first agent purchased two bottles of beer from Bruno. The second agent then purchased three bottles of beer from Bruno. The agents continued to order and pay for beer served by Bruno.

A third agent then entered the club, and all of the agents disclosed their identity. Neither Joseph Bruno nor the Anthony F. Damato Democratic Association held any license to sell alcoholic beverages and the premises were not licensed for that purpose.

The agents seized 180 bottles and 171 cans of beer, 20 bottles of whiskey, one gallon jug of wine and \$33.85 in cash in a cigar box, which sum included marked dollar bills used by the agents to pay for beer served to them, and the furniture and fixtures and equipment in the club quarters.

Mr. Cusimano claims that it is all a misunderstanding. He claims that the wine and whiskey seized were intended for use at a celebration to honor one of their members who was elected or appointed to public office. Further, that the club obtained a permit from the Division of Alcoholic Beverage Control when it conducted a social affair at which alcoholic beverages were served. Concerning the beer at the club, he stated that it always had beer on hand, apparently as an accommodation for members, who paid for beer or soda served to them.

Cusimano offers the explanation that while it is true that one of the agents purchased beer on July 20th, the person who served the agent had the impression that the agent had joined the club and was a member. As to the other agent, it was a customary courtesy extended to a member to permit such member to invite a friend to consume beer at the bar.

Mr. Cusimano testified that the club applied for a retail liquor license to the Hoboken authorities sometime in June 1954, and that such application was pending at the time of the hearing.

It is not necessary to determine the actual facts concerning such application. It is merely intended to demonstrate that the sale of alcoholic beverages (at least beer) was an integral part of the functions of the club. In Mr. Cusimano's words, "There was always a doubt in our minds. In other words, we should have a liquor license to have it in the right way. In other words, if we are passing things along we should have a license on the premises."

This is a clear and honest statement of the principles which guided the club. The club had the misguided idea that if it limited sales of beer (or perhaps other alcoholic beverages) to members only, it could go unharmed even though it held no license to sell alcoholic beverages. This is a mistaken notion. No club or organization, no matter how worthy its objectives may be, can indulge in such conduct. See Seizure Case No. 7131, Bulletin 800, Item 2; Seizure Case No. 7139, Bulletin 807, Item 4. Every organization and individual must obey the law. A sale of alcoholic beverages without a license subjects the alcoholic beverages and property seized therewith to forfeiture. R.S. 33:1-1(i) and (y), R. S. 33:1-2, R.S. 33:1-66.

Subsequent to the hearing, counsel for the Association entered his appearance and filed exceptions to the proposed Determination and Order in the case, and was heard thereon by the Director on oral argument.

Counsel urged that the Association was honestly misled and hence the forfeiture penalty should be held to a minimum. The only proper factor which may be considered on that score is whether there can be any legitimate difference of opinion as to the retail value of the seized property, represented by the sum deposited with the Director. A person who deposits money in order to obtain return from this Division of property seized as alleged unlawful property has of course thereby elected his choice of the various remedies afforded him for such purpose by the Alcoholic Beverage Law, and hence is bound by the appraised valuation fixed by the Director. Nevertheless, fairness dictates that such appraisal may be reviewed at any stage of the proceedings prior to forfeiture of the money deposited, and transmittal thereof to the State Treasurer. Seizure Case 7795.

Necessarily, the Division personnel must make an on the spot appraisal, at whatever time of day or night such seizure is made.

In the instant case, the inspector in charge of the seizure appraised the articles seized as of the retail value of \$400.00. After the aforesaid oral argument, in which counsel for the Association disputed (or questioned) the value placed on the articles in question by our inspector, an independent auctioneer and appraiser, acting on behalf of this Division, made a written appraisal wherein he states that the replacement value of such articles is \$431.20, and the value thereof if sold at public auction is approximately \$300.00.

In the absence of any actual sale, private or public, appraisals furnish the only basis upon which determination can be made as to the retail value of seized property. After careful consideration of all the facts before me, I fix the sum of \$300.00 as the retail value of the seized property returned to the Association.

Accordingly, it is DETERMINED and ORDERED that the \$33.85 in cash, and the seized alcoholic beverages, described in the aforesaid

Schedule "A", constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that they 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; and it is further:

DETERMINED and ORDERED that the sum of \$300.00, deposited in place and stead of the furniture returned to the Anthony F. Damato Democratic Association, being the retail value thereof as herein fixed, likewise be and hereby is forfeited, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the balance of \$100.00, representing the sum deposited in excess of the reasonable retail value of such furniture, be returned to the Anthony F. Damato Democratic Association.

WILLIAM HOWE DAVIS
Director.

Dated: December 13, 1954.

SCHEDULE "A"

180 - bottles of beer
 171 - cans of beer
 5 - 4/5 quart bottles of whiskey
 15 - one quart bottles of whiskey
 1 - one gallon jug of wine
 7 - cases of assorted soda
 34 - chairs
 5 - bar stools
 1 - Seeburg music box
 1 - Frigidaire refrigerator
 3 - tables
 2 - benches
 1 - Federal radio
 1 - fan
 3 - cabinets
 1 - mirror
 1 - Crosley Television
 1 - gas stove
 63 - assorted drinking glasses
 Miscellaneous kitchen equipment as
 listed in inventory in the case
 \$33.85 in cash

6. DISQUALIFICATION - PRIOR APPLICATION DENIED - ENGAGEMENT IN ALCOHOLIC BEVERAGE BUSINESS DURING FIVE-YEAR PERIOD - HINDERING INVESTIGATION - REAPPLICATION 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. 1190.
-----)

BY THE DIRECTOR:

On July 21, 1953 the then Director dismissed a prior petition for removal of the statutory disqualification resulting from petitioner's conviction of at least two crimes involving moral turpitude (bookmaking in 1946 and obtaining merchandise under false pretenses in 1947). Re Case No. 1065, Bulletin 980, Item 4.

In dismissing the petition the then Director noted that an earlier statutory disqualification resulting from petitioner's conviction, in 1938, of the crime of operating an unregistered still was removed by order of the then Commissioner, on December 29, 1943. The Director expressed his reluctance to grant the relief sought in view of petitioner's conviction of crime after the earlier removal of his previous disqualification and, in addition, pointed out that petitioner also had actively participated (in February 1953) in the hindering of an investigation in violation of R.S. 33:1-35, citing Re Mitchell, Bulletin 980, Item 3, since affirmed in Mitchell v. Cavicchia, 29 N. J. Super. 11 (App. Div. 1953).

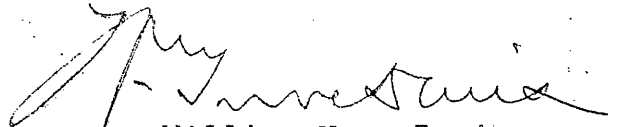
At the hearing herein, petitioner testified that he has been law-abiding since the hearing on his most recent previous application (May 27, 1953) and that he has conducted a lunch room business in the interim. He denied that he had hindered an investigation, as hereinabove related, or that he knew that he was disqualified while employed upon the licensed premises where the alleged violation occurred.

Petitioner also produced as witnesses two police officers of the municipality in which he resides and a businessman, all of whom have known him for more than five years last past. Each testified that petitioner bears a good reputation in the community and has been law-abiding for at least five years last past.

Even if credence were to be given to petitioner's claim that he was unaware of his ineligibility while employed upon licensed premises, as aforementioned, the fact still remains that, after having regained his eligibility to be associated in a business capacity with the alcoholic beverage industry, whose members are subjected to such close scrutiny, and rightly so, he apparently held the privilege so lightly that he became involved in, not one, but two other disqualifying crimes and, in addition, was found to have personally participated in a most serious type of violation, (hindering an investigation) which threatens the entire enforcement structure and will not be tolerated under any circumstances.

Under all of these circumstances I am unable to find that petitioner has been law-abiding for five years last past. In the absence of such a finding I cannot grant the relief sought. R.S. 33:1-31.2.

Accordingly, it is, on this 2nd day of December, 1954,
ORDERED that the petition herein be and the same is hereby
dismissed.



William Howe Davis
Director.