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

BULLETIN 1007 APRIL 1, 1954.

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ITEM

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

BULLETIN 1007 APRIL 1, 1954.

1. APPELLATE DECISIONS - BUDIN v. NEWARK.

PEARL BUDIN, Administratrix of the Estate of Noah Budin, and ELIJAH BUDIN, Appellants, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, Respondent.	)	ON APPEAL O R D E R

Carl J. Yagoda, Esq., Attorney for Appellants.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from a twenty-day suspension imposed by respondent against Plenary Retail Distribution License D-20 held by appellants for premises at 369 West Market Street, Newark. The suspension was imposed after appellants were found guilty in a disciplinary proceeding on a charge of selling alcoholic beverages to minors.

On the filing of the appeal an order was entered on February 19, 1954, staying the effect of respondent's order of suspension pending determination of the appeal herein.

Prior to the hearing the attorney for appellants advised in writing that his clients desired to withdraw their appeal. The attorney for respondent has advised me that he has no objection thereto. No reason appearing to the contrary,

It is, on this 10th day of March, 1954,

ORDERED that the within appeal be and the same is hereby dismissed; and it is further

ORDERED that the order dated February 19, 1954, shall be vacated effective at 9:00 a.m. March 16th, 1954, and that Plenary Retail Distribution License D-20, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Pearl Budin, Administratrix of the Estate of Noah Budin, and Elijah Budin, for premises 369 West Market Street, Newark, be and the same is hereby suspended for a period of twenty (20) days, commencing at 9:00 a.m. March 16, 1954, and terminating at 9:00 a.m. April 5, 1954.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - MALINCONICA v. MATAWAN TOWNSHIP.

FLORENCE MALINCONICA, trading as FLO'S BAR & GRILL, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF MATAWAN, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

John W. Applegate, Esq., Attorney for Appellant.
Ezra W. Karkus, Esq., Attorney for Respondent.
Edward Farry, Jr., Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's action on December 31, 1953, whereby it denied appellant's application for a place-to-place transfer of her plenary retail consumption license from 93 Lower Main Street, Township of Matawan, to premises hereinafter described.

At the hearing on this appeal it was agreed that the only question raised by the appeal is whether or not the location of the premises, as described in the aforesaid application, was out of the territorial limits of the Township of Matawan over which the Township Committee and the Township of Matawan has no jurisdiction.

By stipulation the following documents were admitted in evidence:

(1) The application for transfer from place to place.

(2) The sketch which was filed with such application.

(3) A copy of assessment map of the Township.

(4) A letter from the Township Engineer to the Township Clerk.

(5) Affidavit of publication of the notice of application for transfer.

(6) A certified copy of respondent's resolution denying the transfer.

(7) A map showing the portion of the Township of Matawan in question.

In addition, the licensee appeared and testified.

From all the evidence the following facts appear. The premises to which the license is sought to be transferred were described in the license application as follows: "Northwest side of Dock Street - 539 feet more or less from the northwest corner of Main & Dock Streets. Township of Matawan." The rough sketch which accompanied the application contains the legend "Flo's Bar," and indicates that the bar is located 30 feet from Dock Street but bears no directional sign and is otherwise somewhat vague. The published notice of application states that the transfer is sought "to premises located on Dock St. approximately 539 ft. north of Main St., Matawan Township, Matawan, N. J." The Township Engineer expressed it as his opinion that the description in the application should read "on the easterly side of Dock Street and the northwesterly side of Sunny Brook Place distant 500 feet more or less from the northeasterly corner formed by the intersection of Main Street and Dock Street in the Township of Matawan, County of Monmouth and State of New Jersey."

At the hearing below, appellant was advised that her application, as filed, did not accurately describe the location of the proposed new premises. She immediately, and before the taking of testimony, asked leave to amend her said application. Respondent reserved decision on that motion and proceeded to hear witnesses. At the conclusion of the hearing below, respondent reserved decision and, on December 31, 1953, denied the application without ruling on the motion. However, a denial of the motion to amend is implicit in the denial of the application for license.

The contention of respondent and the objectors is that the location described in the application, as hereinabove set forth, is in the Borough of Matawan. In this connection, it would appear that property located 500 or more feet in a northwesterly direction from the corner of Dock Street and Main Street might well be beyond the territorial limits of the Township of Matawan. Appellant, in her testimony, admitted the premises described in the application "as being in the Borough of Matawan," but on cross-examination stated that she did not know that to be a fact of her own knowledge but "it seems to be what everybody thinks...". Appellant's attorney, in his memorandum, admits that "appellant inadvertently described the premises to which she requested a transfer of her said license as being on the northwesterly side of Dock Street, Matawan Township, New Jersey. This was an error on the part of appellant since the premises are actually on the northeasterly side of Dock Street in Matawan Township." Counsel then contends that the premises sought to be licensed are actually in Matawan Township and that appellant should have been allowed to amend her application in order to correct the erroneous description of the premises therein.

A license may be transferred from place to place only upon the filing of a proper application therefor. R. S. 33:1-26. All statements in such application are deemed material. R. S. 33:1-25. The clear intendment is that all questions in the application must be fully and accurately answered. All applications for license require that the location of the premises sought to be licensed be set forth. One important reason for that requirement is to afford the issuing authority an opportunity to inspect the premises in order to determine whether or not such premises are suitable for the type of license sought. As was stated in Re Application for Retail Licenses, Bulletin 969, Item 2:

> "Under the Alcoholic Beverage Law (R. S. 33:1-24), it is the duty of each municipal issuing authority 'to inspect premises sought to be licensed'. Naturally, this cannot be done unless the application clearly indicates what premises are sought to be licensed. Consequently, applicants for license should be required, in answer to the questions concerning this matter, so to describe the licensed premises that it will be readily apparent to all concerned just what is and is not to be considered licensed premises."

Notice of application for transfer from place to place is required to be published in a newspaper published and circulated in the municipality in which the licensed premises are located. R. S. 33:1-25, 26. The obvious purpose of this provision is to inform all concerned, including the general public, of the existence of the application and to afford an opportunity for the filing of objections, and, if objections are filed to afford an opportunity for a public hearing.

In the instant case, admittedly, the description of the proposed licensed premises, as contained in the application, was erroneous. In addition, the description of the proposed licensed premises, as contained in the published notice of application, was different from that contained in the application and did not adequately describe the location. It merely stated that the premises were located on "Dock St. approximately 539 ft. north of Main St." but did not indicate on which side of the street they were located.

The contention that respondent should have granted the motion to amend the application changing the description of the licensed premises is unsound. I have examined the authorities cited by counsel in support of such contention and find them to be inapplicable to the facts of this case. Where, as here, the interests of third parties and the public are concerned, an amendment involving so vital a question as the location of the premises sought to be licensed should not be permitted unless and until notice thereof, by publication, has been given as required by law. To hold otherwise would be to nullify the protective provisions of the law.

On the record before me, the territorial location of the premises sought to be licensed does not clearly appear. In appeals of this nature the burden is on the appellant to establish that the action of the issuing authority was erroneous and should be reversed. Rule 6 of State Regulations No. 15. Under all the facts and circumstances of this case, I find that appellant has failed to carry this burden.

Accordingly, it is, on this 9th day of March, 1954,

ORDERED that the appeal herein be and the same is hereby dismissed without prejudice to the filing of a new application.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - PETRANGELI v. EWING TOWNSHIP, BARRETT AND SCIARROTTA.

NESTORE PETRANGELI,
Appellant,
-vs-
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EWING; JOSEPH BARRETT, t/a DELAVUE GRILL; and PHYLLIS K. SCIARROTTA, t/a CLUB 88,
Respondents.

ON APPEAL
CONCLUSIONS AND ORDER

George Pellettieri, Esq. and Samuel Moskowitz, Esq., Attorneys for Appellant.
George H. Bohlinger, Jr., Esq., Attorney for Respondent Township Committee
William Abbotts, Esq., Attorney for Respondent Joseph Barrett.
No appearance on behalf of Respondent Phyllis K. Sciarrotta.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it granted an application to transfer a plenary retail consumption license (with broad package privileges) from Phyllis K. Sciarrotta and from her premises at 200 Ewingville Road, to Joseph Barrett and to his premises on River Road, and whereby at the same time it granted an application to transfer a plenary retail consumption license (without broad package privileges) from Joseph Barrett and from his premises on River Road to Phyllis K. Sciarrotta and to her premises at 200 Ewingville Road, Township of Ewing.

A copy of the Notice of Appeal and Petition of Appeal were served upon respondent Phyllis K. Sciarrotta but she did not file an answer and did not appear at the hearing held herein.

The facts of the case as set forth in the Petition of Appeal and admitted in the answers filed herein may be summarized as follows:

1. For some years last past appellant has held a plenary retail consumption license (with broad package privileges) at premises on River Road.

2. Appellant's premises are approximately 600 feet from Barrett's premises, and another plenary retail consumption license (without broad package privileges) is held by one Gasparri for premises located approximately 300 feet from Barrett's premises.

3. The premises occupied by Sciarrotta at 200 Ewingville Road are some distance away from the area on River Road wherein are situated the premises occupied by appellant, Gasparri and Barrett.

From the evidence given at the hearing herein it further appears that Barrett's licensed premises originally consisted of a barroom and dining room; that in November 1953 there was erected an addition to his building with show windows on River Road and a separate entrance from River Road. This addition (which is designated as the liquor store) was not covered by Barrett's original license, but it is apparent that, under the license recently transferred to him, he sells or intends to sell alcoholic beverages in original containers for off-premises consumption from the liquor store instead of from his public barroom to which such sales were restricted under his original license. See R.S. 33:1-12.23. (P. L. 1948, ch. 98.)

Appellant contends that the transfer of the Sciarrotta license to Barrett was in violation of Section 1 of an amended ordinance of the Township of Ewing which became effective on June 5, 1953, and which reads as follows:

> "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.
>
> "The distance herein above set forth shall be measured in a normal way that a pedestrian would properly walk from the nearest entrance of the premises sought to be licensed."

Counsel for respondent Barrett contends that Section 1 of the ordinance permits said transfer. Respondent Township Committee apparently agreed with this contention because, at the close of the hearing below and immediately prior to the granting of the pending applications, Mayor Armstrong made the following statement:

> "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 licensees. We do not believe the general welfare of the community will be adversely affected by the granting of this application."

(It should be noted that both licenses do not have the same privileges because the privilege of selling "package goods" for off-premises consumption is more extensive in the original Sciarrotta license than in the original Barrett license.)

I am unable to agree with the contention. At no place in the Alcoholic Beverage Law is any provision made for the exchange of existing licenses and, hence, both pending applications should have been considered as applications for transfer within the provisions of R. S. 33:1-26. It is apparent that the Sciarrotta license was transferred to Barrett's premises which are located within 1,000 feet of two other premises for which plenary retail consumption licenses have been issued. Such action was in violation of Section 1 of the amended ordinance. A local issuing authority has no jurisdiction to grant or transfer a license in violation of the terms of a local ordinance. Bachman v. Phillipsburg, 68 N. J. L. 552.

Moreover, I find that the ordinance is unambiguous in its terms. Counsel for respondent Barrett has cited numerous cases stating that the purpose of construction of ordinances is the discovery and effectuation of the local legislative intent. These cases are not in point because they apply to a proviso or exception or to ambiguous language in an ordinance. The rule of construction as to ordinances is the same as the rule of construction as to statutes. In Camden v. Local Government Board, 127 N. J. L. 175, 178 (Sup. Ct. 1941), the Court said:

"We are enjoined to interpret and enforce the legislative will as written and not according to some supposed unexpressed intention."

In Burnson v. Evans, 137 N. J. L. 511, 514 (Sup. Ct. 1948), the Court said:

"Even when a court is convinced that the legislature really meant and intended something not expressed in the phraseology of the act, it will not deem itself authorized to depart from the plain meaning of the language which is free from ambiguity."

For the reasons aforesaid, I conclude that the action of respondent Township Committee was erroneous and must be reversed.

Accordingly, it is, on this 11th day of March, 1954,

ORDERED that the action of respondent Township Committee in granting the transfer of the license held by Phyllis K. Sciarrotta for premises at 200 Ewingville Road to Joseph Barrett for premises on River Road, and the transfer of the license held by Joseph Barrett for premises on River Road to Phyllis K. Sciarrotta for premises at 200 Ewingville Road, be and the same is hereby reversed, effective immediately.

WILLIAM HOWE DAVIS
Director.

4. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOLIC BEVERAGES PURCHASED FROM BOOTLEGGER - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on December 20, 1953 of a pint bottle of alcoholic beverages and a Plymouth sedan, at or near the intersection of White Horse Pike and Chestnut Street, in the Borough of Audubon, County of Camden and State of New Jersey.	Case No. 8476 ON HEARING CONCLUSIONS AND ORDER

Cobbin and Farr, Esqs., by William A. Farr, Esq., Attorneys for Commercial Credit Corporation.
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 pint bottle of an alcoholic beverage and a Plymouth sedan, described in a schedule attached hereto, seized on December 20, 1953, at or near the intersection of White Horse Pike and Chestnut Street, Audubon, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the first instance by a local police officer after he discovered that James Thompson, the owner and operator of the Plymouth sedan, was transporting the pint bottle of what appeared to be an illicit alcoholic beverage. The alcoholic beverage and car were thereafter turned over to the Division of Alcoholic Beverage Control

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Commercial Credit Corporation, which sought recognition of its alleged lien upon the motor vehicle. No one appeared to oppose forfeiture of the pint bottle containing the alcoholic beverage.

Reports of A.B.C. agents and other documents in the file, presented in evidence with consent of counsel for the finance company, disclose the following facts:

On December 20, 1953 a police officer halted the Plymouth sedan at the above location for investigation. James Thompson, who was driving the car, appeared to be intoxicated and had the pint bottle containing the alcoholic beverage in his possession. A.B.C. agents were notified and one of such agents questioned Thompson, who informed him that he made the acquaintance of a man previously unknown to him at an unspecified corner, and asked this man where he could obtain some good corn whiskey. This stranger went with Thompson to an unspecified location where Thompson purchased the pint of corn whiskey, in a bottle bearing a wine label. This was the bottle seized from Thompson. Thompson stated that he was unwilling to get anyone else in trouble, and hence would not more specifically disclose where and from whom he purchased the corn whiskey.

The alcoholic beverage in the pint bottle was analyzed by the Division chemist, who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 46.4 percent.

The bottle in which the alcoholic beverage is contained bears a label which does not truly describe its contents. The alcoholic beverage in such bottle is therefore prima facie illicit. R. S. 33:1-88. Furthermore, the inference is justified that the alcoholic beverage was not purchased from a person licensed to deal in alcoholic beverages.

The alcoholic beverage is therefore illicit on both scores. R. S. 33:1-1(i). Such illicit alcoholic beverage and the 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. The relatively minor quantity of illicit alcoholic beverage possessed and transported in the motor vehicle is immaterial in these forfeiture proceedings. Seizure Case #7044, Bulletin 760, Item 8.

The finance company asserts that it did not know, or have any reason to suspect that Thompson would transport illicit alcoholic beverages in the car. It presented a conditional sales contract dated April 13, 1953 evidencing the sale of the motor vehicle in question to James Thompson for the purchase price of $1,795.00, with an unpaid balance of $1,697.04 to be paid in monthly installments of $70.71. The finance company is the present assignee of such contract, and its lien is noted on the Certificate of Title issued by the Department of Revenue, Commonwealth of Pennsylvania. The present balance due on such contract, after rebate allowance for prepayment as of February 13, 1953, is $966.55.

It appears that prior to purchasing such conditional sales contract, the finance company received information concerning the background, employment, and financial responsibility of James Thompson.

A check by the finance company of the information confirmed that Thompson was employed as a laborer, resided at the address given and was slow in payments on one previous loan transaction, while another firm considered his account good. The investigation disclosed no derogatory information. James Thompson does not appear to have any previous criminal record for violating any liquor laws.

I am satisfied that the finance company acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be placed or transported in the Plymouth sedan. R. S. 33:1-66(f). I shall, therefore, recognize its lien.

I am advised that it is not desirable to retain the Plymouth sedan for the use of the State, conditioned upon the payment of the lien of $966.55, and that the retail value of such vehicle does not exceed the amount of such lien and the costs of the seizure and storage of the motor vehicle.

Accordingly, it is DETERMINED and ORDERED that if on or before the 22nd day of March, 1954, Commercial Credit Corporation pays the cost incurred in the seizure and storage of the Plymouth sedan, described in Schedule "A" attached hereto, such motor vehicle will be turned over to the Commercial Credit Corporation; and it is further

DETERMINED and ORDERED that the pint bottle with the alcoholic beverage listed in the aforesaid Schedule "A" 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
Director.

Dated: March 11, 1954.

SCHEDULE "A"

1 - 1 pint bottle of alcoholic beverage
1 - Plymouth sedan, Serial No. 12935060, Engine No. A-663538, 1953 Pennsylvania Registration S-S-627

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF MINIMAL AMOUNT OF ALCOHOLIC BEVERAGES IN JUGS - REPRESENTATION OF GOOD FAITH AND HONEST ASSUMPTION THAT JUGS WERE EMPTY ACCEPTED - MOTOR VEHICLES ORDERED RETURNED TO OWNERS - ALCOHOLIC BEVERAGES FORFEITED.

Case No. 8376
In the Matter of the Seizure on July 26, 1953 of 4 one-gallon jugs with alcohol and two 100-lb. bags of grain, on U. S. Route #1 in West Windsor Township, and the seizure on July 30, 1953 of a Buick sedan at 471 Southard Street, in the City of Trenton, both in the County of Mercer and State of New Jersey.

ON HEARING
CONCLUSIONS AND ORDER

Case No. 8377
In the Matter of the Seizure on July 26, 1953 of 4 one-gallon jugs with alcohol on U. S. Highway #1, West Windsor Township, and the seizure on July 30, 1953 of a Chevrolet sedan at 471 Southard Street, in the City of Trenton, both in the County of Mercer and State of New Jersey.

Emanuel Kaplan, Esq., Attorney for Lester Presley and Leroy Ealey.
Louis Bernocchi and Charles Alu, t/a Max's Auto Parts, by Louis Bernocchi.
Harry Castelbaum, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

These matters concern the alleged possession and transportation of illicit alcoholic beverages by Lester Presley and Leroy Ealey in their respective motor vehicles, and have been consolidated for hearing because they involve a common question of law and fact.

Such matters come before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey to determine whether the following items constitute unlawful property and should be forfeited, to wit: 4 one-gallon jugs containing a small quantity of alcoholic beverages and two 100-lb. bags of grain seized from Presley and four similar jugs containing a small quantity of alcoholic beverages seized from Ealey, on July 26, 1953 on U. S. Route #1, West Windsor Township, N. J.; and a Buick sedan owned by Lester Presley and a Chevrolet sedan owned by Leroy Ealey, both seized on July 30, 1953 at 471 Southard Street, Trenton, N. J.

The bags of grain and four jugs were seized by a New Jersey State Trooper from Presley's car, after it had been halted for a traffic violation; the trooper seized the other four jugs from the Chevrolet sedan driven by Ealey, who was accompanying Presley. The jugs and grain were turned over to ABC agents, who extracted a total of a few ounces of liquid from each four jugs.

These liquids were submitted to the Division chemist, who reports that it is alcohol and water fit for beverage purposes, with an alcoholic content by volume of 43.0% and 43.6% respectively. At least one, and probably some of the other jugs were labeled "Coca Cola".

Accordingly, ABC agents seized Presley's Buick sedan and Ealey's Chevrolet sedan on July 30, 1953 at 471 Southard Street, Trenton, where both men were employed.

When the matters came on for hearing pursuant to R.S. 33:1-66, Lester Presley and Leroy Ealey appeared and sought return of their respective cars, and Louis Bernocchi appeared and sought recognition of an alleged lien upon Ealey's Chevrolet sedan. None of these persons disputes the above stated facts.

The alcoholic beverages in the jugs are prima facie illicit because of the absence of any labels on the jugs describing their contents. R. S. 33:1-88. Such illicit alcoholic beverages and the vehicle in which they were found and were being transported constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66. Forfeiture does not depend upon the quantity of illicit alcoholic beverages seized. Cf. Seizure Case No. 7044, Bulletin 760, Item 8.

However, possession and transportation of an insignificant quantity of illicit alcoholic beverages, as in this case, is a factor to be considered in determining whether the persons involved acted in good faith and unknowingly violated the law, or whether it is a mere circumstance that they were not caught with a larger amount of illicit alcoholic beverages. They may have been on the way to an illicit still to have the jugs filled with bootleg liquor, or they may have just completed a delivery of such liquor. On the other hand, they may have had the honest and innocent belief that they were empty jugs.

To establish their innocence, Presley and Ealey must make a true and full disclosure of what transpired, from which it must appear that there is no likelihood that they had engaged in or intended to engage in any bootlegging enterprise.

The substance of their testimony is that the grain was intended as feed for a pig owned by one Robert MacFarland, an acquaintance, under an arrangement whereby the latter was to give Presley a pig when and if it was born; that during the course of his visits to MacFarland, Presley told him he intended to make some apple cider and asked him to look for a few empty gallon jugs; and that the eight seized jugs were found by MacFarland on a nearby dump and turned over to Presley and Ealey.

There are various discrepancies in the details of this explanation. However, it is possible that Presley and Ealey are telling the truth as intelligently as they are able to.

Neither Presley nor Ealey have any previous record for violating any liquor laws. They have been legitimately employed. There were other persons, including children, in both cars on the Sunday of the seizure. I am reluctant to believe Presley and Ealey were engaged in a bootleg venture with the other men, women, and children in their cars. In view that they appear to have a previous law-abiding background insofar as alcoholic beverages are concerned, I shall give Presley and Ealey the benefit of the doubt, and accept their explanation of how it came about that the jugs were in their cars.

I therefore find that Presley and Ealey acted in good faith and unknowingly violated the law. It should be specifically noted that the above considerations do not control criminal proceedings for possessing and transporting illicit alcoholic beverages, since intent to violate the law is not an essential element therein. Indeed, it appears that both Presley and Ealey have recently been convicted and fined in criminal proceedings in the case.

Accordingly, pursuant to the discretionary authority afforded me by R. S. 33:1-66(e), the motor vehicles will be returned to Presley and Ealey, respectively, upon payment by each of the costs of the seizure and storage of his motor vehicle.

It is therefore unnecessary to determine whether Louis Bernocchi and Charles Alu, t/a Max's Auto Parts have a lien on Ealey's Chevrolet

sedan, as they may now proceed to enforce whatever claim they have by direct action against Ealey when the motor vehicle is returned to him.

Accordingly, it is DETERMINED and ORDERED that if on or before March 22, 1954, Lester Presley pays the costs of seizure and storage of the Buick sedan described in Schedule "A" hereinafter set forth, such sedan and two bags of grain will be returned to him; and it is further

DETERMINED and ORDERED that if on or before the 22nd day of March, 1954, Leroy Ealey pays the costs of seizure and storage of the Chevrolet sedan described in the aforesaid Schedule "A", such sedan will be returned to him; and it is further

DETERMINED and ORDERED that the eight jugs listed 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: March 11, 1954.

SCHEDULE "A"

Case No. 8376

4 - 1-gallon jugs with alcohol
2 - 100 lb. bags of grain
1 - Buick sedan, 1953 N. J. Registration LS-15-R.

Case No. 8377

4 - 1-gallon jugs with alcohol
1 - Chevrolet sedan, Serial No. 14BH093217, 1953 N J. Registration LB-9969.

6. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION THROUGH THIS STATE OF BOOTLEG ALCOHOLIC BEVERAGES - CLAIMANT'S ASSERTED BELIEF THAT PURCHASE OF SUCH ALCOHOLIC BEVERAGES OUT OF STATE WAS LEGAL REJECTED - ALCOHOLIC BEVERAGES AND MOTOR VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on November 11, 1953 of 72 one-half gallon jars of alcohol and a Ford sedan, in the vicinity of Post #105, New Jersey Turnpike near Newark entrance, in the City of Newark, County of Essex and State of New Jersey.	Case No. 8449 ON HEARING CONCLUSIONS AND ORDER

Nicholas D. Introcaso, Jr., Esq., Attorney for Thomas Fogg.
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 72 half-gallon jars of alcohol and a Ford sedan, described in a schedule attached hereto, seized on November 11, 1953 in the vicinity of Post #105, New Jersey Turnpike, near Newark entrance, in the City of Newark, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the first instance by a New Jersey State Trooper, on a routine patrol of passing vehicles, when he discovered the alcohol in the Ford sedan. The motor vehicle and alcohol were thereafter turned over to the Division of Alcoholic Beverage Control.

When the matter came on for hearing, pursuant to R.S. 33:1-66, an appearance was entered on behalf of Thomas Fogg, the registered owner of the motor vehicle, who sought return of such vehicle and the alcohol.

It appears from the testimony of the State Trooper that William Fogg was driving the car and Thomas Fogg and Wilma Fogg were passengers therein when it was seized; that immediately preceding the discovery of the alcohol in the trunk compartment of the car, Thomas Fogg said to the Trooper, "I have a few bottles of liquor in the trunk;" that the Trooper asked Fogg what kind of liquor, Thomas Fogg replied "bootleg liquor".

The Trooper then found six cardboard cartons each containing twelve half-gallon "Mason" jars with what appeared to be alcohol. None of the jars had affixed thereto any labels or stamps indicating the payment of tax on alcoholic beverages. Thomas Fogg told the Trooper that he had purchased the alcohol in Franklin County, North Carolina, from a man unknown to him, in or at the outskirts of a wooded area for about $20.00 a case and was transporting it to his home in New York for personal consumption by himself and five brothers.

A sample of the contents of one of the jars was analyzed by the Division chemist who reports that it is alcohol and water, fit for beverage purposes, with an alcoholic content by volume of 46.5%.

At the conclusion of the presentation of the evidence by the Division, and again at the conclusion of evidence on Thomas Fogg's behalf, counsel for Thomas Fogg made an urgent plea that there had been no violation of the Alcoholic Beverage Law of this State. He contended that the evidence established that Fogg had purchased the alcoholic beverages in North Carolina ostensibly in a legal manner or at least in accordance with the local custom in that State and that Fogg was merely transporting such alcoholic beverages through New Jersey, to his home in New York, for personal consumption. This, of course, is an erroneous concept of the present day view concerning liquor control. Comity between the States, in addition to the

possibility that bootleg liquor may come to rest within the boundaries of our State, is the basic reason why possession or transportation of bootleg alcoholic beverages in this State violates our law irrespective of the origin or destination of such bootleg beverages.

The controlling provisions of our law, in so far as transportation of alcoholic beverages from a point outside the State, through the State, to a point in another State, are referred to in Seizure Case No. 8234, Bulletin 979, Item 2. One of the provisions of Rule 2, State Regulations No. 18, referred to in such cited case, is that the alcoholic beverages being transported through this State must be properly labeled and bear indicia of tax payment. The jars of alcoholic beverages seized in the instant case had neither labels nor tax stamps.

In actuality, there can be no doubt that Fogg was transporting moonshine liquor. It would be far fetched to accept at face value the assertions by Fogg's witnesses that they honestly assumed the purchase, possession, transportation and consumption of alcoholic beverages in the manner herein set forth were legal. I am certain that the least intelligent amongst them was aware that any such practice of obtaining alcoholic beverages in North Carolina, or elsewhere, was in violation of law, even if as claimed, such law was customarily disregarded in some rural areas in North Carolina.

The essential facts are that the jars contained illicit alcohol as defined by the law of this State, because of the absence of labels or tax stamps on the jars, R. S. 33:1-88, R.S. 33:1-1(i); that actually the method of packing and manner of sale of the alcoholic beverages leads to the inescapable conclusion that such alcoholic beverages were not the product of a licensed distiller and sold pursuant to any license, but were bootleg in origin and sale, that by reason of the transportation of such illicit alcoholic beverages in the Ford sedan, such motor vehicle, as well as the alcoholic beverages, constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

My discretionary authority to return the property subject to forfeiture is limited to those cases where the claimant has established to my satisfaction that he acted in good faith and unknowingly violated the law. R. S. 33:1-66(e). Whatever may be said concerning Fogg's lack of knowledge of the laws of this State governing transportation of alcoholic beverages therein, it is certainly clear that when he purchased, from a stranger in woods on or near a highway, 36 gallons of these alcoholic beverages referred to as corn liquor, whether for himself or sale to others, he had no illusions that it was a legitimate transaction. Thomas Fogg's request for the return of the motor vehicle and alcohol is therefore denied.

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. 33:1-66, 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
Director.

Dated: March 11, 1954.

SCHEDULE "A"

72 - one-half gallon jars of alcohol
1 - Ford sedan, Serial and Engine No. 98ba-583086, 1953 N. Y. Registration BB 3955.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - UNQUALIFIED EMPLOYEE - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ANTHONY ALESI
T/a APPLEGARTH HOTEL
Prospect Plains Road
Monroe Township (Middlesex County)
P. O. Hightstown, N. J.,

Holder of Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Monroe.

CONCLUSIONS AND ORDER

Anthony Alesi, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On January 23, 1954, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, at your licensed premises to Kenneth ---, Frederick ---, Raphael --- and George ---, persons under the age of twenty-one (21) years, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulations No. 20.

"2. On January 23, 1954, you knowingly allowed, permitted and suffered Anthony Alesi, Jr., a non-resident of the State of New Jersey who had not obtained a requisite employment permit from the Director of the Division of Alcoholic Beverage Control, to serve, sell and solicit the sale of alcoholic beverages in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 13."

The file herein discloses that two ABC agents entered defendant's licensed premises at about 9:00 p.m. on January 23, 1954. Anthony R. Alesi, Jr. (son of defendant-licensee) was tending bar. About twenty minutes later four young men entered the premises. Each young man ordered from the bartender a bottle of beer, the contents of which he consumed, and each ordered a second bottle of beer, the contents of which he was consuming when the agents identified themselves. Subsequent investigation disclosed that the four young men were, respectively, 17, 18, 19 and 19 years of age, and that the bartender resides in Chester, Pennsylvania, and does not hold an employment permit issued by the Director.

Defendant has a prior record. Effective July 20, 1948, the Director suspended his license for ten days after he had pleaded non vult to a charge alleging that he possessed illicit alcoholic beverages. Re Alesi, Bulletin 811, Item 1. Effective December 1, 1952, the local issuing authority suspended his license for ten days for selling alcoholic beverages during prohibited hours. The minimum penalty is twenty days for a violation of the type set forth in charge 1 (Re Buddy & Steve's Tavern, Inc., Bulletin 964, Item 6) and five days for a violation of the type set forth in charge 2 (Re Nevins Bankers Club, Bulletin 942, Item 2). However, in view of defendant's prior record, I shall suspend his license for a period of thirty days. Re Penns Grove Lodge, Bulletin 970, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 12th day of March, 1954,

ORDERED that Plenary Retail Consumption License C-10, issued by the Township Committee of the Township of Monroe to Anthony Alesi, t/a Applegarth Hotel, for premises on Prospect Plains Road, Monroe Township (Middlesex County), be and the same is hereby suspended for twenty-five (25) days, commencing at 3:00 a.m. March 22, 1954, and terminating at 3:00 a.m. April 16, 1954.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - CLUB LICENSEE - FAILURE TO KEEP LICENSED PREMISES CLOSED IN VIOLATION OF LOCAL ORDINANCE - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
AMERICAN LEGION, BAYONNE POST #19)
683 Broadway) CONCLUSIONS
Bayonne, N. J.,) AND ORDER
)
Holder of Club License CB-157, issued by the Director of the Division of Alcoholic Beverage Control.)

Cornelius E. Gallagher, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charge:

"On Sunday, February 7, 1954 at about 3:22 a.m. you failed to have your licensed premises securely closed, locked and made inaccessible to persons except you and your employees; in violation of Section 11 of an Ordinance passed by the Board of Commissioners of the City of Bayonne on August 3, 1943, as amended by Ordinance passed by said Board of Commissioners on April 17, 1951."

Section 11 of the ordinance referred to in the charge requires licensed premises to be closed between 3:00 a.m. and noon on Sunday.

The file discloses that two ABC agents who were in defendant's premises at 3:00 a.m. Sunday, February 7, 1954, observed that the persons who were then in the premises did not leave at that time and that many persons were entering the premises. The agents went to Police Headquarters and returned to the licensed premises with members of the Bayonne Police Department at 3:22 a.m. When the agents and police entered, approximately twenty-five persons were still in the barroom area.

Defendant has no prior adjudicated record. I shall suspend defendant's license for fifteen days. Re Jackson, Bulletin 835, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 19th day of March, 1954,

ORDERED that Club License CB-157, issued by the Director of the Division of Alcoholic Beverage Control to American Legion, Bayonne Post #19, for premises 683 Broadway, Bayonne, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. March 29, 1954, and terminating at 2:00 a.m. April 8, 1954.

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Charles Zambuto, Thomas Zambuto & Ralph Nigro
T/a F & F Trucking Company
1040 Lafayette Avenue
Brooklyn, N. Y.
Application filed March 24, 1954 for Transportation License.

M. K. Goetz Brewing Company
6th and Albemarle Streets
St. Joseph, Missouri.
Application filed March 25, 1954 for Limited Wholesale License.

Otto Kern
T/a Kern Distributing Co.
305 Manchester Ave.
North Haledon, Paterson, N. J.
Application filed March 25, 1954 for Limited Wholesale License.

Cambeis Trucking Company, Inc.
40 Bay Street
Brooklyn 31, N. Y.
Application filed March 30, 1954 for Transportation License.

William Howe Davis
Director.