

STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 783

NOVEMBER 21, 1947.

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STATE OF NEW JERSEY  
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 783

NOVEMBER 21, 1947.

1. APPELLATE DECISIONS - MATWEISHYN v. HILLSIDE, WINTER AND CERVEN;  
DI BUONO AND INTRABARTOLO.

JOSEPH G. MATWEISHYN, PAUL  
MATWEISHYN and ANTHONY  
MATWEISHYN, t/a LIBERTY LIQUOR  
STORE,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC  
BEVERAGE CONTROL OF THE TOWNSHIP  
OF HILLSIDE, and GRAHAM B. WINTER  
and DANIEL J. CERVEN, t/a MAYFAIR  
LIQUOR STORE; WILLIAM V. DI BUONO  
and FRANK J. INTRABARTOLO,

Respondents

ON APPEAL  
CONCLUSIONS AND ORDER

Kasen, Schnitzer and Kasen, Esqs., by Daniel G. Kasen, Esq.,  
Attorneys for Appellants.

Herrigel, Lindabury & Herrigel, Esqs., by Louis J. Dughi, Esq.,  
Attorneys for Respondents Municipal Board, Graham B. Winter  
and Daniel J. Cerven.

Robert W. Moncrief, Esq., Attorney for Respondents William V.  
DiBuono and Frank J. Intrabartolo.

BY THE COMMISSIONER:

Appellants appeal from the action of respondent Municipal Board on July 17, 1947, whereby said Board denied appellants' application for a plenary retail distribution license and granted an application filed by respondents Winter and Cerven for a plenary retail distribution license and an application filed by respondents DiBuono and Intrabartolo for a plenary retail distribution license.

The petition of appeal alleges that:

"(a) The entire proceedings before the BOARD of July 17, 1947, and its action on that date were contrary to law, marked by bad faith and were intended and designed not to afford appellants an equal opportunity of obtaining a Plenary Retail Distribution License;

\*\*\*\*\*

"(e) The BOARD wilfully and grossly abused its discretion."

According to the 1940 Federal census, the Township of Hillside had a population of 18,556. On June 11, 1947, the Township Committee adopted an ordinance increasing the permissible number of plenary retail distribution licenses from four to six. The issuance of two additional licenses was not prohibited by the provisions of P.L. 1947, ch. 94, because, after the issuance of said licenses, the ratio of licenses to population was less than one to each 3,000 inhabitants.

After the ordinance was amended, nine applications for licenses were filed. Appellants sought a license for premises known as 1329 Liberty Avenue, in close proximity to premises known as 1317 Liberty Avenue wherein one Szarko has operated under a plenary retail distribution license for a number of years. Appellants' premises, and the premises mentioned in three other applications (which are not the subject of this appeal), are located to the south of Hillside Avenue. The premises for which respondents Winter and Cerven applied

are known as 1454 North Broad Street, and the premises for which respondents DiBuono and Intrabartolo applied are known as 1405 Maple Avenue. Both of these premises are north of Hillside Avenue, and the premises mentioned in three other applications (which are not the subject of this appeal) were also located north of Hillside Avenue.

The nine applications were first presented to the Municipal Board at its meeting held on July 3, 1947. At the hearing herein, Secretary Luthenauer testified that, after the meeting adjourned on July 3rd, the members of the Board inspected each of the premises for which applications had been filed. At a meeting of the Board held on July 17, 1947, each of the applicants was given an opportunity to be heard, and thereafter the Board granted the applications filed by respondents Winter and Cerven and DiBuono and Intrabartolo, and denied the other seven applications because the quota of licenses had thus been filled. The minutes of the meeting of respondent Municipal Board held on July 17, 1947 discloses the following:

"\*\*\* The Board was in agreement that both licenses should be granted in the area north of Hillside Avenue as eighteen licenses are now in force south of that thoroughfare and only five in the area to the north of it; furthermore, the Board has consistently refused to grant any more licenses in that southern area and were upheld in their actions when one applicant appealed to the State in the past.

"Therefore, all applicants for premises south of Hillside Avenue were considered disapproved on the grounds that sufficient licenses are now in force in that area.

"The first application filed in the north of Hillside Avenue area was for premises at 1454 North Broad Street. As no objections were received from residents, the Board was unanimous in awarding a license to Graham B. Winter and Daniel J. Cerven.

"The Board feels it is not advisable to have more than one package store in the North Broad Street area. Applications for premises at 1422 North Broad Street and 1424 North Broad Street were, therefore, disapproved.

"The second vacancy was filled by awarding a license to William V. DiBuono and Frank J. Intrabartolo for premises at 1405 Maple Avenue."

Lengthy cross-examination of the three members of respondent Board failed to disclose any evidence that they were improperly motivated or influenced by any person in reaching their decision. Specifically, I find that there is absolutely no truth in the charge that they were influenced by the licensee Szarko. I am satisfied that they considered only the proper geographical distribution of licenses in the municipality. The evidence shows that eighteen licenses, including both consumption and distribution licenses, had previously been issued for premises south of Hillside Avenue, and that only five licenses had previously been issued for premises north of Hillside Avenue. Even if the railroad should have been taken as a dividing line, as appellants contend, the previous distribution was sixteen to the south and seven to the north of the railroad. It would seem that public convenience and necessity clearly did not require the granting of appellants' application for premises in close proximity to an existing distribution license, and that the two applications which were granted were for premises in business sections not adequately served by distribution licensees. Under these circumstances I conclude that appellants have failed to show that the members of the Board acted in bad faith or abused their discretion.

Additional grounds set forth in the petition of appeal may be disposed of in a few words: The application filed by respondents Winter and Cerven was filed before their notice of application was advertised. Respondents Winter and Cerven had a sufficient right of possession of their licensed premises at the time the application was filed, and entered into actual possession shortly after the license was issued. Cf. Segal v. Clifton, Bulletin 732, Item 5. There is no evidence that the Clerk of the Township is indirectly interested in either or both of the applications which were granted.

Under the circumstances I shall affirm the action of respondent Board.

Accordingly, it is, on this 10th day of November, 1947,

ORDERED that the action of respondent Municipal Board, in denying appellants' application for a plenary retail distribution license, and in granting a plenary retail distribution license to respondents Winter and Cerven and a plenary retail distribution license to respondents DiBuono and Intrabartolo, be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Commissioner.

2. DISCIPLINARY PROCEEDINGS - HINDERING INVESTIGATION - PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
PENNS GROVE LODGE NO. 820 )  
LOYAL ORDER OF MOOSE )  
Naylor Ave. & West Main St. )  
Penns Grove, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Club License CB-104 for the 1946-47 and the 1947-48 licensing years, issued by the State Commissioner of Alcoholic Beverage Control.)

Joseph Narrow, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to a charge alleging that it hindered and failed to facilitate an inspection of its licensed premises by an investigator of the State Department of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

On April 14, 1947, in the course of a retail inspection of the licensed premises, the bartender-steward then in charge of said premises refused to permit the inspection by an investigator of the State Department of Alcoholic Beverage Control of a room in the building of which the licensed premises are a part. Such inspection is authorized by R. S. 33:1-35 which provides, among other things, "The Commissioner \*\*\*may\*\*\* cause to be made \*\*\* the inspection and search of premises for which the license is sought or has been issued, of any building containing the same \*\*\*", and is specifically agreed to by the defendant in its application for a license in language following, to wit: "The person signing this application is authorized to, and does, consent on behalf of the club, that the licensed premises and all

portions of the building containing same, including all rooms, cellars, out-buildings, passageways, closets, vaults, yards, attics, and every part of the structure of which the licensed premises are a part and all buildings used in connection therewith which are in its possession or under its control, may be inspected and searched without warrant at all hours by the State Commissioner of Alcoholic Beverage Control, the State Tax Commissioner, their duly authorized inspectors, investigators and agents and all other officers."

The steward's stated reason for the refusal was that he had no key. Nevertheless, he made no effort to secure a key and refused to get in touch with any responsible officer of the club to secure such key, although he was requested so to do. The investigator, after waiting nearly three hours, left the premises without having inspected the room.

It is urged in mitigation of the penalty to be imposed herein that the steward acted without authority. It is to be noted that the steward has apparently been so employed by the defendant for well over twenty years and that he had met the inspector on the occasions of prior inspections. He should know, and if he does not, he must learn that proper cooperation with the law-enforcement machinery of the State is required of all its citizens. It is unfortunate that the fault of one should fall upon the many, but I must insist that my agents be given full and complete cooperation by all licensees and by all their employees and agents.

Defendant's license was suspended by the State Commissioner for thirty-five days, effective April 20, 1944, Re Penns Grove Lodge No. 820, Loyal Order of Moose, Bulletin 615, Item 2, on a charge of gambling and sales after hours (Sunday) and to non-members.

In view of all the circumstances, I shall suspend the license for thirty days, remitting five days for the plea, leaving a net suspension of twenty-five days. It behooves the responsible officers and members of the club to take the proper steps to see that no further violations of the liquor laws occur on their licensed premises.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the licensing year 1947-48. State Regulations No. 16.

Accordingly, it is, on this 10th day of November, 1947,

ORDERED that Club License CB-104, issued for the 1947-48 licensing year by the State Commissioner of Alcoholic Beverage Control to Penns Grove Lodge No. 820, Loyal Order of Moose, for premises Naylor Ave. & West Main Street, Penns Grove, be and the same is hereby suspended for a period of twenty-five (25) days, commencing at 1:00 a.m. November 17, 1947, and terminating at 1:00 a.m. December 12, 1947.

ERWIN B. HOCK  
Commissioner.

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

In the Matter of an Application )  
to Remove Disqualification )  
because of a Conviction, )  
Pursuant to R. S. 33:1-31.2. )

CONCLUSIONS  
AND ORDER

Case No. 620.  
----- )

BY THE COMMISSIONER:

The petitioner was advised in October 1939 that he was disqualified from holding a liquor license or being employed by a liquor licensee in this state because of his conviction, in May 1928, of the crime of possessing and selling narcotics in violation of the Harrison Act. See Re Case 300, Bulletin 353, Item 15.

In May 1940, his application to lift such disqualification was denied because, despite the transfer of his liquor license to his wife in February 1939, he continued to be employed there and was personally implicated in a violation of the liquor laws at the tavern in June 1939. See Re Case 78, Bulletin 407, Item 3.

The records of this Department further show that the petitioner remained the undisclosed owner of the tavern in his wife's name, and continued the active management of the business until it was sold to a third person in June 1942.

In view of the petitioner's clear record for more than five years last past and the excellent character testimony offered on his behalf by a lawyer, the pastor of his church, and a former municipal employee, I would, normally, have no hesitancy in acting favorably on the instant petition. What gives me pause, however, is the warranted inference, from the recited background, that the petitioner has little respect for observance of the provisions of the Alcoholic Beverage Law.

His past conduct, indicative as it is of a tendency to deliberately and callously disregard the liquor laws, raises a serious question as to whether I can find, as I am required to do under the statute before granting relief, that the petitioner's association with the alcoholic beverage industry will not be detrimental to the public interest. With this issue in the forefront, I have carefully examined the entire record and have reached the conclusion, although not without some misgiving, to exercise my discretion in the petitioner's favor and lift the disqualification resulting from his criminal conviction.

The petitioner will understand that his resultant status is, at best, a tenuous one, and that any decision in the future, involving a violation by him of the liquor laws, must reflect his past history in the liquor business.

Accordingly, it is, on this 10th day of November, 1947,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2.

ERWIN B. HOCK  
Commissioner.

4. APPELLATE DECISIONS - HEINRICH v. WALLINGTON AND SZOT.

RICHARD W. HEINRICH, )  
 )  
 Appellant, )  
 )  
 -vs- )  
 )  
 MAYOR AND COUNCIL OF THE BOROUGH )  
 OF WALLINGTON, and KAROL JOHN SZOT, )  
 trading as SZOT'S TAVERN, )  
 )  
 Respondents )  
 )  
 ----- )

ON APPEAL  
CONCLUSIONS AND ORDER

John Stothers, Esq., Attorney for Appellant.  
 No appearance on behalf of Respondent Mayor and Council.  
 Manfield G. Amlicke, Esq., Attorney for Respondent Karol John Szot.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Mayor and Council whereby it renewed for the present fiscal year a plenary retail consumption license held by respondent Karol John Szot for premises at 20 William Street, Wallington.

Appellant alleges that the action of respondent Mayor and Council was erroneous because respondent Szot "knowingly violates the section of the State Alcoholic Beverage Act, by permitting unnecessary and unbearable noises by the patrons of the tavern, and the loud Juke Box playing and shameful and unbearable stamping of the feet at all hours of the night, this being approved and encouraged by the afore-said proprietor."

Appellant and his mother have resided for many years at 22 William Street, Wallington. Their home is separated from Szot's tavern by an alleyway which is approximately three and one-half feet in width. Both appellant and his mother testified that they have been frequently annoyed during the early hours of the morning by loud noises caused by the patrons of Szot's tavern. Specifically they allege that these patrons slam doors, shout, use profane language, play shuffleboard and stamp while dancing on the licensed premises. They allege that they frequently complained to the licensee and that he has done nothing to remedy their complaints.

Respondent Szot has been conducting his licensed business continuously since Repeal at the premises now known as 20 William Street. He denies that his patrons make any unnecessary noise or otherwise conduct themselves in an improper manner. He states that his juke box, which has a control in the back, is "not loud". He further testified that during each year he has had only three or four wedding receptions at which dancing is permitted in a large room located in a rear part of his licensed premises. Mrs. Mitchell, who has resided for the past eighteen years directly above the licensed premises, and Mr. Wogacik, who has resided next door to the licensed premises for twenty years, testified that they have never been annoyed by any noises or any improper conduct of patrons.

Considering all the evidence herein and the clear record of the licensee, appellant has not sustained the burden of proof in showing that respondent Mayor and Council acted erroneously in renewing the license. Hence I shall affirm the action of the Mayor and Council.

The interested parties herewith should attempt to adjust the matter calmly and fairly and with the realization that we must live and let live and give and take; that, on the one hand, noise is

incident to the conduct of any business but that, on the other hand, there is a time and place for it and a reasonable hour at which a good neighbor should be able to enjoy his sleep. Bulletin 342, Item 10. A licensee is responsible for the conduct of his patrons in and about his licensed premises. Repici v. Hamilton, Bulletin 201, Item 8.

The conclusion which I have reached herein applies merely to the renewal for the present fiscal year. The appellant may request the local issuing authority to institute disciplinary proceedings at any time and may object to renewal for the next fiscal year if unsatisfactory conditions result from the continued operation of the licensed premises. Suber v. Matawan, Bulletin 646, Item 8.

Accordingly, it is, on this 10th day of November, 1947,

ORDERED that the action of respondent Mayor and Council, in renewing the license of Karol John Szot, trading as Szot's Tavern, for premises at 20 William Street, Wallington, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Commissioner.

- 5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSEE, WHILE APPARENTLY INTOXICATED, WORKING ON LICENSED PREMISES - HINDERING INVESTIGATION - PREVIOUS RECORD - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against )

MICHAEL SALIKLIS )  
T/a OAK INN )  
1023 Magnolia Avenue )  
Elizabeth 4, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth. )

-----  
Walter H. Flaherty, Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges that he (1) sold alcoholic beverages in original containers for off-premises consumption after 10:00 p.m., in violation of Rule 1 of State Regulations No. 38; (2) worked on licensed premises when apparently intoxicated, in violation of Rule 24 of State Regulations No. 20; and (3) hindered and failed to facilitate the investigation by investigators of the State Department of Alcoholic Beverage Control, in violation of R. S. 33:1-35.

On Saturday, September 13, 1947, at about 10:45 p.m., an investigator of the State Department of Alcoholic Beverage Control entered the licensed premises of defendant and purchased from the bartender six 12-ounce cans of beer in original containers, which the investigator was permitted to carry off the licensed premises.

The licensee was then on the licensed premises but apparently not working. When the Alcoholic Beverage Control agents made their identity known the licensee caused so much commotion and confusion that it was necessary first to call in some city detectives, and finally a uniformed policeman to quiet the licensee and keep the customers in order. At this time the licensee went behind the bar and, although he was apparently intoxicated, he proceeded to serve several patrons. A licensee who cannot control his customers under similar circumstances, or at least try to control them, is certainly not a proper person to be in charge of his licensed premises, and when his action is the cause of the disturbance he is definitely subjecting himself and his licensed business to a severe penalty. The only reason given by the defendant for his conduct was that on a previous occasion two men entered his licensed premises and falsely represented themselves as ABC agents. I can find no merit in this excuse because, if he believed that my agents were impostors, he should have called the police immediately. It is about time licensees learned that they must not only cooperate with agents of this Department but must facilitate investigations conducted by them.

Defendant has a prior record. Effective May 7, 1947, the local issuing authority suspended his license for five days after finding him guilty of selling alcoholic beverages to minors.

Under all the circumstances and considering the plea entered herein, I shall suspend the license in the instant case for a period of sixty days.

Accordingly, it is, on this 12th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-116, issued by the Municipal Board of Alcoholic Beverage Control of the City of Elizabeth to Michael Saliklis, t/a Oak Inn, for premises 1023 Magnolia Avenue, Elizabeth, be and the same is hereby suspended for a period of sixty (60) days, commencing at 2:00 a.m. November 19, 1947, and terminating at 2:00 a.m. January 18, 1948.

ERWIN B. HOCK  
Commissioner.

6. SEIZURE - FORFEITURE PROCEEDINGS - ALCOHOLIC BEVERAGES PEDDLED FROM MOTOR VEHICLE CONVERTED TO TRAVELING "DINER" - MOTOR VEHICLE AND ALCOHOLIC BEVERAGES, MERCHANDISE AND EQUIPMENT IN THE VEHICLE ORDERED FORFEITED.

In the Matter of the Seizure on )  
 June 26, 1947, of a quantity of )  
 alcoholic and other beverages, )  
 food stuffs, merchandise, equipment )  
 and a Chevrolet truck, at the inter- )  
 section of Routes 24 and 29 (opposite )  
 the State Highway Garage) in the City )  
 of Newark, County of Essex and State )  
 of New Jersey. )

Case No. 7145

ON HEARING  
 CONCLUSIONS AND ORDER

Giro Napolitano, Pro Se.

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

BY THE COMMISSIONER:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1 of the Revised Statutes, to determine whether a quantity of alcohol and other beverages, a Chevrolet truck, and other articles, described in a schedule attached hereto, seized on June 26, 1947 opposite the state highway garage in Newark, N. J. constitute unlawful property and should be forfeited.

It appears that the State Department of Alcoholic Beverage Control received a specific complaint that at the location in question a person was selling beer, from a motor vehicle, to construction workers. Accordingly, three ABC agents stationed themselves there at about noon on June 26th and observed the arrival of the Chevrolet truck, equipped as a crude "diner", with cooking utensils and a cooler for bottled beverages.

Giro Napolitano parked the truck, and several construction workers purchased sandwiches and soda. An ABC agent then purchased a sandwich and a can of beer, for which he paid Napolitano. While this agent was eating the sandwich and drinking the beer, the two other agents came to the vehicle. These men each ordered and were served a sandwich and a can of beer, for which they paid Napolitano. The agents then disclosed their identity.

Napolitano did not hold any license authorizing him to sell or serve alcoholic beverages and, in any event, alcoholic beverages may not be peddled, even by a retail licensee. Rule 3, State Regulations No. 17.

The agents obtained a signed statement from Napolitano in which he admits the sale of the three cans of beer to them, and acknowledges that he had been selling beer from his truck for about three weeks, at the suggestion of a foreman at the garage.

Napolitano was arrested by the ABC agents and they seized the truck and its contents, which included two unopened cans of beer in the cooler, and \$26.00 in cash receipts.

The seized beer is an illicit alcoholic beverage because it was intended for sale in violation of the Alcoholic Beverage Law. R. S. 33:1-1(i). The fact that there were only two cans of beer in the truck when the seizure was made is merely incidental, and in nowise lessens the serious nature of the offense. Cf. Seizure Case No. 7044, Bulletin 760, Item 8. Whatever beer was seized is illicit and, together with the other articles in the truck, the truck itself, and

the cash receipts of the unlawful enterprise, constitute unlawful property and is subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Pending the seizure hearing in the case, the truck and its contents, excepting the two cans of beer and the cash receipts, were returned to Giro Napolitano upon payment of the sum of \$250.00, the appraised retail value thereof, to the State Commissioner of Alcoholic Beverage Control, under protest, pursuant to R. S. 33:1-66. Napolitano has stipulated that said Commissioner shall determine in this proceeding whether the money shall be returned to him.

When the matter came on for hearing pursuant to R. S. 33:1-66, Napolitano appeared and sought return of the \$250.00.

Under R. S. 33:1-66(e), I have the discretionary authority to return property subject to forfeiture to a person who has acted in good faith and has unknowingly violated the law.

According to Napolitano, he is 60 years of age, resides alone, has no previous criminal record, conducted a restaurant during the period 1923 to 1930, and for the last four years has been a huckster and of late has operated the truck as a "diner". He says that during the three-week period he purchased beer only one day a week, only 12 bottles at a time, and sold the beer for accommodation and not to make money. His pastor testified that Napolitano is regarded favorably and has a good reputation.

This evidence, if accepted at face value, would establish that Napolitano was not of criminal bent of mind and had an industrious and honest background.

However, that, in itself, is not controlling. It may indicate that Napolitano is not a large scale or vicious violator of the liquor laws, but that is not the question to be decided. Cf. Seizure Case 7041, Bulletin 745, Item 1. The only matter I can consider is whether Napolitano unknowingly violated the Alcoholic Beverage Law.

On this score when asked directly, "Didn't you know you would get in trouble with the law?", Napolitano replied, "I don't know nothing at all." I have grave doubt that Napolitano is ignorant to that degree. It is much more significant that when Napolitano was asked, "Why did you sell beer on the truck?", he answered that the foreman told him that if he did not bring beer, the men would not buy his sandwiches; that this foreman actually did not buy any sandwiches for three days, and on the last day told Napolitano that if he brought beer the next day, he would buy sandwiches.

Apparently yielding to the compulsion of the foreman's importunities, Napolitano took a chance and was caught. He acted foolishly, but it certainly was not in ignorance of the law. Aside from the fact that at this late date everyone should know that it is illegal to sell alcoholic beverages without a license, Napolitano's business venture as the operator of a restaurant and as a huckster indicate that he had the intelligence and experience actually to know that he was violating the liquor laws by selling alcoholic beverages to the workmen at the garage. I am therefore compelled to deny his request for return of the \$250.00. Cf. Seizure Case 6343.

Accordingly, it is DETERMINED and ORDERED that the two cans of beer and the \$26.00 cash receipts, listed in Schedule "A" attached hereto, constitute unlawful property and the same be and hereby are forfeited in accordance with the provisions of R. S. 33:1-66, and that the beer 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 State Commissioner of Alcoholic Beverage Control, and that

the money be accounted for in accordance with law, and it is further

DETERMINED and ORDERED that the Chevrolet truck and other articles described in said schedule constitute unlawful property and that the sum of \$250.00, representing the retail value of such truck and other articles, paid under protest to the State Commissioner of Alcoholic Beverage Control by Giro Napolitano, be and hereby is forfeited in accordance with the provisions of R. S. 33:1-66, to be accounted for in accordance with law.

Dated: November 12, 1947.

ERWIN B. HOCK  
Commissioner.

SCHEDULE "A"

- 2 - 12 oz. cans of beer
- 2 - 1-gal. jugs of gasoline
- 118 - bottles of assorted sodas
- 4 - cans of sauer kraut
- 1 - 3-gallon thermos jug containing coffee
- 3 - sauce pans
- 1 - 4-burner gasoline stove
- 1 - copper steam table and 4 porcelain pots
- 11 - empty cans for assorted soda
- 125 - empty assorted soda bottles
- 100 - 8-oz. carry-out containers
- 1 - galvanized roll-container
- 1 - Coca Cola ice cooler
- 37 - Italian cigars
- 2 - boxes straws
- 31 - packages of miscellaneous cigarettes
- 1 - 1935 Chevrolet truck, 1947 Registration  
Lic. No. XL 62 L
- \$26.00 in cash taken from inside of truck

7. COURT DECISIONS - NEW JERSEY SUPREME COURT - SPRING LAKE CHATEAU INC. AND GALLAGHER v. SPRING LAKE AND DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL - CERTIORARI DENIED.

NEW JERSEY SUPREME COURT

SPRING LAKE CHATEAU, INC., body )  
corporate, and ANDREW J. GALLAGHER, )  
Prosecutors, )

-vs-

ON CERTIORARI  
MEMORANDUM

BOROUGH OF SPRING LAKE, a municipal )  
corporation, MAYOR AND COUNCIL OF THE )  
BOROUGH OF SPRING LAKE, MYRON O. )  
MORRIS, Clerk of the Borough of Spring )  
Lake, and DEPARTMENT OF ALCOHOLIC )  
BEVERAGE CONTROL OF THE STATE OF NEW )  
JERSEY, )  
Defendants )

(Not officially reported)

Submitted October 10, 1947. Decided November 4, 1947.

For Prosecutors: Ward Kremer.

For Defendants, Borough of Spring Lake, Mayor and Council of the Borough of Spring Lake, Myron O. Morris, Clerk of the Borough of Spring Lake: Gilbert Van Note.

For the Defendant, Department of Alcoholic Beverage Control of the State of New Jersey: Walter D. Van Riper, Attorney General, and Samuel B. Helfand, Deputy Attorney General.

BURLING, J.

This is an application for a writ of certiorari to review an order entered by the Commissioner of Alcoholic Beverage Control on the 19th day of February 1947, affirming the action of the Mayor and Council of the Borough of Spring Lake in denying an application of the prosecutors for a seasonal retail consumption license.

The Legislature in 1947 enacted "An Act concerning alcoholic beverages; limiting the number of licenses to sell alcoholic beverages at retail, and supplementing chapter one Title 33, of the Revised Statutes.", being Chapter 24 and now found in R. S. 33:1-12.13 to 12.21 inclusive. This act was effective May 15, 1947. Paragraph 2 (R. S. 33:1-12.14) is pertinent and reads as follows:

"2. Except as otherwise provided in this act, no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census; and no new plenary retail distribution license shall be issued in a municipality unless and until the number of such licenses existing in the municipality is fewer than one for each three thousand of its population as shown by the last then preceding Federal census." (underlining supplied.)

The Borough of Spring Lake, according to the 1940 census, has a population of 1650. Since there are presently outstanding, as there were at the time the statute became operative, two plenary retail consumption licenses, three seasonal retail consumption licenses, three plenary retail distribution licenses, and one club license (seasonal), the subject matter of the application has become moot, as the Governing Body is prohibited from issuing a sixth consumption retail license, whether plenary or seasonal.

The prosecutor does not operate "a hotel containing fifty sleeping rooms" as provided in paragraph 8 of the 1947 act, supra, (now R. S. 33:1-12.20) which is an exception to the numerical limitation.

In Westinghouse Electric Corp. v. United Electrical &c., 139 N.J.E. 97 (C of E 1946) at 106, it was held:

"\*\*\* The greater weight of authority takes the view that the time of the determination of the question by an appellate court governs, and not the law prevailing at the time the question was determined by the court below."

and in Socony-Vacuum Oil Co., Inc., v. Mt. Holly Twp., 135 N.J.L. 112 (SC 1947) at 117, it was held:

"Moreover, in my opinion, there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision by the court that is controlling. Cf. Westinghouse Electric Corp. v. United Electrical &c. America (Court of Errors and Appeals, 1946), 139 N.J.E. 97, 105, 106; 49 Atl. Rep. (2d) 896."

The application is denied as there is no debatable question presented and an appropriate rule may be presented.

8. DISCIPLINARY PROCEEDINGS - PERMITTING PIN BALL MACHINES, DICE CAGE AND DICE WHEEL ON LICENSED PREMISES IN VIOLATION OF RULE 7 OF STATE REGULATIONS NO. 20 - PERMITTING SLOT MACHINES ON LICENSED PREMISES IN VIOLATION OF RULE 8 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

CAPE MAY AMERICAN LEGION HOME ASSOCIATION, INC. 513 Lafayette Street Cape May, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-3, issued by the Board of Commissioners of the City of Cape May. )

T. Millet Hand, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded guilty to a charge that it possessed, allowed, permitted and suffered on its licensed premises two bagatelle or pin ball machines, in violation of Rule 7 of State Regulations No. 20, and has pleaded non vult to charges that it possessed two slot machines, in violation of Rule 8 of State Regulations No. 20, and possessed a dice cage and a dice wheel (devices and apparatus designed for the purpose of unlawful games and gambling), also in violation of Rule 7 of State Regulations No. 20.

On August 1, 1947, investigators of the State Department of Alcoholic Beverage Control discovered the two pin ball machines in rooms adjoining the barroom of the licensed premises used by club members. Further investigation disclosed two slot machines ("one armed bandits") and two "dice" games which were stored on the licensed premises but apparently then not in use.

Officials of the club licensee admit the possession of all this paraphernalia but state that they did not realize either that the bagatelle machine was prohibited or that possession, without use, of the other devices was a violation of State Regulations. The language of the State Regulations is clear. Ignorance of the provisions of the State Regulations is no excuse. Re Broodwinner, Bulletin 477, Item 3.

Department records disclose no prior conviction of a violation of the law. I shall, therefore, suspend the license for the minimum period (ten days) for the violation of Rule 7 (Bulletin 672, Item 12), and ten days additional for the violation of Rule 8 (Bulletin 670, Item 11), and remit five days of said suspension because of the pleas, leaving a net suspension of fifteen days.

Accordingly, it is, on this 14th day of November, 1947,

ORDERED that Club License CB-3, issued by the Board of Commissioners of the City of Cape May to Cape May American Legion Home Association, Inc., for premises 513 Lafayette Street, Cape May, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. December 1, 1947, and terminating at 2:00 a.m. December 16, 1947.

ERWIN B. HOCK Commissioner.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES TO A MINOR -  
 PRIOR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary )  
 Proceedings against )  
 FRANK and LOUIS MALANG )  
 T/a NINE O'CLOCK CLUB )  
 South Washington Avenue )  
 Piscataway Township )  
 P.O. RFD 2, New Brunswick, N.J., )  
 Holders of Plenary Retail Consump- )  
 tion License C-11 issued by the )  
 Piscataway Township Committee. )

CONCLUSIONS  
 AND ORDER

Alex Eber, Esq., Attorney for Defendant-licensees.  
 Edward F. Ambrose, Esq., appearing for Department of Alcoholic  
 Beverage Control.

BY THE COMMISSIONER:

Defendants have pleaded non vult to charges alleging that on October 19, 1947, and on divers days prior thereto, they sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, Private Edward ---, a minor, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

The file herein discloses that Private Edward --- was born on January 24, 1928. On October 19, 1947, he and another soldier, who was of full age, visited defendants' premises. During the course of this visit Frank Malang, one of defendant-licensees, served "two or three beers and two or three shots of whiskey" to the minor and his companion. In a statement obtained from Private Edward --- he states that he also had several glasses of beer and several drinks of whiskey in defendants' premises on October 15, 1947. The minor states that on neither occasion was he asked to produce any means of identification or to sign any papers stating that he was of age.

In alleged mitigation defendants allege that Frank Malang asked the minor to produce his pass from Camp Kilmer, whereupon the minor presented a pass bearing the name of "Jones" and indicating the holder thereof to be over twenty-one years of age. It is immaterial, however, whether or not such a pass was presented. Admittedly the minor did not falsely represent in writing that he was twenty-one years of age or over. It follows that defendants have not established a defense under the provisions of R. S. 33:1-77. Roey v. Hock, Bulletin 758, Item 2.

Defendants have a prior record. On December 29, 1943, their license was suspended for a period of ten days after they had been found guilty on charges of selling alcoholic beverages to minors. Re Malang, Bulletin 600, Item 8. On January 27, 1947, their license was suspended for twenty-five days after they had pleaded non vult to charges of possessing illicit alcoholic beverages and failing to disclose their prior suspension in their application for license. No aggravating circumstances appear in the present case but, since this is a third violation and a second violation for sales to minors, I shall suspend the license for twenty-five days, less five days for the plea, making a net suspension of twenty days.

Accordingly, it is, on this 17th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-11, issued by the Piscataway Township Committee to Frank and Louis Malang, t/a Nine O'clock Club, for premises on South Washington Avenue, Piscataway Township, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. December 2, 1947, and terminating at 2:00 a.m. December 22, 1947.

ERWIN B. HOCK  
Commissioner.

10. RETAIL LICENSEES - DISPLAY OF LICENSE CERTIFICATE IN FRAME BEARING ADVERTISING MATTER PROHIBITED.

November 14, 1947

G. Krueger Brewing Company  
Newark, N. J.

Gentlemen:

On November 10th your advertising manager, Joel G. Harris, visited this Department and inquired whether you may distribute to retail licensees in this state a frame, containing a glass front, in which the retailer is to post his license certificate. On the bottom of the frame there will be an advertisement of your company.

Your plan is based upon the fact that, effective May 15th of this year, the Department adopted a regulation which requires retail licensees to have their license certificates prominently posted on the licensed premises. See Rule 16 of State Regulations No. 20 (Bulletin 760, Item 1).

In adopting this regulation, the Department intended the posting of the license certificate to be a measure of help in the orderly administration of the liquor laws and regulations. It was not designed as an added medium of advertising. Certainly, the regulation and the license certificate, which formally symbolizes the governmental franchise given to the holder, deserve more dignity than being used or exploited as a means for bringing advertising matter to the attention of the public.

Your plan is disapproved. I hereby specially rule that the license certificate shall not be posted in any frame which contains advertising material of any kind.

Very truly yours,  
ERWIN B. HOCK  
Commissioner.

11. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION CONCEALING MATERIAL FACT - AIDING AND ABETTING NON-LICENSEE TO EXERCISE THE RIGHTS AND PRIVILEGES OF LICENSE - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against

JOSEPHINE BRUNO  
T/a THE CLUB  
414 Richmond Avenue  
Point Pleasant Beach, N. J.,

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-8, issued by the Mayor and Borough Council of the Borough of Point Pleasant Beach, and transferred during the pendency of these proceedings to

PHILIP BRUNO,

for the same premises.

Josephine Bruno, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant, Josephine Bruno, pleaded non vult to charges alleging that (1) in her application dated June 11, 1947, she falsely concealed the fact that Philip Bruno was the real owner of the licensed business, (2) since July 23, 1942 she permitted Philip Bruno to exercise the privileges of her successive licenses, and (3) between October 18, 1938 and July 23, 1942, her predecessor in interest, Anthony L. Bruno, permitted Philip Bruno to exercise the privileges of his successive licenses.

Philip Bruno was formerly employed by a railway company whose regulations forbade its employees from having any proprietary interest in a business conducted under a liquor license. He therefore caused his original license to be placed in the name of his brother, Anthony. When the latter was inducted into military service, the license was then transferred nominally to his sister, Josephine.

Since the institution of these proceedings the license has been transferred to Philip Bruno who, so far as appears from the record, has always been qualified to hold a liquor license under the Alcoholic Beverage Law.

The license will be suspended for a period of twenty days.  
Cf. Re Russo, Bulletin 741, Item 4.

Accordingly, it is, on this 17th day of November, 1947,

ORDERED that Plenary Retail Consumption License C-8, issued by the Mayor and Borough Council of the Borough of Point Pleasant Beach to Josephine Bruno, t/a The Club, and transferred to Philip Bruno, for premises 414 Richmond Avenue, Point Pleasant Beach, be and the same is hereby suspended for a period of twenty (20) days, commencing at 2:00 a.m. November 25, 1947, and terminating at 2:00 a.m. December 15, 1947.