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

BULLETIN 1020 JUNE 21, 1954.

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ITEM

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

BULLETIN 1020 JUNE 21, 1954.

1. COURT DECISIONS - WA WA SOCIAL CLUB, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-243-53

WA WA SOCIAL CLUB, INC.,)
Appellant,)
-vs-)
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY,)
Respondent.)

Argued June 1, 1954. Decided June 9, 1954.

Before Judges Jayne, Stanton and Hall.

Mr. Samuel D. Bozza argued the cause for the Appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the Respondent. (Mr. Grover C. Richman, Jr., Attorney General, Attorney for Respondent).

The opinion of the Court was delivered by

STANTON, J.A.D.

This is an appeal from an order of the respondent, overruling the action of the Municipal Board of Alcoholic Beverage Control of the Township of North Bergen in issuing a club license to the appellant, and cancelling the said license.

The undisputed facts are: the appellant club has been in existence thirty-five years; during the last fifteen years it has held two meetings monthly, alternating in each month between two taverns; in one the club met in the public barroom where tables and chairs were arranged for its members before the bar; its meetings there were open to the sight and hearing of other patrons; in the other they were held in a room adjoining the barroom and separated from it by an open archway; part of a shuffleboard extended into this room, a telephone was located there and access to a ladies' room was had through it; in each tavern the part of the premises used by the appellant for its meeting was, at all other times, devoted to the use of the members of the public who patronized the same; the appellant erected a club house and has occupied it continuously and exclusively since April or May, 1953; it was granted a club license by the local board on July 10, 1953.

R. S. 33:1-12(5) N.J.S.A. provides in part as follows:

"Club licenses may be issued only to such * * * organizations * * * which comply with all conditions which may be imposed by the Commissioner of Alcoholic Beverage Control by rules and regulations."

Pursuant to the statute Regulation No. 7 was promulgated and it contains the following pertinent Rules:

"Rule 3. Except as provided in Rule 5, no license shall be issued to any club unless it shall have been in active operation in the State of New Jersey for at least three (3) years continuously immediately prior to the submission of its application for a license.

Rule 4. Except as provided herein or in Rule 5, no license shall be issued to any club unless it shall have been in exclusive possession and use of a clubhouse or club quarters for at least three (3) years continuously immediately prior to the submission of its application for a license. A bona fide club which has been in active operation in this State for the period of time required as aforesaid, but which has been deprived of continuous possession and use of its clubhouse or club quarters by reason of foreclosure, dispossess or other removal for a cause other than the violation of the laws of the State or of municipal ordinance shall not be prevented thereby from obtaining a club license upon presenting to the satisfaction of the issuing authority proof of said facts and proof that possession of suitable premises has been obtained."

The reasonableness of the aforesaid regulation is not challenged and the only question is whether the Director correctly applied the same to the facts.

The first contention of the appellant is that compliance with either Rule 3 or Rule 4 is sufficient to warrant the issuance of a license. If this were so it would be entitled to one because it has met all the requirements of Rule 3. However, it is obvious that an applicant must comply with the conditions of both. It may be said, in passing, that Rule 5 is not applicable here.

Its second contention is that it "was in active operation for the required time and the circumstances of possession constituted a removal other than violations when the owners of the tavern removed the club for use of the quarters following the meetings, which caused the appellant club to secure suitable quarters when they purchased land and erected their own clubhouse". This is not clear but it seems to imply that the appellant was deprived of the exclusive and continuous possession and use of its club quarters by reason of foreclosure, dispossess or other removal for a cause other than the violation of a law or an ordinance. There is no merit in this. The second sentence of Rule 4 applies only to an organization which not only has been in active operation in this State for at least three years continuously and immediately prior to the submission of the application, but also has actually had continuous and exclusive possession and use of a club house or club quarters which it lost by reason of foreclosure, dispossess or other removal for a cause other than the violation of a law or an ordinance.

It is plain that the use of part of each of the tavern premises once a month over a period of years is not the exclusive and continuous possession and use of club quarters required by the Rules. It is clear that the intent of the Regulation is to require that an applicant for a club license be not only an organization that has been in active operation in this State for a period of three years prior to the application, but one which has evidenced standing and stability by having had the exclusive use and possession of a club house or club quarters for a like period. It is the design to grant licenses to legitimate organizations of more or less permanent standing and which are not mere devices to obtain the right to sell liquor. Cf. Meserole v. Liquor Control Commission, 125 Conn. 104, 3 A 2d 664, (Sup. Ct. Err. 1939). The appellant appears to be a bona fide organization of long standing but unfortunately, from its

viewpoint, has not had sufficient exclusive and continuous use and possession of a club house or club quarters to qualify it for a license. A good general rule sometimes appears to work a hardship in a particular case. This may be such a case. Even so, there is no way in which it may be excepted from the rule.

The order is affirmed.

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2. COURT DECISIONS - HICKEY v. ALPINE ET AL. - ORDER OF DIRECTOR AFFIRMED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-236-53, September Term, 1953

GORDON HICKEY and DANIEL HICKEY, trading as ALPINE CASTLE,

Appellants,

-vs-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY, and MAYOR AND COUNCIL OF BOROUGH OF ALPINE,

Respondents.

Argued June 1, 1954. Decided June 8, 1954.

Before Judges Jayne, Stanton, and Hall.

Mr. Leo Rosenblum argued the cause for appellants.

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

Mr. C. Conrad Schneider argued the cause for Mayor and Council of Borough of Alpine (Messrs. Schneider & Schneider, attorneys).

The opinion of the court was delivered by

JAYNE, S.J.A.D.

The following statement of the Deputy Attorney General is concisely expressive of the posture of the present appeal: "Conceivably, if the members of this Court had been initially confronted with the decision herein, they might have voted to grant the application. However, it is axiomatic that the scope of appellate review has no such breadth as would permit the judiciary to substitute its judgment in matters resting in discretion, for that of the administrative officials in whom the Legislature has reposed that responsibility."

During a span of approximately seven years the appellants have been the recipients of a plenary retail consumption license for their restaurant and tavern situate on highway route No. 9W in the Borough of Alpine. The State instituted an action to acquire this property by condemnation for highway purposes and consequentially the appellants presented an application to the Mayor and Council of the Borough in quest of a transfer of the license to a site on Closter Dock Road. The

latter location is approximately 2,000 feet distant from the former and in a more central area of the Borough designated by the local ordinance as B-2 Business Zone.

After a hearing and mature deliberation the Mayor and Council resolved to deny the application. The memorial of their action contains the specification of eight reasons. From the adverse determination of the municipal governing body the applicants appealed to the Director of the Division of Alcoholic Beverage Control who, upon a study of the testimony introduced before the hearer, affirmed the denial of the transfer. In response to the present appeal we review the factual basis and the rationalism of the director's decision.

In the pursuit of such a judicial inquiry we must be conscious that the governmental power extensively but discreetly to restrict and regulate the privilege to vend intoxicating liquors, especially by retail, has with traditional uniformity been accorded judicial support. In re Schneider, 12 N. J. Super. 449, 455 (App. Div. 1951), and citations therein.

No one doubts that a license to sell intoxicating liquor at a particular location is essentially a permit to pursue there an occupation otherwise illegal, and that the Legislature has conferred the discretionary power to grant such a privilege upon designated governmental licensing agencies. No one has the right to demand the issuance of a liquor license. Paul v. Gloucester County, 50 N. J. L. 585 (E. & A. 1888). Our appellate power is characteristically supervisory and remedial, thus we are no more at liberty arbitrarily or captiously to overturn the bona fide discretionary determinations of the constituted licensing agencies than are the latter free to act erratically or capriciously or otherwise to abuse rational discretion in their appropriate field of public service. Cf. Bivona v. Hock, 5 N. J. Super. 118 (App. Div. 1949).

Accordingly our appellate duty is to answer whether in the factual circumstances, the existence of which is not in substantial dispute, the appellants have sustained the burden of proving that the director's action was a manifestly mistaken exercise of sound discretion. Vide, Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N. J. Super. 172 (App. Div. 1949); Price v. Excise Board of Town of Millburn, 29 N. J. Super. 103 (App. Div. 1953).

Truly, the factual conditions and circumstances revealed by the evidence in the present proceedings are such that in our opinion neither the denial nor the granting of the transfer could be judicially disapproved as conspicuously abusive of the logical and reasonable exercise of circumspect discretion.

An expeditious decision of this appeal restrains us from embodying in this memorandum a detailed recitation of the evidence except to comment that the proximity of the new location to the church properties including the Community House and proposed children's playground doubtless constituted the predominantly influential reason motivating the municipal governing body and the director in denying the application.

The determination of the director is affirmed. No costs.

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3. COURT DECISIONS - MARY SLEE CATERING CORP. v. PRINCETON ET AL. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
No. A-161-53, September Term, 1953

MARY SLEE CATERING CORP.,
Appellant,
-vs-
MAYOR AND COUNCIL OF THE BOROUGH OF PRINCETON, and DIVISION OF ALCOHOLIC BEVERAGE CONTROL,
Respondents.

Argued May 17, 1954. Decided June 2, 1954.

Before Judges Eastwood, Jayne, and Smalley.

Mr. John F. Lynch argued the cause for appellant (Mr. Edward J. O'Mara, of counsel; Mr. Louis Gerber, attorney).

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

Mr. Edgar S. Smith, attorney for respondent Mayor and Council of the Borough of Princeton (Mr. Henry M. Stratton, II and Messrs. Smith, Stratton & Wise, of counsel).

The opinion of the court was delivered by

JAYNE, J.A.D.

The solitary legal problem presented to us for solution by the present appeal emerges from the odd circumstance that the premises of the Princeton Inn at Princeton, New Jersey, are situate partly within the boundaries of the Borough of Princeton and partly within the adjoining limits of the Township of Princeton. For a score of years last past a retail plenary liquor consumption license has been issued to the corporate owner of the Inn.

The Mayor and Council of the Borough of Princeton issued a temporary plenary retail consumption license for the Inn on December 8, 1933 and a permanent license on February 6, 1934, but thereafter, until the present licensing year, the applications have been addressed to and action taken thereon by the Committee of the Township of Princeton.

It was the circumstance that an officer of the corporate owner of the Inn became a member of the Township Committee that the application for a renewal of the license for the present licensing year was presented to the Director of the Alcoholic Beverage Control in obedience to the directions of R. S. 33:1-20.

The governing bodies of both municipalities, the Borough and the Township, adopted resolutions consenting to the issuance of the renewal license and dispatched them to the State Director. The Director thereupon issued the renewal license applicable to the premises of the Inn

to be effective July 1, 1953 and disbursed $400 of the deposited license fee to the Township and the remaining $200 of it to the Borough in conformity with a mutual agreement between the governing bodies of those municipalities.

On July 31, 1953 the appellant, Mary Slee Catering Corp., a New Jersey corporation having its place of business in the Borough of Princeton, filed with the Mayor and Council of that Borough an application for a plenary retail consumption license for the present licensing year for premises situate entirely within the territorial boundaries of the Borough. The applicant complied with all the legal requirements associated with such an application. The application, however, sought the issuance of a new license.

The statute commonly known as the State Limitation Law, P. L. 1947, c. 94; R. S. 33:1-12.13, et seq., forbids the issuance of any new plenary retail consumption license in a municipality "unless and until" the number of such licenses existing in the municipality is fewer than one for each one thousand of its population. The Borough of Princeton has a population of 12,230, and it has already issued 11 plenary retail consumption licenses.

The presentation of the appellant's application for a new and additional retail license introduced the rather perplexing question whether the license issued by the Director to the Princeton Inn, the business premises of which are in part located in the Borough, should be regarded as a license "existing in the municipality" within the intended import of R. S. 33:1-12.14.

The Mayor and Council of the Borough elicited an opinion on the subject from the Attorney General and, responsive to its guidance, denied the appellant's application for the sole reason that in the existing circumstances the statute presently prohibits the issuance of any new and additional retail license.

The action of the Borough Council came to the attention of the Director of Alcoholic Beverage Control on appeal and he, by formal conclusions and order, resolved that the license currently exercised by the Princeton Inn is a license existing in the Borough within the meaning of the statutory limitation. There thus being 12 retail licenses existing in the Borough, the appellant's application was necessarily denied. The propriety of his adjudication is the subject of our review.

At the inception of our study of the proceedings, we observe two factual circumstances of cogent and impressive significance. The governing officials of the Borough adopted a resolution consenting, in effect approving the issuance of the license to premises known to be situate in part within the Borough. They negotiated, agreed upon, and actually received for the Borough a portion of the license fee. For what? Assuredly it was for the privilege of selling alcoholic beverages on that division of the licensee's premises situate within the Borough.

True, R. S. 33:1-16 declares that where a building and its associated land sought to be licensed is located in more than one municipality, it shall not be necessary to obtain more than one license of the same class for the building and its appurtenances. But the statute exhibits the contemplation in such instances that the municipalities shall agree upon a satisfactory division of the one license fee, and in the absence of such agreement the Director of the Alcoholic Beverage Control shall determine the proportionate amount of the license fee to be paid to each of the municipalities.

True, also, the statute ordains that the application for the license in such circumstances "may be made in each of the municipalities having jurisdiction over any part of the building or premises."

We must appreciate that here we have a license granted by the Director with the consent and approval of the governing bodies of the

two municipalities pursuant to an agreement to divide in a fractional percentage the remunerative license fee.

We are of the opinion that the license granted by the Director for use on the premises of the Princeton Inn has under the statutory provisions the equivalence and coequality of a license issued under the authority of R. S. 33:1-6 and hence is an existing license to vend alcoholic liquor in the Borough. The statutory quota of such licenses available in the Borough having been exhausted, the appellant's application was properly denied.

The order of the Director is affirmed.

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4. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT ALCOHOLIC BEVERAGES FOUND IN MOTOR VEHICLE - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT OWNER (SISTER OF PERSON POSSESSING ILLICIT LIQUOR).

In the Matter of the Seizure on March 2, 1954, of a half-gallon jug of alcohol and a Buick sedan on Lebanon Road, in the Township of Deerfield, County of Cumberland and State of New Jersey.

Case No. 8544

ON HEARING
CONCLUSIONS AND ORDER

Harry Adler, Esq., Attorney for Anna Baxter.
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 half-gallon jug of alcohol and a Buick sedan, described in a schedule attached hereto, seized on March 2, 1954 on Lebanon Road, Deerfield, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made in the first instance by a local police officer when he discovered the jug of alcohol in the car, parked on Lebanon Road, with William Hnatuk asleep therein.

The jug of alcohol and the motor vehicle were thereafter turned over to the Division of Alcoholic Beverage Control. The jug did not have affixed thereto any label or stamp indicating the payment of tax on alcoholic beverages.

When the matter came on for hearing, pursuant to R. S. 33:1-66, Anna Baxter, the registered owner of the motor vehicle appeared, and sought its return. No one opposed forfeiture of the alcohol.

A sample of the contents of the jug was analyzed by the Division chemist, who reported that it is alcohol and water with a trace of artificial color, and an aroma of brandy, fit for beverage purposes, with an alcoholic content by volume of 51 percent.

The alcohol is illicit because the jug in which it was contained bore no label or tax stamp. R. S. 33:1-88, R.S. 33:1-1(i). Such 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.

Anna Baxter, sister of William Hnatuk, claims that she loaned the car to her brother, and did not know, or have any reason to suspect that such car would be used to transport illicit alcoholic beverages.

According to her testimony, she is legitimately employed by a manufacturer of clothing in a neighboring municipality and was frequently transported to her place of employment by her daughter. She formerly owned another motor vehicle, which she used as part payment when she purchased the Buick sedan in question for about $500.00. She is paying the balance in monthly installments. She does not reside with her brother.

Mrs. Baxter states that her brother is employed as a carpenter, and that she frequently loaned him her car for use in his employment because he did not have any car of his own. She assents, in effect, that she was willing to forego the convenience of her car because she felt sorry for her brother, and was anxious to help him earn a living.

The background of illicit liquor activity stems from the practice of one Harry Pustelnik, a boarder in William Hnatuk's dwelling, of purchasing bootleg alcohol. Mrs. Baxter claims that she merely knew Pustelnik by sight. William Hnatuk claims that he was totally unaware that the jug of alcohol was in his car. While I do not accept his claim at face value, there is no evidence that Hnatuk made a practice of trafficking in bootleg liquor. His fingerprint record does not disclose any previous criminal record.

Application for return of property subject to forfeiture by reason of its use in violation of the Alcoholic Beverage Law, when made by a close relative of the person who put it to such use is closely scrutinized, but is not rejected merely because of such relationship. Seizure Case No. 7211, Bulletin 857, Item 1. Anna Baxter appears to be an honest, law-abiding person. Her account of the purchase and payments by her indicate that she is the actual owner of the vehicle. Her brother appears to have no bootlegging background. I am reluctant to penalize Mrs. Baxter for what appears to be an example of affectionate conduct between sister and brother merely on account of Hnatuk's frequent use of her car. Such conduct is not inconsistent with their natural relationship. Cf. Seizure Case No. 7735. Under such circumstances, the availability of the car for use by a close relative at will does not denote carelessness, indifference, or lack of concern regarding the purpose for which the car was used. See Seizure Case No. 8152. Accordingly, I will accept Anna Baxter's assurance that she was entirely innocent in the matter, and therefore find that she acted in good faith, and had no knowledge of the unlawful use to which her property was put or of such facts as would have led a person of ordinary prudence to discover such use. R. S. 33:1-66(f). Consequently, I shall recognize her claim.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 27th day of May, 1954, Anna Baxter pays the costs of seizure and storage of the Buick sedan, such Buick sedan described in Schedule "A" attached hereto will be returned to her; and it is further

DETERMINED and ORDERED that the one half-gallon of alcohol listed in the aforesaid Schedule "A", constitutes unlawful property and that the same be and hereby is forfeited, in accordance with the provision 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: May 17, 1954.

SCHEDULE "A"

1 - half gallon jug of alcoholic beverages
1 - Buick sedan, N. J. Registration Z4-200

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF MORE THAN 24 QUARTS OF BEER IN MOTOR VEHICLE NOT LICENSED FOR THAT PURPOSE - BEER INTENDED FOR CONSUMPTION BY MINORS - BEER ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO JUVENILE OWNER NOT PRINCIPALLY RESPONSIBLE FOR PROCURING BEER FOR MINORS.

In the Matter of the Seizure on February 19, 1954 of 18 cans of beer, one gallon jug of wine and a Chevrolet coupe, at the intersection of River and Central Avenues, in the Township of Lakewood, County of Ocean and State of New Jersey.	Case No. 8533 ON HEARING CONCLUSIONS AND ORDER

Donald R. Applegate, Pro Se.
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 18 cans of beer, a gallon jug of wine, and a Chevrolet coupe, described in a schedule attached hereto, seized on February 19, 1954 at the intersection of River and Central Avenues, Lakewood, New Jersey, constitute unlawful property, and should be forfeited.

The matter came to the attention of local police officers on the above date when one of a group of four boys indulged in a boyish prank at the highway intersection in question. His three companions were seated nearby in the Chevrolet coupe, including its owner, Donald R. Applegate. The officers discovered the 18 cans of beer and the gallon of wine in the car. Thereupon the officers took into custody the boys, the car, and the alcoholic beverages.

The Division of Alcoholic Beverage Control was notified of these events and the car and alcoholic beverages turned over to ABC agents. The agents interviewed the four boys, two 17 years of age, and two 18 years of age, and ascertained from them that the 18 cans of beer were part of 144 cans of beer purchased the previous day by an adult for the boys at a tavern, and transported in Applegate's car to a "shack" in the vicinity. The boys drank some of the beer there. The next day the boys placed in the car the 18 cans of beer and the gallon of wine, which they claimed was also in the shack, and were probably on their way to a local basketball game when they were picked up.

When the matter came on for hearing, pursuant to R. S. 33:1-66, Donald R. Applegate appeared with his mother, and sought return of his car. He did not request return of the alcoholic beverages.

The specific violation of the Alcoholic Beverage Law involved is the use of the car, which is not licensed for that purpose, to transport 144 cans of beer. The law provides the transportation of any quantity above 64 - 12-ounce cans (24 quarts) of beer, even for personal consumption, must be in a vehicle licensed to transport alcoholic beverages. R. S. 33:1-2.

In addition, the transaction in question was highly improper. One of the primary aims of liquor control is that minors are to be prevented from purchasing alcoholic beverages. Indeed, licensees are prohibited by law from making sales of alcoholic beverages to minors, and the retail liquor licensee in the instant case suffered a suspension of his license for his part in the transaction. Re Tobias, (not yet published in Bulletin). Manifestly, minors are not to be encouraged to skirt (by the simple device of employing an adult purchaser) this statutory objective. Seizure Case No. 8112.

Applegate seeks return of his car on the claim, in effect, that he was unaware that it was unlawful to transport the 144 cans of beer in his car. However, even if such was probably the fact, considering his age, normally it would be insufficient to afford him relief from forfeiture, inasmuch as such transportation was in the course of an improper objective, that is, consumption of alcoholic beverages by minors, and hence the transaction seemingly lacked the element of good faith. See Seizure Case No. 7318, Bulletin 829, Item 1.

However, the fact that Applegate is only 17 years of age should be taken into account. The concept of general law is that a juvenile committing the above violation of the Alcoholic Beverage Law is not guilty of a crime, like an adult, but is to be considered a juvenile offender. Its aim is to rehabilitate youngsters, not to impel them further on a downward path. The enforcement of the Alcoholic Beverage Law concerning forfeitures must be consistent with this concept.

It appears that young Applegate is employed by a soft drink manufacturer, and also helps his father on their farm. He purchased the car about a week before the seizure for $75.00, which he saved from his wages. He needs the car for transportation to his place of employment. He does not appear to be the moving factor in the purchase of the beer but merely appeared to have a car available for such improper use. I am convinced that, in the exercise of my discretion, the facts fully justify my finding that Applegate acted in good faith and unknowingly violated the Alcoholic Beverage Law. R. S. 33:1-66(e). Consequently, the car will be returned to Applegate.

The alcoholic beverages obviously are not to be returned, for the reasons above stated.

Accordingly, it is DETERMINED and ORDERED that if on or before the 28th day of May, 1954, Donald R. Applegate pays the costs of seizure and storage of the Chevrolet coupe, such Chevrolet coupe will be returned to him; and it is further

DETERMINED and ORDERED that the alcoholic beverages, more fully described in Schedule "A" attached hereto, constitutes unlawful property and that 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: May 18, 1954.

SCHEDULE "A"

18 - 12 oz. cans of beer
1 - 1 gallon jug of wine
1 - Chevrolet coupe, Serial No. 2AH0130180, 1953 N. J. Registration LV E 51

6. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
JOS. EBERHARDT & PHILIP EBERHARDT T/a HILL VIEW TAVERN 157 West Main Street P. O. Box 23, Denville, N. J.,	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Denville.	)	

Defendant-licensees, Pro se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold, served and delivered alcoholic beverages to minors, and allowed, permitted and suffered the consumption thereof by said minors on their licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file discloses that on March 17, April 1 and 2, 1954, two minors, 17 years and 19 years of age respectively, and on March 17 and April 2, 1954, another minor, 17 years of age, were sold and served alcoholic beverages on defendants' licensed premises.

Defendants have no prior adjudicated record. In view of the fact that two of the minors were only 17 years of age and considering the number of minors involved, I shall suspend the license for twenty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days. Re Camarota, Bulletin 950, Item 2.

Accordingly, it is, on this 20th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-1, issued by the Township Committee of the Township of Denville to Jos. Eberhardt & Philip Eberhardt, t/a Hill View Tavern, for premises 157 West Main Street, Denville, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. June 1, 1954,and terminating at 3:00 a.m. June 16, 1954.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against RUSSELL HENDERSON T/a DOUBLE R BAR S. S. Wheat Road Buena, P.O. R.F.D. Vineland, N.J., Holder of Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Buena.	CONCLUSIONS AND ORDER

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

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages at his licensed premises to two minors, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

The file herein discloses that ABC agents obtained signed sworn statements from Harold --- (age 19) and Robert --- (age 20) relating that on the night of April 3, 1954, and early Sunday morning, April 4, 1954, they visited defendant's premises and consumed alcoholic beverages served by a man and a waitress, who made no inquiry as to their ages.

Subsequently Harold --- directed the agents to the Double R Bar, which he identified as the place where he and Robert --- had been served and had consumed alcoholic beverages, and identified therein the licensee, Russell Henderson, and his wife as the persons who had served them.

Defendant has a prior adjudicated record. His license was suspended by the local issuing authority for five days, effective December 2, 1951, for violation of a local "hours" regulation. I shall suspend defendant's license for a period of fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days. Re Maione, Bulletin 903, Item 8.

Accordingly, it is, on this 20th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-5, issued by the Borough Council of the Borough of Buena to Russell Henderson, t/a Double R Bar, S. S. Wheat Road, Buena, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 1, 1954, and terminating at 3:00 a.m. June 11, 1954.

WILLIAM HOWE DAVIS
Director.

8. DISCIPLINARY PROCEEDINGS - SALE AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MACK DRUG CO., INC.
T/a MACK'S
197-197-A Main Street
Hackensack, N. J.,

Holder of Plenary Retail Distribution License D-11, issued by the City Council of the City of Hackensack.

CONCLUSIONS AND ORDER

Schneider and Schneider, Esqs., by C. Conrad Schneider, Esq., Attorneys for Defendant-licensee.

David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it sold 12 - 4/5 quart bottles of Four Roses Blended Whiskey, at less than the effective Minimum Consumer Resale Price, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that two ABC agents entered defendant's licensed premises on March 26, 1954, and asked a clerk the price of a case of Four Roses "fifths" (4/5 quarts). The clerk spoke to the manager and quoted a price of $54.15. The agents also spoke to the manager who confirmed that price. The clerk placed a case of Four Roses "fifths" on the counter and the manager accepted $54.15 therefor. The effective price per case on March 26, 1954, was twelve times the price per bottle ($4.85) less a permissible five percent. discount, or a net amount of $55.29.

Defendant seeks to explain the violation by contending that an error was made in arithmetic. However, such fact is neither a defense nor an excuse.

Defendant has a prior record. Its license was suspended by the then State Commissioner for five days, effective February 18, 1946, for sale of alcoholic beverages below the minimum listed price (Re Mack Drug Co., Inc., Bulletin 695, Item 9). The minimum suspension imposed for a violation of this kind is ten days. Since the prior similar violation occurred more than five years ago, I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Levin, Bulletin 866, Item 1.

Accordingly, it is, on this 20th day of May, 1954,

ORDERED that Plenary Retail Distribution License D-11, issued by the City Council of the City of Hackensack to Mack Drug Co., Inc., t/a Mack's, for premises 197-197-A Main Street, Hackensack, be and the same is hereby suspended for ten (10) days, commencing at 9:00 a.m. June 1, 1954, and terminating at 9:00 a.m. June 11, 1954.

WILLIAM HOWE DAVIS
Director.

9. MORAL TURPITUDE - COMMERCIALIZED GAMBLING HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

May 17, 1954

Re: Case No. 651

Subject seeks a determination as to whether or not he is ineligible to be associated with the alcoholic beverage industry because of his conviction of crime.

On September 1, 1953 subject pleaded non vult to a charge of Aiding and Abetting Bookmaking and as a result thereof was sentenced to State Prison for a period of one to two years. The operation of the prison sentence was suspended and subject was placed on probation for two years and fined $1,000.00.

From the information obtained from the subject during the course of the criminal investigation it appears that he accepted bets from various persons and turned them over to his employer. This practice continued over a period of a few weeks before the law enforcement officers raided the establishment where he was employed. His employer was convicted of bookmaking and sentenced to State Prison.

The crime may or may not involve moral turpitude depending on the circumstances. Re Case No. 1018, Bulletin 956, Item 7. Where one is a principal or a "lieutenant" in commercialized gambling, particularly where such gambling is conducted on a large scale, it has been ruled that the crime of which one is convicted based on commercialized gambling involves moral turpitude. Re Case No. 635, Bulletin 946, Item 10; Re Case No. 641, Bulletin 963, Item 5. However, in the instant case subject was neither a principal nor a "lieutenant." On the contrary he merely accepted bets on horses as an accommodation for his employer. Under the circumstances, I conclude that the crime of which subject was convicted does not involve moral turpitude. Cf. Case No. 634, Bulletin 947, Item 8.

It is recommended that subject be advised that, in the opinion of the Director, he is not disqualified by statute because of said conviction from being associated with the alcoholic beverage industry in this State.

Clarence E. Kremer
Attorney.

APPROVED:
WILLIAM HOWE DAVIS
Director.

10. DISCIPLINARY PROCEEDINGS - SALE FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ISADORE & SARAH MARECH
275 Eighteenth Avenue
Newark 3, N. J.,

Holders of Plenary Retail Consumption License C-441, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

CONCLUSIONS AND ORDER

Joseph Brody, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to the following charge:

"On Thursday, May 6, 1954, at about 12:15 A.M., you sold an alcoholic beverage not pursuant to and within the terms of your license as defined by R. S. 33:1-12(1), viz., a bottle of wine in other than its original container for consumption off the licensed premises, in that you opened such container and thereby destroyed its original character before making delivery thereof to the purchaser; in violation of R. S. 33:1-2."

The file herein discloses that on May 6, 1954, at 12:15 a.m., an ABC agent visited defendants' licensed premises and ordered a bottle of wine to take out. The bartender, Robert Nelson, broke the seal of a quart bottle of wine, handed the container to the agent, took $1.00 in payment and admonished him to "Hide it good before you go out." Complying therewith, the agent left the premises. He returned later with an associate and, after the agents identified themselves, obtained from Nelson a signed sworn statement attesting to the above facts.

Defendants have no previous adjudicated record. The minimum period of suspension for a violation of the character set forth herein is fifteen days. Re Langer & Bershaw, Bulletin 907, Item 5. I shall suspend defendants' license for fifteen days and remit five days for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 21st day of May, 1954,

ORDERED that Plenary Retail Consumption License C-441, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Isadore & Sarah Marech, for premises 275 Eighteenth Avenue, Newark, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 1, 1954, and terminating at 2:00 a.m. June 11, 1954.

WILLIAM HOWE DAVIS
Director.

11. DISCIPLINARY PROCEEDINGS - UNLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against

OTTO J. & ELLA J. SCHORPP
T/a BUDAPEST TAVERN
3 Thomas Street
South River, N. J.,

Holders of Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of South River.

CONCLUSIONS AND ORDER

Otto J. & Ella J. Schorpp, Defendant-licensees, Pro Se.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded non vult to a charge alleging that they allowed an unlabeled beer tap on their licensed premises, in violation of Rule 26 of State Regulations No. 20.

The file herein discloses that on April 7, 1954, during the course of a routine inspection of defendants' licensed premises, an ABC agent found a barrel of beer marked "Ballantine" connected to a tap which bore no name of the brand of beer to be dispensed therefrom.

Defendants have no prior adjudicated record. I shall suspend defendants' license for a period of three days (the minimum suspension imposed for a violation of this character). One day will be remitted for the plea entered herein, leaving a net suspension of two days. Re Byer, Bulletin 956, Item 9.

Accordingly, it is, on this 17th day of May, 1954,

ORDERED that Plenary Retail Consumption License C-10, issued by the Borough Council of the Borough of South River to Otto J. & Ella J. Schorpp, t/a Budapest Tavern, 3 Thomas Street, South River, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. May 24, 1954, and terminating at 2:00 a.m. May 26, 1954.

WILLIAM HOWE DAVIS
Director.

12. STATE LICENSES - NEW APPLICATION FILED.

Alphonsus A. Strickland
"Lucky Mae"
Ken's Landing, Point Pleasant Beach Borough, N. J.
Application filed June 18, 1954 for Plenary Retail Transit License.

William Howe Davis
Director.