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

BULLETIN 1092 JANUARY 4, 1956.

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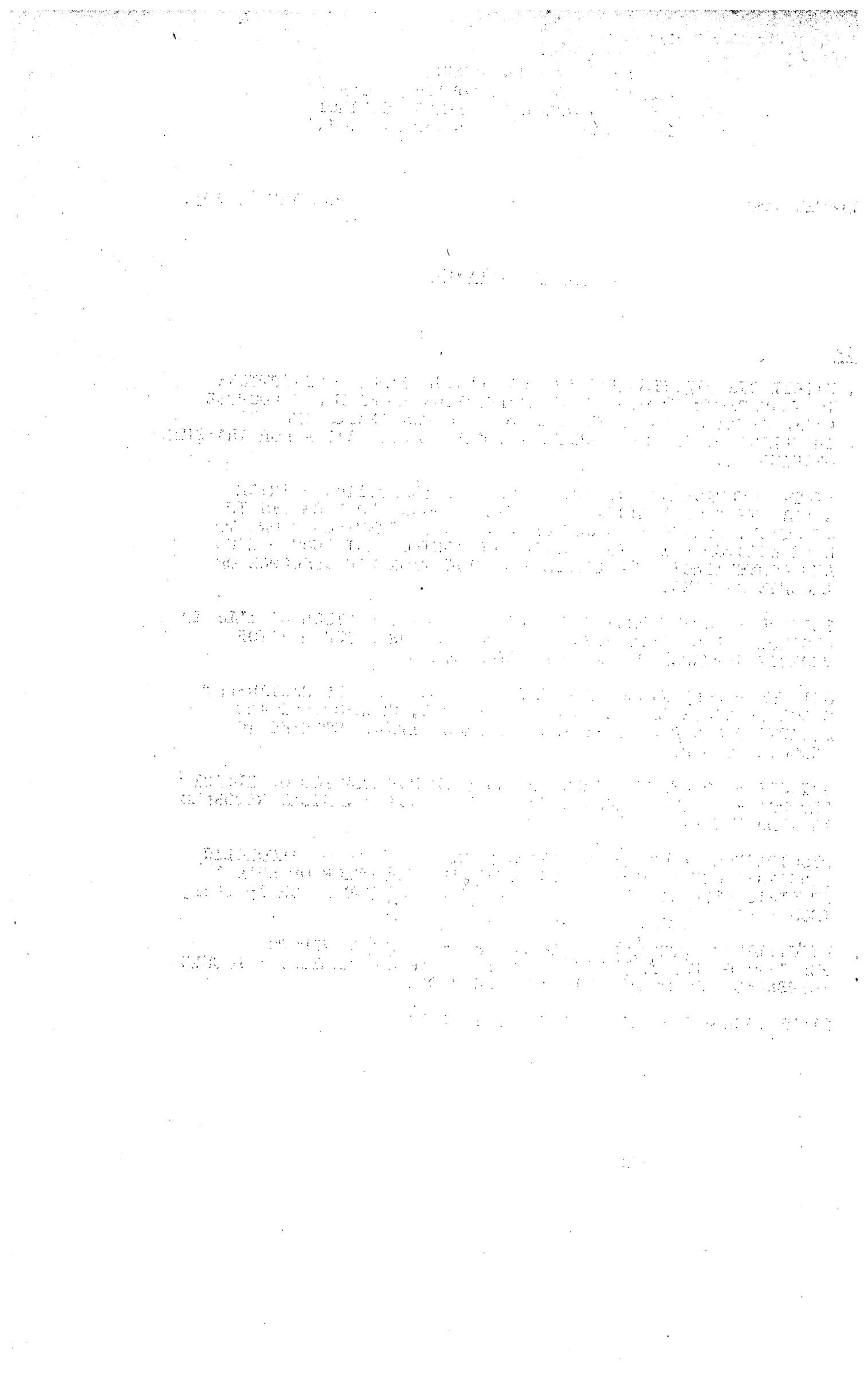

STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1092 JANUARY 4, 1956.

1. RETAIL DISTRIBUTION LICENSE - OBJECTIONS TO TRANSFER HELD NOT TO BE MERITORIOUS - ORDINANCE ADOPTED AFTER APPLICATION FILED HELD TO BE UNREASONABLE AND INAPPLICABLE TO THE TRANSFER SOUGHT - APPLICATION FOR TRANSFER GRANTED.

In the Matter of an Application by

THE GREAT ATLANTIC & PACIFIC TEA COMPANY
705 Anderson Avenue
Cliffside Park, N. J.,

To Transfer License D-9 from Big Chief Liquors, Inc., 683-685 Anderson Avenue, Cliffside Park, New Jersey.

CONCLUSIONS

Appearances: George P. Moser, Esq., for Applicant.
Samuel Moskowitz, Esq., for Objectors.

BY THE DIRECTOR:

On July 21, 1955, The Great Atlantic & Pacific Tea Company filed with me an application for transfer to it, from Big Chief Liquors, Inc., of Plenary Retail Distribution License D-9, and from premises 683-685 Anderson Avenue, Cliffside Park, New Jersey, to the applicant's premises at 705 Anderson Avenue, Cliffside Park, New Jersey. The application was filed with me instead of with the municipal issuing authority because the Mayor of the Borough of Cliffside Park is an employee, in the Produce Division of the New York office, of the applicant corporation. R. S. 33:1-20. Separate written objections were filed: On August 5, 1955, on behalf of Colombo's Wines and Liquors Corporation (holder of License C-24, with the "broad package privilege", for premises at 699 Anderson Avenue, Cliffside Park, New Jersey), and on August 8, 1955, on behalf of the Hudson-Bergen County Retail Liquor Stores Association. A hearing on the objections was held on September 15, 1955, and oral argument was held before me on October 21, 1955.

No objection or appearance was made on behalf of the Borough. A letter dated September 13, 1955 set forth the Borough Health Department's approval of the applicant's premises, and letters of September 14 contained the similar approval of the local Police and Fire Departments, respectively.

Early in June of 1955 Big Chief Liquors, Inc., through its President, had commenced negotiations with the applicant corporation looking toward the license transfer objected to herein. Prior to completion of the negotiations, under an agreement dated July 6, 1955, the President of Big Chief Liquors, Inc. told numerous liquor salesmen about the proposed transfer of the license to the applicant. On June 21, 1955, a representative of the objecting Association telephoned the Division on the subject of a proposed ordinance concerning distance between plenary retail distribution licensed premises in Cliffside Park. On June 28, 1955, the Borough Attorney wrote to the Division:

"The Borough of Cliffside Park is interested in introducing and passing an Ordinance preventing the transfer

of Plenary Retail Distribution Licenses within a distance of 200 feet of another such license holder ...."

The Division's responsive letter of June 29, 1955 said in part:

"These distance-between-premises ordinances are extremely complicated and, over the years, we have had difficulties with them. The recognized proper purpose of such ordinances is not to protect licensees against too-close competition but, in the public good, to prevent too great a concentration of licensed places in one neighborhood. In that connection we wonder about the policy of an ordinance on the subject relating only to plenary retail distribution licenses. It would seem that if the Borough plans to move a distance-between-premises ordinance it should consider most carefully the question whether plenary retail consumption licenses should also be included."

The Borough Attorney telephoned the Division on June 30, 1955, and stated that he would bring our letter to the prompt attention of the Mayor and Council and would advise them to consider the ordinance matter most thoughtfully. However, on July 11, 1955, the Mayor and Council passed on first reading an ordinance providing as follows:

"No Plenary Retail Distribution license for the sale of alcoholic beverages shall hereafter be issued for, or transferred to, premises within two hundred (200) feet of premises for which a Plenary Retail Distribution license for the sale of alcoholic beverages is outstanding, provided, however, that this limitation shall not prevent the renewal or person-to-person transfer of a license for premises licensed when this ordinance becomes effective. The two hundred (200) feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of the licensed premises to the nearest entrance of the premises sought to be licensed."

The ordinance, without change, was finally adopted (over the applicant's objections) on August 8, 1955.

The following licenses are issued in the Borough of Cliffside Park: plenary retail consumption - 37; seasonal retail consumption - 1; plenary retail distribution - 13; limited retail distribution - 3; club - 2.

Anderson Avenue is the principal business street of Cliffside Park. As noted, the applicant's store is at 705 Anderson Avenue and the premises of Big Chief Liquors, Inc., some two hundred feet therefrom, are at 683-685 Anderson Avenue. Nine other licenses are outstanding in the same busines area -- C-30, carrying the "broad package privilege" pursuant to P. L. 1948, c. 98, and State Regulations No. 32, at 681 Anderson Avenue; C-10, at 690 Anderson Avenue; C-24, with the "broad package privilege", held by the objector Colombo's Wines & Liquors, Inc., for premises at 699 Anderson Avenue; D-2, at 704 Anderson Avenue; D-10, at 719 Anderson Avenue; D-3, at 730 Anderson Avenue; C-20, at 735-1/2 Anderson Avenue; D-7, at 739 Anderson Avenue; and C-16, at 371 Lawton Avenue. Of the four plenary retail distribution licenses, the premises of one (D-10, held by Home Liquors, Inc., 719 Anderson Avenue) are within two hundred feet -- specifically one hundred fifty-five feet -- from the applicant's premises, as measured under the method set forth in the ordinance.

Citing and quoting from various Court decisions (relative to zoning ordinances), a memorandum of law filed on behalf of the applicant contends that the ordinance, introduced after consummation of the agreement looking toward the transfer and finally adopted after filing of the application, is invalid or, if valid, is not reasonably applicable to the transfer sought.

In argument, the memorandum of law on behalf of the applicant asks: "... if the municipality was sincere in its attempt to protect its citizens ... would they not have passed an ordinance disposing of or limiting the right of transfer to all licenses, but no, they chose to leave consumption licenses untouched ...." The memorandum continues: "...Anderson Avenue i a busy street. The survey in evidence shows a series of stores along the street. It is the business area of the municipality. The license in question was held by a man who operated a super market. He apparently got into difficulty with his creditors. He finally ...sold his license to a competitor operating a super market and, as he testified, just as soon as he made the contract he told his creditors, all of whom were in the liquor business .... Word went through this business area and then we have the specific activity to attempt to prevent the transfer of this license joined in by the members of the council ...."

The memorandum of law filed on behalf of the objector Association, contending for the validity of the ordinance, says:

> "An ordinance prohibiting transfer under the circumstances as in the matter sub judice is valid. Cf. Cohen v. Wrightstown, Bulletin 1064, Item 1."

Then, arguing that the ordinance applies in prohibition of the transfer sought herein, the memorandum continues:

> "The well established general rule is that it is not the status of the law prevailing at the time of the application for a license or permit which controls, but it is the status of the law which prevails at the time the court or agency decision is rendered. Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1. See, also, Socony-Vacuum Oil Co., Inc. v. Mt. Holly Township (Sup. Ct. 1947), 135 N. J. L. 112."

Then, the memorandum of law on behalf of the objector Association discusses as follows the question of bona fides:

> "The applicant for some reason attempts to imply that bad faith prompted the passage of the ordinance under discussion. While it alleges a conclusion of this charge, the record is barren of any facts to substantiate it. Is this to be implied from the fact that the Council in its discretion feels that licensed premises in any area should be spaced 200 feet apart? In the absence of any proof of bad faith, the ordinance should stand as a formal manifestation of a policy against placing Alcoholic Beverage Licensed Establishments too close together. ...
>
> "The Director in Cohen v. Wrightstown, supra, in discussing a similar ordinance said:
>
> > 'I should not hesitate on this appeal to find the ordinance invalid or unreasonable in its application to appellant if the evidence established any

> improper motivation or if there was no evidence of any reasonable basis for the ordinance. But improper motivation has not been established, ---- and I may appropriately remark that there is nothing damning in an admission that the ordinance was introduced and adopted to prevent the transfer unless there was no proper and reasonable ground for wishing to prevent the transfer in the first place ----'"

My decision in Cohen v. Wrightstown, supra, contained also the following paragraphs:

> "A memorandum of law filed on behalf of appellant cites... Bivona et al. v. Hock et al., ...[5 N. J. Super. 118 App. Div. 1949] and decisions by the State Commissioner (now Director) in which, on appeal, municipal denial of place-to-place transfer was found to be unreasonable and was reversed when application was for transfer to premises in the same vicinity and where granting of the transfer would not aggravate to any appreciable degree the existing concentration of licenses in that area. But in the cases cited (including Costa v. Verona, supra [Bulletin 501, Item 2]; Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Meister v. Passaic Township, Bulletin 1030, Item 1), no applicable ordinance in prohibition of the transfer had been adopted.
>
> "The well established general rule is that it is not the status of the law prevailing at the time of application for a license or permit that controls, but the status of the law prevailing at the time the court or agency decision is rendered. Socony-Vacuum Oil Co., Inc. v. Mt. Holly Township, 135 N.J.L. 112 (Sup. Ct., 1947); Franklin Stores Co. v. Elizabeth, Bulletin 61, Item 1; Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1....
>
> .....
>
> "In the absence of bad faith the ordinance stands as a formal manifestation of policy against placing alcoholic beverage licensed establishments too close together...."

The distance-between-premises ordinance in Cohen v. Wrightstown, supra, did not apply to just one type of license. It applied, alike, to plenary retail consumption and plenary retail distribution licenses, and the denied application was for transfer to premises right next to another licensed premises. The situation in the instant matter is quite different. There is no indication whatsoever of a policy in the Borough of Cliffside Park, prior to the adoption of the ordinance here in question, with respect to regulating the distance between licensed premises. It appears to be manifest, from the circumstances hereinabove outlined, that the ordinance was moved at the behest of the objectors for the purpose of preventing the transfer sought -- for the purpose of protecting certain plenary retail distribution licensees against the close competition of the applicant, and not because of a proper purpose and policy of protecting the public against an over-concentration of licensed establishments.

In Baker v. Newark et al., Bulletin 1018, Item 1, I said:

> "... Even in the case of a denial of a permit, a later prohibitory ordinance will not always be given retrospective effect and, on occasion, such ordinances have been set aside as arbitrary and capricious. Vine v.

Zabriskie, 122 N.J.L. 4 (Sup. Ct. 1939); Ridgefield Terrace Realty Co. v. Ridgefield, 136 N.J.L. 313 (Sup. Ct. 1947); Kerrigan Development Co. v. Newark, 2 N. J. Super. 592 (Super. Ct. Law Div. 1949). Similarly, a prohibitory ordinance adopted after delay in acting upon an application for a permit was set aside. Brown v. Terhune, 125 N.J.L. 618 (Sup. Ct. 1941), appeal dismissed 127 N.J.L. 554 (E. & A. 1941)."

In my Conclusions and Order in Cohen v. Wrightstown, supra, I said (after pointing out that the cited decisions had to do with zoning ordinances -- not with an alcoholic beverage ordinance):

"... the ordinance in the Kerrigan case was held to be invalid as not based upon a uniform or comprehensive scheme; and ... in the Terhune case the Court's opinion was that the change in the zoning ordinance seemed to bear no relation to the public health, safety, morals or general welfare but seemed, instead, arbitrary and for no other purpose than to preclude prosecutor's long-lawful use of his premises...."

I find the ordinance, herein, to be unreasonable and inapplicable with respect to the transfer sought. The application for transfer will be granted if and when said application is complete and in proper form.

WILLIAM HOWE DAVIS
Director.

Dated: November 17, 1955.

2. STATE BEVERAGE DISTRIBUTOR'S LICENSE - PRIOR APPLICATION OF A LICENSEE TO THE PERSONS AND PREMISES IN QUESTION, DENIED - NONCONFORMING USE OF PREMISES FOUND TO HAVE EXISTED PRIOR TO ADOPTION OF ZONING ORDINANCE - NEED AND CONVENIENCE ESTABLISHED - APPLICATION FOR ISSUANCE OF LICENSE GRANTED.

In the Matter of Objections to the Issuance of a State Beverage Distributor's License to

JOSEPH COHEN & ROBERT DICKMAN t/a Lake Beverage Distributors

For Premises Located at Rear 95 West Main Street, Denville, N. J.

CONCLUSIONS

Leo J. Berg, Esq., Attorney for Applicants.
Sidney Simandl, Esq., Attorney for Morris County Licensed Beverage Association, an Objector.
Samuel Moskowitz, Esq., Attorney for the North Central Counties Retail Liquor Stores Association and New Jersey Retail Liquor Stores Association, Objectors.

BY THE DIRECTOR:

This is an application for a state beverage distributor's license for the current licensing period for premises located in the rear of 95 West Main Street, Denville, New Jersey. Written objections to the issuance of the license were filed with me by various objectors who alleged, in substance, that the area wherein the proposed premises is located and for which the license in question is sought is adequately served by the existing liquor establishments. All objectors were notified that a hearing would

be held in the matter and, in addition thereto, the municipal clerk of the municipality wherein the proposed premises is located was notified of the filing of the application for said license so that the governing body of the municipality might, if it so desired, interpose objections to the issuance thereof. However, the municipality did not see fit to appear at the hearing or file any objections to the issuance of said license.

At the hearing Joseph Cohen, one of the applicants, testified that the applicants, at present, have a carbonated beverage business consisting of approximately 700 customers residing in thirteen municipalities; that about 250 of these customers have indicated that they would purchase malt alcoholic beverages from the applicants; that the municipality wherein the proposed premises is located has issued a Certificate of Occupancy granting permission to occupy the said premises and engage in the beverage distribution business.

The applicants produced five witnesses who testified that applicants serve them with soft drinks at present and it would be a convenience to them if the applicants could supply them with malt beverages.

Eleven holders of retail liquor licenses (two of whom have a business in Denville and the others in surrounding municipalities) testified that they were of the opinion that there was no need for another liquor license of any type in that area. Nine of the objectors agreed that their main protest in objection to the issuance of the license was that their businesses might be adversely affected. The remaining two objectors testified that in their opinion the issuing of the license was unnecessary.

Petitions containing numerous names in favor of the issuance of the license and others opposing the issuance of said license were marked in evidence as exhibits in the instant matter.

On July 26, 1955, I denied an application for a transfer of a state beverage distributor's license from an Atlantic City licensee to the persons and premises in question. Re Cohen & Dickman, Bulletin 1077, Item 9. My greatest concern at that time was the fact that Mayor Hogan of Denville testified that a resolution was approved by the Township Committee to enter a protest to the granting of the transfer of license to the proposed premises in rear of 95 West Main Street as it would constitute a violation of the local zoning ordinance and, in addition thereto, did not meet with the building code so that no Certificate of Occupancy of the premises could be given.

On July 25, 1955, a Certificate of Occupancy, however, was issued by the municipality after the members of the governing body learned that the use of the premises in question constitutes a nonconforming use which had existed prior to the adoption of the zoning ordinance and as a result thereof was not subject thereto. As I previously mentioned, no one appeared on behalf of the municipality to object to the issuance of the license. I am also mindful of the fact that all of the objectors are holders of retail liquor licenses and were apparently prompted to object for economic reasons. Moreover, the applicants' business has increased since the time when the previous hearing on transfer took place. Furthermore, the issuance of the license in question will not increase the number of state beverage distribution licenses presently outstanding as the license previously sought to be transferred to applicants from the Atlantic City licensee was not renewed for the current licensing year.

After careful examination of the evidence produced herein, I am satisfied that there is now a need for and a convenience to be served by the issuance of the license applied for. Therefore, I shall issue the license in accordance with the application filed in this matter.

WILLIAM HOWE DAVIS
Director.

Dated: December 5, 1955.

3. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOLIC BEVERAGES ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on October 19, 1955 of a gallon jug with alcohol, two pint bottles with whiskey, and a Chevrolet truck, on Burlington Road, in Upper Pittsgrove Township, County of Salem and State of New Jersey.	Case No. 9024 ON HEARING CONCLUSIONS AND ORDER

Chivian & Chivian, Esqs., by Louis Chivian, Esq., Attorneys for General Motors Acceptance Corporation.
Harry Adler, Esq., Attorney for Bertha Cogdill and Grady Walter Duckett.
I. Edward Amada, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This matter comes before me pursuant to the provisions of Title 33, Chapter 1, Revised Statutes of New Jersey, to determine whether a gallon jug with alcohol, two pint bottles with whiskey, and a Chevrolet truck, described in a schedule attached hereto, seized on October 19, 1955 on Burlington Road, Upper Pittsgrove Township, New Jersey, constitute unlawful property and should be forfeited.

When the matter came on for hearing pursuant to R. S. 33:1-66, Bertha Cogdill, the registered owner of the truck, appeared and sought its return and an appearance was entered on behalf of General Motors Acceptance Corporation, which sought recognition of its alleged lien on the motor vehicle. Forfeiture of the alcoholic beverages was not opposed.

Reports of ABC agents and other documents in the file admitted into evidence with the consent of the above claimants disclose the following facts:

New Jersey State Troopers came upon the motor vehicle on the above date and location while investigating an alleged robbery in that vicinity. Grady Walter Duckett, who is Bertha Cogdill's son, was in the cab of the truck. The troopers found in the cab the above mentioned alcohol and whiskey. There was no stamp indicating payment of the tax on alcoholic beverages on the jug of alcohol. Thereupon the troopers took into custody Duckett, the truck and the alcoholic beverages. Later, the truck and alcoholic beverages were turned over to ABC agents.

The contents of the jug 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 51.8 percent.

The alcohol and the jug is illicit because of the absence of any tax stamp on such jug. R. S. 33:1-1(i), R.S. 33:1-88. Such illicit alcohol, the motor vehicle in which it was transported and found, and the other two bottles with whiskey, constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

General Motors Acceptance Corporation has presented a Conditional Sales Contract which it holds by assignment, representing the conditional sale on August 18, 1955 to Bertha Cogdill of the Chevrolet truck in question. The balance secured by the document was $1,846.42. The present balance due thereon after rebate for prepayment is $1,429.75.

It appears that the finance company extended credit to Bertha Cogdill on the basis of a previous transaction with her in May 1955. On that occasion, it financed the purchase by Bertha Cogdill of another Chevrolet truck from the same dealer. Prior to extending credit to her in the first instance, it received information concerning her source of income, residence, and background, which checked and confirmed that she was the owner of premises whereon she conducted a poultry business, had resided there for a number of years and was financially responsible. Its investigation did not develop any detrimental information concerning Bertha Cogdill.

I am satisfied that the General Motors Acceptance Corporation acted in good faith and did not know or have any reason to suspect that illicit alcoholic beverages would be transported in the truck. I shall, therefore, recognize its lien to the extent of $1,429.75. R.S. 33:1-66(f).

It appears that the appraised value of the Chevrolet truck does not exceed the amount of the lien claim and the costs of its seizure and storage. The Chevrolet truck will, therefore, be returned to General Motors Acceptance Corporation upon payment of the costs of its seizure and storage.

Hence, because Bertha Cogdill and Grady Duckett have stipulated at the hearing that their claim should be considered withdrawn if the motor vehicle is returned to the finance company, it is unnecessary to determine in these forfeiture proceedings the effect to be given to the fact that Bertha Cogdill and Grady Duckett are partners in the poultry business; that the truck was apparently purchased with partnership funds and used in the partnership business, and to determine whether thereby Bertha Cogdill and Grady Duckett are prevented from obtaining return of the truck because Duckett purchased bootleg alcohol and placed it in the truck.

Accordingly, it is DETERMINED and ORDERED that if on or before the 5th day of December, 1955, the General Motors Acceptance Corporation pays the costs incurred in the seizure and storage of the Chevrolet truck, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the jug of alcohol and the two pint bottles with whiskey 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: November 23, 1955.

SCHEDULE "A"

1 - one-gallon jug of alcohol
2 - pint bottles of whiskey
1 - Chevrolet truck, Serial No. J-255-B002246, N. J. Registration X/E-L-395

4. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY IN RESTAURANT - STOCK OF ALCOHOLIC BEVERAGES, FIXTURES, FURNISHINGS AND EQUIPMENT ORDERED FORFEITED - VARIOUS ITEMS RETURNED TO INNOCENT OWNER.

In the Matter of the Seizure on August 4, 1955, of a quantity of alcoholic beverages, fixtures, furnishings and $54.90 in cash, in a store located on Garrison Avenue, Fortescue, Downe Township, County of Cumberland and State of New Jersey.	Case No. 8950 ON HEARING CONCLUSIONS AND ORDER

Samuel Adler, Esq., Attorney for Martha Williams.
Philip L. Lipman, Esq., by Charles Casella, Esq., Attorney for Salvatore De Bruno.
I. Edward Amada, Esq., appearing for 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 quantity of alcoholic beverages, $54.90 in cash and various fixtures and furnishings, described in a schedule attached hereto, seized on August 4, 1955 in a store, located on Garrison Avenue, Fortescue, Downe Township, New Jersey, constitute unlawful property and should be forfeited.

The seizure was made by ABC agents because of alleged unlicensed sale of alcoholic beverages on the above premises.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Salvatore De Bruno who sought to recover a music machine and a "Safari" amusement machine, and an appearance was entered on behalf of Martha Williams who sought to recover the balance of the seized property except the alcoholic beverages, soda and $54.90 in cash.

The Hearer's Report setting forth the facts presented at the hearing in the case and his recommendations thereon was mailed to the attorney for Martha Williams. No objection or exception to such report was filed in her behalf within the time limited therefor.

I have given careful consideration to the complete record in the case, have reviewed the Hearer's Report and make the following findings as established by the evidence presented:

An ABC agent was at the premises on five occasions investigating the activities being carried on there. The place was a small luncheonette, patronized for the most part by fishermen.

On July 6 and 7, 1955, Martha Williams apparently was in charge of the establishment. The agent sought to purchase beer from Mrs. Williams but was unsuccessful on these occasions.

On August 2nd, 3rd and 4th, the agent found Firman Souders in charge, engaged in the sale of alcoholic beverages to various persons in the store. The agent purchased various alcoholic beverages from Souders on each of these dates. Mrs. Williams was not present on August 2nd and 3rd.

On August 4th, shortly after the agent entered at about 1:30 p.m., Martha Williams came into the store from the kitchen. The agent states that he saw Martha Williams serve drinks of alcoholic beverages and place money received therefor in the register. At about 3:00 p.m., other ABC agents and local police officers entered the store and disclosed their identities.

Firman Souders did not hold a license authorizing him to sell alcoholic beverages and the premises were not licensed for that purpose. Accordingly, the agents seized a considerable stock of beer and whiskey, together with all of the fixtures, furnishings and equipment in the place, including $54.90 in the cash register of which $1.00, identified by serial number, had been used by the agent to pay Souders when purchasing alcoholic beverages.

It is obvious that the seized alcoholic beverages were intended for unlawful sale and, hence, are illicit. R. S. 33:1-1(i). Such illicit alcoholic beverages and all personal property seized therewith in the premises constitute unlawful property and are subject to forfeiture. R. S. 33:1-1(y), R.S. 33:1-2, R.S. 33:1-66.

Martha Williams is the owner of the building and the seized equipment. Her presence there at the time of the seizure, and her reported participation in the unlawful sales of alcoholic beverages would normally result in the denial of her request for return of the seized property.

However, Mrs. Williams asserts that her presence at the time of the seizure was in nowise related to such sale of alcoholic beverages and that she is actually innocent of any such participation. Her explanation is that she operated the business from May 1955 until the end of July 1955 when, because of her illness, her doctor advised her to cease such activity. In this emergency, she rented the place, fully equipped, to Firman Souders. His tenancy was to commence August 1, 1955 but she gave him the keys a few days previous thereto. She had an understanding with Souders that he would not commence business under his tenancy until she had an opportunity to take inventory of her merchandise. Prior to August 4th, because of her illness, she had no such opportunity. On August 4th, when she entered the store, she was shocked that Souders was selling alcoholic beverages and demanded an explanation from him. He told her to wait until he took care of his customers; that everything would be all right and that he would explain everything to her. The agents made the seizure while she was waiting.

Mrs. Williams' background and that of the premises must be considered in determining whether or not to accept her explanation. In 1948, she was convicted in criminal proceedings of operating a speakeasy at other premises in the community. In 1953, speakeasy activities were carried on by her former tenant at the instant premises.

Souders testified that he had not previously operated any business, and did not have any funds to operate the business allegedly leased from Mrs. Williams. He was unable to present satisfactory evidence that he had the means to purchase and was

actually the owner of the considerable amount of alcoholic beverages which were found in the store. Mrs. Williams testified that she was acquainted with Souders for a number of years.

From the evidence presented, it is extremely doubtful that Mrs. Williams would entrust her business equipment and merchandise to a person who had no experience in operating a business and who was without funds, especially in view of her alleged dissatisfaction with her previous tenant. The more logical conclusion from the facts presented is that Firman Souders was actually operating the business on her behalf and that the alcoholic beverages were being sold with her consent and knowledge. Accordingly, the request of Martha Williams for the return of the seized property is denied.

Salvatore De Bruno placed the music box in the store in June 1955 at the request of Martha Williams. About a month later, he placed a "Safari" amusement machine in the store. He serviced the machines every week or two weeks. He testified that he did not observe any service or consumption of alcoholic beverages on these visits and there were no alcoholic beverages visible. He was at the store on August 4th at about 11:30 a.m. Souders was the only person there. This was the first time that he had met Souders who told him that he was now operating the business and that Mrs. Williams had rented the store to him.

The establishment had the outward appearance of a legitimate commercial place of business. Martha Williams' conviction in 1948 of violating the liquor laws appears to be too remote in time to charge De Bruno with constructive notice that she was likely to be engaged in speakeasy activities in 1955. Seizure Case No. 8837, Bulletin 1089, Item 4. I, therefore, find that Salvatore De Bruno acted in good faith and did not know nor have any reason to suspect that the place where his machines were located was a speakeasy. I shall grant his request for the return of the two machines upon payment of the costs of their seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 16th day of December 1955, Salvatore De Bruno pays the costs incurred in the seizure and storage of the music machine and "Safari" machine described in Schedule "A" attached hereto, such machines will be returned to him; and it is further

DETERMINED and ORDERED that the balance of the seized property, including the $54.90 in cash, 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: December 5, 1955.

SCHEDULE "A"

18 - bottles of assorted sizes of various brands of alcoholic beverages
212 - bottles of beer
289 - bottles of soda
1 - counter
1 - Safari Amusement Machine with currency therein
1 - Wurlitzer Music Machine with currency therein
1 - Coca Cola Cooler
12 - stools

1 - National cash register
1 - Rotisserie and stand
1 - Bendix Television
1 - Coolerator deep freeze
1 - 7-Up Cooler and motor
90 - packs of cigarettes
90 - cigars
$54.90 in cash

5. SEIZURE - FORFEITURE PROCEEDINGS - TRANSPORTATION OF ILLICIT ALCOHOL - ALCOHOL ORDERED FORFEITED - MOTOR VEHICLE RETURNED TO INNOCENT LIENOR.

In the Matter of the Seizure on August 4, 1955 of a quantity of alcohol and a Mercury sedan, on Route 130 near Route 206, in Bordentown Township, County of Burlington and State of New Jersey.	Case No. 8953 ON HEARING CONCLUSIONS AND ORDER

Abraham Weiss, Esq., Attorney for Atlantic Auto Discount Corp.
I. Edward Amada, Esq., appearing for 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 quantity of alcohol and a Mercury sedan, described in a schedule attached hereto, seized on August 4, 1955, on Route No. 130, near Route No. 206, Bordentown Township, New Jersey, constitute unlawful property and should be forfeited.

A New Jersey State Trooper stopped the vehicle on the above date and location during his routine patrol of traffic on the highway. He ascertained that the motor vehicle was being operated by its owner, Roscoe Smith, and discovered 107 two-quart "Mason" jars of alcohol in the trunk of the car. There was no stamp indicating the payment of tax on alcoholic beverages on any of the jars. Accordingly, the trooper seized the alcohol, the motor vehicle, and took Smith into custody. Later the motor vehicle and alcohol were turned over to ABC agents.

Roscoe Smith, in a signed statement, declared that he purchased the alcohol at a gas station in Durham, North Carolina, and was transporting such alcohol to New York City for another person, who agreed to pay him for his services.

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 48.2 per cent.

The alcohol is illicit because of the absence of any tax stamps on the jars. R.S. 33:1-1(i), R.S. 33:1-88. 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.

When the matter came on for hearing pursuant to R. S. 33:1-66, an appearance was entered on behalf of Atlantic Auto Discount Corp. which sought recognition of its alleged lien on the Mercury sedan. No one opposed forfeiture of the alcohol.

The finance company has presented a conditional sales contract, dated December 15, 1954, between G & G Auto Sales and Roscoe Smith, evidencing the conditional sale of the Mercury sedan to Smith, which contract is presently held by the Atlantic Auto Discount Corp. The original balance due on the contract was $1,132.56, and the present unpaid balance is $798.42.

Prior to extending credit to Smith, the finance company was informed that Smith was employed as a moulder, with earnings of $85.00 per week, and was supplied with the names of his employer, landlord and various credit references. The finance company verified Smith's employment and residence, and checked with the credit references, the State Liquor Authority, Federal Narcotics Bureau, and the local police, and did not receive any information detrimental to Smith.

It thus appears that the finance company made a reasonably thorough inquiry of the background and activities of Roscoe Smith before it purchased the conditional sales contract. It, therefore, should not be held accountable for the fact that its investigation did not reveal that Roscoe Smith had been fined $100.00 in Goldsboro, North Carolina in November 1949 for selling whiskey, and an appeal taken, the disposition of such appeal not appearing on his fingerprint record. I shall therefore recognize the lien of Atlantic Auto Discount Corp. to the extent of $798.42. R.S. 33:1-66(f).

It appears that the appraised value of the Mercury sedan does not exceed the amount of the lien claim and the costs of its seizure and storage. The Mercury sedan will, therefore, be returned to Atlantic Auto Discount Corp. upon payment of the costs of its seizure and storage.

Accordingly, it is DETERMINED and ORDERED that if on or before the 27th day of December, 1955, the Atlantic Auto Discount Corp. pays the costs incurred in the seizure and storage of the Mercury sedan, described in Schedule "A" attached hereto, such motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the 107 two-quart "Mason" jars of alcohol 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: December 13, 1955.

SCHEDULE "A"

107 - two-quart "Mason" jars of alcohol
1 - Mercury sedan, Serial and Engine No. SO MC 48959 M, New York Registration 1 K 61-13.

6. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against VINCENT DiGIOIA 371 Johnston Avenue Jersey City 4, N. J., Holder of Plenary Retail Consumption License C-317, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.	CONCLUSIONS AND ORDER

Vincent DiGioia, Defendant-licensee, Pro se.
Dora P. Rothschild, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that he sold, during prohibited hours, an alcoholic beverage in its original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38.

The file herein discloses that at 10:35 p.m., September 30, 1955, an ABC agent purchased from the bartender in defendant's licensed premises a pint bottle of whiskey for off-premises consumption. The agent left with the merchandise and returned shortly thereafter accompanied by a fellow agent. Both agents identified themselves and obtained a signed sworn statement from the bartender admitting the aforesaid sale.

Defendant has no prior adjudicated record. I shall suspend his license for a period of fifteen days. Re Rybicki, Bulletin 1087, Item 12. 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 December, 1955,

ORDERED that Plenary Retail Consumption License C-317, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Vincent DiGioia, 371 Johnston Avenue, Jersey City, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. January 3, 1956, and terminating at 2:00 a.m. January 13, 1956.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PERMITTING INDECENT STATUETTES ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

BELVEDERE BAR & GRILL, INC.
t/a BELVEDERE INN
Conklintown Road
Wanaque, PO Midvale, N. J.,

Holder of Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Wanaque.

CONCLUSIONS AND ORDER

Slingland, Houman & Bernstein, Esqs., Attorneys for Defendant-licensee.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that on October 22, 1955 it (1) sold, served and delivered and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to minors, and allowed, permitted and suffered the consumption of such beverages by said minors in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20; and (2) allowed, permitted and suffered in and upon its licensed premises and had in its possession matter containing an obscene, indecent, filthy, lewd, lascivious and disgusting representation, in violation of Rule 17 of State Regulations No. 20.

The file herein discloses that two ABC agents were in defendant's licensed premises on October 22, 1955 at about 9:45 p.m., and observed Mathew Giunta, president of the corporate-licensee, who was acting as a bartender, serve alcoholic beverages to three young men without questioning any of them as to their age. When these young men commenced to drink the alcoholic beverages, the agents identified themselves. The agents ascertained that Thomas ---, whom they had observed being served with a drink of gin and 7-Up, was 18 years of age and that Daniel ---, whom they had observed being served with a glass of beer, was 20 years of age.

During the course of the agents' activities on the licensed premises they discovered a plaster of paris statuette on the back bar behind a bottle of alcoholic beverages. Domenick Rigano, secretary of the corporate-licensee, told the agents that one of the bartenders had taken the statuette from a patron. The statuette is obscene and indecent in character.

Counsel for defendant appeared before me on oral argument in mitigation of the penalty to be imposed herein and presented a letter from a patron of the licensee stating that he was present on the evening in question and saw the bartender wrest the aforesaid statuette from a customer who was exhibiting it to others. The agents' reports, however, confirm the fact that the bartender "didn't remember" the alleged incident.

Defendant has no prior adjudicated record. I shall suspend its license for ten days on Charge (1), Re Rudberg, Bulletin

1083, Item 8; and ten days on Charge (2), Re Jackson, Bulletin 1023, Item 2; and remit five days for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 19th day of December, 1955,

ORDERED that Plenary Retail Consumption License C-18, issued by the Borough Council of the Borough of Wanaque to Belvedere Bar & Grill, Inc., t/a Belvedere Inn, Conklintown Road, Wanaque, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. January 4, 1956, and terminating at 3:00 a.m. January 19, 1956.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Cooper's Express, Inc.
320 Lowell St.
Lawrence, Mass.
Application filed December 20, 1955 for Transportation License.

Century Importers Inc.
100 West 10th Street
Wilmington, Delaware.
Application filed December 28, 1955 for Limited Wholesale License.

William Howe Davis
Director.