

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

BULLETIN 834

FEBRUARY 25, 1949

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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 834

FEBRUARY 25, 1949

1. COURT DECISIONS - RUTHERFORD LODGE NO. 547 B.P.O.E., et al.,
v. HOCK, STATE COMMISSIONER, ETC. - APPEAL DISMISSED AND
COMMISSIONER SUSTAINED.

SUPERIOR COURT OF NEW JERSEY

Appellate Division

Nos. A-114/A-115, September Term, 1948

RUTHERFORD LODGE No. 547 BENEVOLENT :
AND PROTECTIVE ORDER OF ELKS,
RUTHERFORD POST No. 109 AMERICAN :
LEGION and REYNOLDS-EVERETT- :
SCHNEIDER POST No. 227 VETERANS OF :
FOREIGN WARS,

Appellants,

vs.

ERWIN B. HOCK, STATE COMMISSIONER
OF ALCOHOLIC BEVERAGE CONTROL,

Respondent.

Argued January 17, 1949. Decided February 10, 1949.

Before Jacobs, Eastwood and Bigelow, JJ.

Mr. Horace F. Banta argued the cause for the appellants:
Edward G. Evertz, of counsel.
(Winne & Banta, Attorneys)

Mr. Samuel B. Helfand, Deputy Attorney-General, argued
the cause for the respondent.
(Walter D. Van Riper, Attorney-General, Attorney)
The opinion of the Court was delivered by

EASTWOOD, J.

Appellants attack an asserted determination by the respondent (hereinafter referred to as "Commissioner"), and contend that it unlawfully terminated their club liquor licenses as of December 1, 1948, consequent upon the result of a referendum election participated in by the voters of the Borough of Rutherford. The Commissioner contends that he merely gave an advisory opinion or interpretation of the legal effect of the referendum election with respect to the three club licenses theretofore issued to and held by the appellants.

The relevant facts are: On November 2, 1948, a referendum election was held in the Borough of Rutherford on the question:

"Shall the retail sale of all kinds of alcoholic beverages, for consumption on the licensed premises by the glass or other open receptacle pursuant to chapter 1 of the title Intoxicating Liquors of the Revised Statutes (Section 33:1-1, et seq.), be permitted in this municipality?"

The vote was negative. The Commissioner, on November 18, 1948, in response to a letter from the Borough Clerk of Rutherford Borough, informing him of the result of said referendum, sent a communication to the clerk, stating that by virtue of paragraph 3 of R. S. 33:1-45 and "Pursuant to the provision of the statutory section and the negative vote thereunder at the referendum, it will be unlawful for the Mayor and Council to issue any license which shall permit the retail sale of alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle; and, from and after midnight of Wednesday, December 1, 1948, the three club licenses now outstanding in the Borough shall be completely void and inoperative. (See the enclosed copies of Re Rutherford, Bulletin 63, Item 1, and Re Merchantville, Bulletin 58, Item 3.)" Under date of November 18, 1948, the Commissioner forwarded a copy of this letter to each of the appellants, stating that it was for their "prompt and careful attention" Appellants state that thereafter they made an oral request of the Commissioner for a hearing, although the record does not reveal this fact. In the argument before this court, it was conceded that the Commissioner had held lengthy conferences with representatives of the appellants, that in response to the request of counsel for appellants for a hearing, the Commissioner stated that the statute did not provide the means for such a hearing on the question at issue, that there was no factual issue presented and the question of the proper construction of the pertinent section of the statute had been "completely argued before him".

Appellants contend that the letters written by the Commissioner constituted reviewable action or decision by him under Rule 3:81-8. The Commissioner contends that he did nothing more than to give utterance to his interpretation or construction of the provisions of the statute in question, that his opinion was merely of an advisory nature, there was no formal hearing or proceeding before him, there is no authority for a hearing on the question at issue, and that he made no reviewable determination. As stated, appellants contend that the Commissioner's action had the effect of terminating their licenses; that their licenses would not have expired otherwise until June 30, 1949; that rights valuable to appellants are involved, and to disregard the asserted determination of the Commissioner would expose appellants to prosecution under the criminal laws of this State.

Rule 3:81-8, as amended, provides that a "Review of the final decision or action of any State Administrative Agency shall be by appeal to the Appellate Division" Formerly, such a review, if allowed, was by certiorari. The basis for the issuance of a writ of certiorari to review a decision of an administrative agency was clearly defined by Mr. Justice Heher in *Morgan v. Burnett*, 121 N. J. L. 352 (Sup. Ct. 1938), 2 A. 2d 339, wherein he stated:

"It is the settled rule in this court that 'certiorari will not lie to revise or correct erroneous opinions, however hurtful they may be to individuals concerning whom they are expressed. An order, judgment, or determination affecting the rights of prosecutors is necessary as a foundation for the use of the writ.' * * * 'The writ of certiorari cannot be used to draw judicial opinions in advance or to affect adjudications of subordinate tribunals.' *Newark v. Fordyce*, 88 N. J. L. 440, 97 A. 67, 68; *Livingston v. Rector, &c.*, of Trinity Church, 45 N. J. L. 230; *Drake v. Plume*, 44 N. J. L. 362; *Watson v. Medical Society of New Jersey*, 38 N. J. L. 377."

Cf. *Vesey v. Driscoll*, 132 N. J. L. 293 (Sup. Ct. 1944), 40 A. 2d 291.

Our review of the letters of the Commissioner convinces us that he merely expressed his opinion or interpretation of the legal effect of the referendum election with respect to the club licenses held by the appellants, that these letters did not constitute a final decision or action by him and, therefore, are not reviewable. The decided cases of our courts so hold, supra. For many years the Commissioner has adopted the practice of furnishing his opinions and views to issuing authorities, licensees and others who have communicated with him and who have posed certain questions and problems with which they have been faced in connection with the administering of the Alcoholic Beverage Law and the applicability thereof with respect to the conduct of their licensed business. Such advisory opinions have served a useful purpose in that they have clarified many perplexing and confusing problems encountered by the issuing authorities, licensees and others affected by the Alcoholic Beverage Law. These advisory opinions of the Commissioner have had a salutary effect and have been conducive to a satisfactory and successful administering of the Alcoholic Beverage Law by the Commissioner of Alcoholic Beverage Control, to whom that task is entrusted by the express provisions of the Act. R. S. 33:1-23.

We are of the opinion that the Commissioner had no authority to and did not make a determination on the question at issue here. And, if it were considered on the merits, it would inevitably lead to the same conclusion. Accordingly, we concur in the view he expressed, to wit: that said club licenses automatically expired on December 1, 1948, which date was the expiration of thirty days after the date of the vote at the referendum election.

We find no merit in appellants' contention that the referendum election did not void their licenses or that they were only partially voided. Appellants argue that the question on which the citizens voted applied only to plenary retail consumption licenses, as provided for in R. S. 33:1-45, that club licenses are not prohibited by a negative vote at a referendum either under R. S. 33:1-45 or under R. S. 33:1-46, and that, assuming R. S. 33:1-45 applied to club licenses, such licenses would then be only partially inoperative and appellants would not be precluded from selling intoxicating liquors in sealed containers for consumption on the club premises. This is a specious argument and falls of its own weight. Analogically, appellants argue that under the language of R. S. 33:1-46.1, adopted in 1945, in the event of a negative referendum resulting in total prohibition of the retail sale of alcoholic beverages for consumption on the premises, such negative vote, while voiding certain enumerated licenses, does not prohibit club licenses; in fact, appellants argue, club licenses are specifically excepted. While the preamble to this supplement is rather loosely and inartistically drawn, it is quite clear that club licenses (except for bona fide golf and country clubs) are voided by R. S. 33:1-46.1, in the event of such a negative referendum vote, notwithstanding the fact that they are not specifically enumerated therein as one of the voided types of licenses. The supplement of 1945 was obviously adopted to provide for the issuance of club licenses to golf and country clubs notwithstanding a negative referendum vote. The fact that R. S. 33:1-46.1 makes such a provision for club licenses solely for golf and country clubs emphasizes the fallacy of appellants' argument. Under the Alcoholic Beverage Law the Legislature has provided for the issuance of two licenses permitting retail sale of alcoholic beverages, to wit: (1) by the glass or other open receptacle for consumption on the licensed premises and (2) in the original container for consumption off the licensed premises. A plenary retail consumption license (R. S. 33:1-12 (1)) entitles the licensee to both privileges. A plenary retail distribution license (R. S. 33:1-12 (3a)) only permits sales in the original container for consumption off the licensed premises. The only distinction between a club license and a plenary retail consumption license is that a club license is limited to sales "to bona fide club members and their guests",

for immediate consumption on the licensed premises, (R. S. 33:1-12 (5)). It clearly appears to us that the Legislature, by the use of the words "by the glass or other open receptacle" did not intend to make any distinction between the prohibition of the sale of alcoholic beverages for consumption on the licensed premises, whether under a plenary retail consumption license or a club license, in the event of such a negative referendum vote. Nor are we persuaded by appellants' argument that the Legislature intended, in the event of a negative referendum vote, that club licenses would thereafter be void as to the sale of alcoholic beverages by the glass or other open receptacle for consumption on the premises, but continue to be effective for the sale of alcoholic beverages in sealed containers for consumption on the premises.

The Commissioner contends that the legislation under review here has been heretofore construed to include club licenses in those licenses that are voided under a negative vote under R. S. 33:1-45. Such construction, he argues, is found in Bulletin No. 58 (3) published by the Commissioner in 1934 and in Bulletin No. 63 (1) issued in January, 1935, to which reference is made in the Commissioner's letter of November 18, 1948. The opinions expressed by the Commissioner in these bulletins do not bring them within the confines of *Cino v. Driscoll*, 130 N. J. L. 535 (Sup. Ct. 1943), 34 A. 2d 6, cited by the Commissioner. However, it is significant that the Legislature has failed to "indicate its disapproval thereof" (*Cino v. Driscoll*, supra) since the Commissioner published the bulletins in question.

Appellants argue that the referendum election could not void the licenses issued to them for which they had paid the annual license fee and which were otherwise effective until June 30, 1949. This argument has no substance. Such a license is subject, of course, to all of the risks which may legally attach thereto, including the possibility of an adverse referendum election such as occurred in the instant case and its resulting effect upon their licenses.

We are of the opinion that the effect of the referendum vote, by virtue of the applicable provisions of the Alcoholic Beverage Law, automatically terminated the club licenses issued to the appellants on December 1, 1948. R. S. 33:1-45.

The appeal is dismissed, without costs.

2. RETAIL LICENSEES - CURB SERVICE PROHIBITED.

February 16, 1949

Dear Sir:

This acknowledges your letter of February 10th, received on the 14th, in which you say:

"I operate a liquor store on a main highway. I am interested in installing an interphone system whereby a customer driving up to my store can reach out, lift the phone off a post and call in his order to me without getting out of his car."

What you propose is a curb service for "package liquor". In my opinion, this is not permissible. It would constitute, in effect, a transaction of sale at the curb or street outside your liquor store and, hence, would be off the licensed premises and in violation of the Alcoholic Beverage Law (cf. Re Rizzo, Bulletin 551, Item 11).

Even apart from the foregoing, I disapprove of and rule against any such curb service (R. S. 33:1-39). Trafficking in liquor on the streets or highways is neither desirable nor conducive toward the best interests of liquor control. There is no need to cater to the joy rider who wants to drive up to the curb and make his purchase of liquor there.

For completeness, I may point out that it has already been ruled that curb service for drinks of alcoholic beverages by tavernkeepers is not permissible (Re Morris, Bulletin 263, Item 11).

Very truly yours,
ERWIN B. HOCK,
Director

3. DISCIPLINARY PROCEEDINGS - ~~CLUB LICENSE~~ - SALES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS AND RULE 9 OF STATE REGULATIONS NO. 7 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

SOCIETA INDEPENDENTE MARCHIGIANA
Warren Street
Alpha, N. J.,

CONCLUSIONS
AND ORDER

Holder of Club License CB-61 issued by the State Commissioner of Alcoholic Beverage Control.

Andrew Varga, Jr., Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on January 9, 1949, between 11:30 a.m. and 1 p.m., it sold alcoholic beverages in violation of a local ordinance which prohibits any such activity between 3 a.m. and 2 p.m. on Sundays, thereby also violating Rule 9 of State Regulations No. 7.

On Sunday, January 9, 1949, two ABC agents entered defendant's premises at approximately 11:55 a.m. and observed seven male patrons consuming alcoholic beverages at the bar. The sales were admitted by Louis Pettinelli, who was then tending bar and who had refused to sell any alcoholic beverages to one of the agents because he was not a member of the club.

Defendant has no prior adjudicated record. I shall, therefore, suspend the license for the usual minimum period of fifteen days, with a remission of five days for the plea, or a net suspension of ten days. See Bulletin 623, Item 14.

Accordingly, it is, on this 10th day of February, 1949,

ORDERED that Club License CB-61, issued by the State Commissioner of Alcoholic Beverage Control to Societa Independente Marchigiana, for premises on Warren Street, Alpha, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. February 23, 1949, and terminating at 3 a.m. March 5, 1949.

ERWIN B. HOCK
Director

4. SEIZURE - FORFEITURE PROCEEDINGS - STOLEN ALCOHOLIC BEVERAGES TRANSPORTED IN VIOLATION OF ALCOHOLIC BEVERAGE LAW - THREE VEHICLES TURNED OVER TO INNOCENT LIENORS - ONE VEHICLE RETURNED TO INNOCENT OWNER - ONE VEHICLE FORFEITED - STOLEN ALCOHOLIC BEVERAGES RESTORED TO OWNER.

In the Matter of the Seizure on June 8, 1948, of approximately eight cases of various brands of alcoholic beverages at the dwelling of Harold Van Arsdale, located on Herbertsville Road, Herbertsville, in Brick Township, County of Ocean and State of New Jersey.

Case No. 7273

ON HEARING

CONCLUSIONS AND ORDER

In the Matter of the Seizure on June 10, 1948, of an International truck, and on June 12, 1948, of a Pontiac sedan, a Buick sedan and a Plymouth sedan, in the City of Newark, County of Essex and State of New Jersey.

In the Matter of the Seizure on June 15, 1948, of a Chevrolet sedan at 1418- 8th Avenue, in the Township of Neptune, County of Monmouth and State of New Jersey.

Maurice A. Scotch, Esq., Attorney for the National Finance Co.
 William Ryan, Esq., Attorney for The Credit Corporation.
 Irving Morris, Esq., Attorney for Auto Loan Company.
 Robert Scherling, Esq., Attorney for Katherine Amoresano.
 Michael Mango, Esq., Attorney for Joseph D'Antonio.
 Edward J. Santoro, Esq., Attorney for Louis Genoves and Nicholas Bianco, t/a Coral Cocktail Lounge.
 Harry Krieger, Esq., Attorney for Wilbur Lee Burnham.
 Beacon Finance Co., by George A. Dwyer, Manager.
 Harry Castelbaum, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

This case involves the seizure in Ocean County of a quantity of stolen alcoholic beverages, the seizure in Essex County of four motor vehicles, and the seizure in Monmouth County of another motor vehicle. The vehicles were seized because allegedly they were, at one time or another, used to transport the stolen alcoholic beverages in violation of the Alcoholic Beverage Control Law and, hence, are subject to forfeiture.

At the seizure hearing held pursuant to R. S. 33:1-66 to determine whether the motor vehicles and alcoholic beverages should be forfeited, appearances were entered for above lien claimants and for Wilbur Lee Burnham who sought return of a Buick sedan; for Katherine Amoresano who sought return of a Pontiac sedan; for Joseph D'Antonio who sought return of a Plymouth sedan, and for the licensees who sought return of the whiskey recovered in the dwelling in Ocean County. The owners of an International truck and a Chevrolet sedan also seized in the case did not appear to contest their forfeiture.

All parties who appeared at such hearing admitted that the facts covering the theft and transportation of the alcoholic beverages were as developed by the investigation of ABC agents. It appears therefrom that on April 29, 1948, five men stole about thirty cases of whiskey from that Coral Lounge, in Plainfield. Ten cases of this whiskey were transported by George Conner, in a Pontiac sedan registered in the name of Katherine Amoresano, to Newark. The balance, comprising approximately twenty cases of whiskey, was transported to Newark in an unidentified vehicle. There all of the whiskey was transferred to an International truck registered in the name of Charles G. Sabin and transported to a dwelling

located in Herbertsville, Ocean County, where it was stored, pending its sale.

Some time later about ten cases of this whiskey were transferred from the dwelling in Herbertsville to Wilbur Burnham's Buick sedan and transported by him to Newark. There the ten cases of whiskey were transferred to Joseph D'Antonio's Plymouth sedan and transported by him to another place in Newark, where he sold the whiskey. Two other cases of whiskey were taken from the aforesaid dwelling by Walter Poland and transported by him in a Chevrolet sedan to a place in Monmouth County, where he sold part of the whiskey.

The case first came to the attention of the Division of Alcoholic Beverage Control on June 8, 1948, when about eight cases of the whiskey were seized by ABC agents in the dwelling in Ocean County. The truck was seized in Newark on June 10; the Pontiac sedan, the Buick sedan and the Plymouth sedan were seized in Newark on June 12, and the Chevrolet sedan was seized in Neptune Township, Monmouth County, on June 15. The alcoholic beverages and the motor vehicles are more specifically described in a schedule attached hereto. There were no alcoholic beverages in any of the motor vehicles when seized. None of the motor vehicles was licensed to transport alcoholic beverages, and none of the persons concerned held any license authorizing any of them to sell alcoholic beverages.

Even a person licensed to deal in alcoholic beverages may not transport his alcoholic beverages in his vehicle, or that of another person, unless the vehicle is licensed for that purpose. It is a violation of the law which subjects the vehicle to seizure and forfeiture even though there are no alcoholic beverages in the vehicle when it is seized. R. S. 33:1-1(i) and (y), R. S. 33:1-2, R. S. 33:1-66, Seizure Case No. 7070, Bulletin 768, Item 8. It is hardly necessary to point out that it is a much more aggravated offense for a person not licensed to deal in alcoholic beverages to transport in an unlicensed vehicle alcoholic beverages intended for sale, especially stolen alcoholic beverages. It is a three-fold violation of the law for which, as in all such cases, in so far as the wrongdoer is concerned, forfeiture follows as a matter of course. See Seizure Case No. 7070, supra.

I am authorized to return property subject to forfeiture to a person who has established to my satisfaction that he acted in good faith and unknowingly violated the law. A lien claimant must establish to my satisfaction that he acted in good faith and had no knowledge of the unlawful use to which the 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 (e) and (f).

Louis Genoves and Nicholas Bianco, the licensees from whom the whiskey was stolen, are obviously entirely innocent parties. The evidence establishes that all of the whiskey recovered is part of that stolen from the licensed premises. Consequently, all of the seized whiskey will be returned to them after the criminal proceedings in the case have been terminated.

The Credit Corporation, and Auto Loan Company, each claim a lien on Burnham's Buick sedan.

Burnham has no previous criminal record. Each claimant investigated Burnham's character and background before dealing with him, and discovered nothing of a detrimental nature. The claimants submitted documents evidencing their liens on the car as security for money loaned to Burnham. The Credit Corporation has an unpaid balance of \$302.80 due, and Auto Loan Company has an unpaid balance of \$178.14 due.

The evidence establishes that they are innocent lienors, and I shall recognize their liens against the Buick sedan in the amounts indicated.

National Finance Co. claims a lien on D'Antonio's Plymouth sedan.

D'Antonio has no previous record of violating any liquor laws. He was employed as a taxicab driver and the finance company had dealt with him for over four years, during which period it loaned him money on eleven occasions. A representative of the National Finance Co. testified that D'Antonio's character and background were investigated when he first applied for a loan, and that such investigations disclosed nothing of a detrimental nature. The claimant submitted documentary evidence of its lien. The unpaid balance due on the lien is \$293.96.

This finance company is likewise an innocent lienor, and I shall recognize its lien against the Plymouth sedan in the amount of \$293.96.

Beacon Finance Co., which claims a lien upon Poland's Chevrolet sedan, notified this Division of such claim after the hearing in the case.

The Beacon Finance Co. has submitted documents and an affidavit evidencing that it holds a chattel mortgage covering the vehicle; that there is a balance of \$183.44 presently due to the company; that it investigated the character and background of Poland before it dealt with him; and that such investigation showed that Poland was apparently legitimately employed, and that there was nothing of a detrimental nature against his record. He has no previous record of violating any liquor laws.

I am satisfied from the evidence that the finance company is an innocent lienor, and I shall recognize its lien against the Chevrolet sedan in the amount of \$183.44.

The appraised retail value of the Buick sedan is \$550.00; that of the Plymouth sedan is \$300.00; and that of the Chevrolet sedan is \$200.00. It is self-evident that the retention of these cars by the State upon payment of the liens will not result in any substantial advantage to the State and, further, that the amount of such liens and the cost of seizure and storage in each case will exceed what can be realized at a public sale of the vehicles. The Buick sedan will be turned over to the Credit Corporation and the Auto Loan Company upon their joint receipt, and the Plymouth sedan will be turned over to National Finance Co., and the Chevrolet sedan will be turned over to Beacon Finance Co., upon payment of the costs of the seizure and the storage of each of the vehicles.

Walter Poland, although absent from the hearing, thereafter wrote to the Division asking for return of his car merely upon the ground that he had need for it.

Since the three motor vehicles are to be returned to the lien claimants, it is not necessary to act upon the applications of the respective owners thereof for their return, except to reiterate that a wrongdoer in this type of case cannot avoid forfeiture of his car. Even if, as Burnham says, he acted foolishly rather than with evil intent, it does not excuse him. Foolish or not, he transported whiskey under circumstances whereby he could not help but know that it was a shady transaction. As to Poland and D'Antonio, in addition to transporting, they actually sold the stolen whiskey. It should be noted that neither Burnham, D'Antonio or Poland will be benefited by the return of the cars to the lien claimants, since the liens exceed their value.

Katherine Amoresano seeks return of the Pontiac sedan on claim that she did not know or have any reason to suspect that Conner would use the car to transport alcoholic beverages.

She is the owner of the car according to a document issued by the New Jersey Division of Motor Vehicles. She says that she paid for the car with her own money, earned from her employment in an industrial plant. On the other hand, Conner, when arrested, gave officers a statement that he was the owner of the car. While this raises some doubt as to the ownership of the car, nevertheless, standing alone, I do not believe that Conner's statement warrants a finding that it is his car, in disregard of the documents of title to the contrary.

It is, therefore, necessary to determine whether Katherine Amoresano knew, or had reason to suspect that Conner would use the car for an unlawful purpose. He was eighteen years of age at the time and intimately associated with the Amoresano family. He was the only person who drove the car for the family, and used the car at will for his own purposes. However, there was not that close relationship which would give rise to the presumption that she knew of his misdeeds. Cf. Seizure Case No. 7319, Bulletin 831, Item 7.

Mrs. Amoresano denies that she had any actual knowledge that Conner intended to transport stolen whiskey to the car. There is no evidence to the contrary and there is nothing to indicate that she should have suspected him of such action. While it may be suspected that Conner, who claims to have been a junk dealer, actually was shiftless and not overly scrupulous as to the manner in which he earned a living, nevertheless it cannot be said that Mrs. Amoresano could have reasonably foreseen that this eighteen-year old boy, without a criminal record, would resort to theft of, and transportation of, stolen whiskey. Consequently the car will be returned to her.

Accordingly, it is DETERMINED and ORDERED that if, on or before the 21st day of February, 1949, the Credit Corporation and Auto Loan Company or either of them, National Finance Co., Beacon Finance Co., and Katherine Amoresano, each pay the cost of seizure and storage of the respective motor vehicles to be returned to each, such motor vehicles, more fully described in Schedule "A" attached hereto, will be turned over to the respective parties and it is further

DETERMINED and ORDERED that the International truck described in Schedule "A" aforesaid 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 at the direction of the Director of Alcoholic Beverage Control.

ERWIN B. HOCK,
Director.

Dated: February 10, 1949.

SCHEDULE "A"

- 5 cases of 4/5 quart bottles of Philadelphia Blended Whiskey
- 1 case containing 23 pint bottles of Philadelphia Blended Whiskey
- 10 bottles Dixie Belle Sloe Gin
- 1 4/5 quart bottle Philadelphia Blended Whiskey
- 21 pint bottles of Kinsey Whiskey
- 2 empty cartons
- One International truck, N. J. 1948 registration XM-8625
- One Pontiac sedan, N. J. 1948 registration FT-566, Serial No. 6DA32907, Engine No. 6450264

- One Buick sedan, N. J. 1948 registration EP-90-K, Serial No. 13652804, Engine No. 7386323
- One Plymouth sedan, N. J. 1948 registration JH-44-A, Serial No. 10420789, Engine No. P4509789
- One Chevrolet sedan, N. J. registration MS-69-H, Serial No. 2FA119101, Engine No. 5729449

5. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
 ARTHUR BERKNER & MARCEL BARBIER)
 49 Belmont Avenue) CONCLUSIONS
 Garfield, N. J.,) AND ORDER
)
 Holders of Plenary Retail Consumption License C-50, issued by the City Council of the City of Garfield, and transferred during the pendency of these proceedings to)
)
 MARCEL BARBIER & HARRY SPERLING)
)
 for the same premises.)
 - - - - -)
 John D. Vasilyk, Esq., Attorney for Defendant-licensees.
 William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they possessed illicit alcoholic beverages at their licensed premises, in violation of R. S. 33:1-50.

On January 6, 1949, an agent of the State Division of Alcoholic Beverage Control seized on defendants' licensed premises a 4/5 quart bottle labeled "The Blended Scotch Whisky of the White Horse Cellar", when his field tests indicated that the contents of said bottle were not in fact as described on its label. Analysis of the contents of said bottle by the Division Chemist permits only the conclusion that the label on said bottle did not truly describe the contents therein. The said alcoholic beverage is, therefore, an illicit beverage. R. S. 33:1-88.

Defendants have a previous record. On May 29, 1948 their license was suspended by me for a period of twenty days after a plea of non vult to charges of permitting gambling on licensed premises and sale for off-premises consumption after 10 P.M. I shall therefore add five days to the minimum suspension for one bottle of illicit liquor, fifteen days, Re Rudolph, Bulletin 680, Item 1, and suspend the license for twenty days, less five days for the plea, leaving a net suspension of fifteen days.

Accordingly, it is, on this 11th day of February, 1949,

ORDERED that Plenary Retail Consumption License C-50, issued by the City Council of the City of Garfield to Arthur Berkner & Marcel Barbier, and transferred to Marcel Barbier & Harry Sperling, for premises 49 Belmont Avenue, Garfield, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 4 A. M. February 21, 1949, and terminating at 4 A. M., March 8, 1949.

ERWIN B. HOCK
 Director.

6. APPELLATE DECISIONS - CRANFORD TOWN TAVERN, INC. v. CRANFORD.

CRANFORD TOWN TAVERN, INC.,)
TRADING AS 415 CLUB,)

Appellant,)

v.)

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF CRANFORD,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Joseph A. Lettieri, Esq., Attorney for Appellant.
Carl H. Warsinski, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of appellant's application for "broad package privileges" in connection with its plenary retail consumption license issued for premises at 415 Centennial Avenue, Cranford.

Respondent admits that prior to June 18, 1948, appellant filed the notice, affidavit, sketch and photograph required by Rules 1 and 2 of State Regulations No. 32. It denies, however, that appellant is entitled to the relief sought in its application because it alleges that the affidavit did not truthfully represent the condition of appellant's premises on May 27, 1948, and further alleges that appellant did not display and sell alcoholic beverages in original containers for off-premises consumption in any part of the licensed premises other than the public barroom prior to May 28, 1948.

The evidence herein discloses that the licensed premises contain three rooms. The entrance to the barroom is located at the corner of McClellan Street and Centennial Avenue. There is a second room shown on the sketch and marked "Package Dept." which has a separate entrance from Centennial Avenue, and a third room marked "Shuffleboards and Sitting Room." The sketch discloses that the public may freely pass from one part of the licensed premises to any other part thereof. The licensed premises were so arranged for a long period of time prior to May 27, 1948.

This appeal concerns the room marked "Package Dept." This was originally a sitting room and contained tables and chairs. The testimony of a carpenter employed by appellant discloses that he installed a counter and shelves in the "Package Dept." on May 24 and May 25, 1948. Walter Grad, President of appellant corporation, testified that in April 1948 he arranged with the carpenter to install the counter and shelves: that the material was delivered on May 21, and that the work was completed on May 25, 1948. His bartender, and two patrons testified that alcoholic beverages in original containers were displayed and that sales of alcoholic beverages for off-premises consumption were actually made in the "Package Dept." prior to May 28, 1948. An investigation made by a Police Lieutenant, who submitted his report to respondent on June 21, 1948, revealed that several families had purchased bottles of alcoholic beverages from this "Package Dept." room prior to May 27, 1948. All of the aforesaid evidence indicates that the application made by appellant was improperly denied. There is no evidence in the case to show that the facts set forth in the affidavit were untrue, and the evidence satisfies me that appellant displayed and sold alcoholic beverages in the "Package Dept." prior to May 28, 1948. Thus, the action of respondent will be reversed.

Accordingly, it is, on this 15th day of February, 1949,

ORDERED that the action of respondent be reversed, and respondent is ordered to cause the following notation to be forthwith made on the face of the license certificate held by appellant:

"This license permits sale of alcoholic beverages in original containers for consumption off the licensed premises from portions of the licensed premises other than the public barroom, pursuant to P. L. 1948, ch. 98, and State Regulations No. 32."

ERWIN B. HOCK
Director.

7. APPELLATE DECISIONS - GRECO et al. v. ENGLEWOOD CLIFFS AND CUNDARI.

JAMES J. GRECO, WILLIAM SAVORY,)	
JAMES BILLINGTON, FRANK GREEK,)	
ADOLPH BRUNESS and THE ENGLEWOOD)	
CLIFFS CIVIC BETTERMENT LEAGUE,)	ON APPEAL
)	CONCLUSIONS AND ORDER
Appellants,)	
)	
v.)	
)	
MAYOR AND COUNCIL OF THE BOROUGH OF)	
ENGLEWOOD CLIFFS, and CARMELA CUNDARI,)	
T/A THE CHICKEN COOP,)	
)	
Respondents.)	

-----)

William Savory, Pro Se., Appearing for Appellants.
 Thomas S. Clancy, Esq., Attorney for Respondent Borough of Englewood Cliffs.
 Walter H. Jones, Esq., Attorney for Respondent Carmela Cundari, t/a The Chicken Coop.

BY THE DIRECTOR:

This is an appeal from the action of respondent Mayor and Council in granting to respondent Carmela Cundari a place-to-place transfer of her plenary retail consumption license from Sylvan Avenue to a proposed site located on the corner of Sylvan Avenue and John Street.

William Savory, an appellant in the instant case and the only person appearing in the matter in behalf of appellants at the time of the hearing, raised the point, at the hearing, that the proposed licensed premises would be, if erected, within 200 feet of property owned by the local Board of Education. It was stipulated and agreed by the said William Savory and the attorneys representing the respondents that the property in question has not been used for school purposes since being abandoned about the year 1926.

R. S. 33:1-76 provides, inter alia, that "Anything to the contrary hereinbefore notwithstanding, and for the benefit not of property but of persons attendant therein, no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse or private schoolhouse ***." The aforesaid section of the statute has been construed by Commissioner Burnett in Bulletin 8, Item 4, thusly: "*** if an edifice or building is not actually used as a church or as a public schoolhouse and there is no present intention of so using it at the time that the license is issued, the case does not fall within the so-called 200 foot rule." Appellants' contention is apparently within that ruling and, hence, devoid of merit

William Savory, the aforementioned appellant, although asked

whether or not he desired to testify on behalf of the appellants, elected not to present himself as a witness in the case. Inasmuch as no testimony whatsoever has been offered by the appellants to substantiate their respective grounds of appeal as set forth in the petition filed herein, I must assume that the various contentions have been abandoned. I have no alternative, therefore, in view of the lack of prosecution on the part of the appellants, but to dismiss the within appeal.

Accordingly, it is, on this 15th day of February, 1949,

ORDERED that the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK
Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
MARTHA OWEN, T/a BAY BAR,
Sunset Blvd., opp. Gate of
Cape May Point,
Lower Township,
P.O. Cape May Point, N. J ,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Lower

Martha Owen, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to charges alleging that she sold, served and delivered alcoholic beverages to four minors and permitted the consumption of such beverages by the minors, in violation of R. S. 33:1-77 and Rule 1 of State Regulations No. 20.

On Saturday night, January 22, 1949, four minors (U.S. Coast Guardsmen), two aged nineteen and two aged twenty, were sold, served and permitted to consume several glasses of beer on defendant's licensed premises.

Defendant has no previous adjudicated record. Under the circumstances herein, and because of the number of minors involved, I shall suspend defendant's license for a period of fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Cf. Re Haley, Bulletin 803, Item 7.

Accordingly, it is, on this 16th day of February, 1949,

ORDERED that plenary retail consumption license C-3, issued by the Township Committee of the Township of Lower to Martha Owen, t/a Bay Bar, for premises on Sunset Blvd., opp. Gate of Cape May Point, Lower Township, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. February 28, 1949, and terminating at 2 a.m. March 10, 1949.

ERWIN B. HOCK
Director.

9. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, AND FAILURE TO KEEP PREMISES CLOSED, IN VIOLATION OF LOCAL REGULATIONS - CHARGE OF HINDERING INVESTIGATION DISMISSED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

ETHEL ENGLE,
T/a OTTO'S TAVERN
17 Center Street,
Newark 2, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

Saul C. Schutzman, Esq., and Jacob S. Glickenhau, Esq., Attorneys for Defendant-licensee.
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The following charges were preferred against the defendant:

- "1. On Saturday, July 17, 1948, you sold and served alcoholic beverages after 2 A.M., in violation of Section 1 of Ordinance No. 1359 concerning alcoholic beverages, adopted by the Board of Commissioners of the City of Newark on December 18, 1945, which prohibits such activity between the hours of 2 A.M. and 7 A.M. on weekdays.
- "2. On the aforesaid occasion, you kept open your licensed premises, where the principal business is the sale of alcoholic beverages, during the hours when sale of alcoholic beverages is prohibited, in violation of Section 3 of the aforesaid ordinance.
- "3. On the aforesaid occasion, while agents of the State Department of Alcoholic Beverage Control were investigating the above alleged violations, you hindered and failed to facilitate such investigation, in violation of R. S. 33:1-35."

The defendant pleaded non vult to charge (2), and entered a plea of not guilty to charges (1) and (3).

At the hearing herein, an ABC agent testified that on July 17, 1948, at about 2:10 a.m., he looked through a glass window in the front door of defendant's premises and saw two men seated at the bar with glasses of beer in front of them; that about 2:30 a.m. he again looked through the window and observed Otto Engle, the bartender, standing behind the bar and pouring whiskey from a bottle into three glasses. This agent testified that he entered the licensed premises at about 2:35 a.m. and observed three women and seven men, all of whom had alcoholic beverages in front of them. This agent testified that he seized three glasses containing highballs and two glasses containing beer, and placed the glasses at the extreme end of the bar, near which portion of the bar another ABC agent was then stationed. The testimony indicates that thereafter the bartender went behind the bar and dumped the highballs, but was stopped from dumping the two glasses of beer by the other agent.

The aforesaid testimony as to the events which occurred on the licensed premises at 2:35 a.m. is substantially corroborated by the testimony of two other ABC agents who entered the premises at about the same time.

On behalf of defendant, the bartender admits that there were patrons on the licensed premises at 2:35 a.m., but denies that any alcoholic beverages were sold or served after 2 a.m. Several persons who said that they were present at the time in question testified that no drinks were served to them after 2 a.m.

After carefully considering all the evidence, and especially the testimony of the agent who testified that he observed the bartender pouring drinks from a bottle approximately five minutes before the agents entered the premises, I am satisfied that the bartender served alcoholic beverages after 2 a.m. and, hence, I find defendant guilty as to charge (1).

Charge (3) is based upon the contention that the act of the bartender in dumping the highballs was a deliberate act intended to hinder the investigation. The bartender asserts that he was merely clearing the premises, and was not aware that the agents desired to preserve the contents of the glasses in question. I shall give the bartender the benefit of the doubt. The third charge was also based upon the fact that certain patrons left the premises by a rear door during the course of the investigation. These patrons appeared at the hearing and testified that they left the premises by way of a rear door, but they denied that the bartender assisted them in any way in leaving the premises. The bartender also denied that he aided the patrons in leaving the premises. Under all the circumstances, I shall dismiss the third charge.

Defendant has no prior adjudicated record. Under the circumstances, I shall suspend her license for a period of fifteen days. Re Dabrowski, Bulletin 687, Item 8.

Accordingly, it is, on this 16th day of February, 1949,

ORDERED that plenary retail consumption license C-274, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ethel Engle, t/a Otto's Tavern, for premises 17 Center Street, Newark, be and the same is hereby suspended for fifteen days, commencing at 2 a.m. February 24, 1949, and terminating at 2 a.m. March 11, 1949.

ERWIN B. HOCK
Director.

10. STATE LICENSES - NEW APPLICATIONS FILED.

John Cattani (Plenary Winery License V-7)
T/A John Cattani & Sons
603-607 Central Ave.
Union City, N. J.

Application for additional warehouse at 714 - 8th St., Union City, N. J., filed February 15, 1949.

Urbana Wine Company, Inc.
Pulteney Road
Hammondsport, N. Y.

Application for Wine Wholesale License filed February 15, 1949.

Widmer's Wine Cellars, Inc.
Naples, N. Y.

Application for Wine Wholesale License filed February 21, 1949.

11. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

ITALIAN AMERICAN CITIZEN'S COLUMBUS CIRCLE, INC., 101-3 State Street, Paterson 3, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Italian American Citizen's Columbus Circle, Inc., by Ralph Marino, Secretary. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleads non vult to a charge alleging that it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages on its licensed premises on Sunday, January 23, 1949, at about 11:10 a.m., in violation of the provisions of a local ordinance.

At about 11:10 a.m. on Sunday, January 23, 1949, two ABC agents purchased two glasses of beer which were served to them by the Secretary of the defendant-club who was tending bar at the time in question. The local ordinance prohibits the sale and service of alcoholic beverages between 3:00 a.m. and 1:00 p.m. on Sundays.

Defendant has no previous adjudicated record. I shall suspend the license for a period of fifteen days, less five days' remission for the plea entered herein, or a net suspension of ten days. Re Madison Lodge B.P.O. Elks #1465, Bulletin 623, Item 14.

Accordingly, it is, on this 17th day of February, 1949,

ORDERED that Plenary Retail Consumption License C-313, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Italian American Citizen's Columbus Circle, Inc., for premises 101-3 State Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m., February 28, 1949, and terminating at 3:00 a.m., March 10, 1949.

Erwin B. Hoek

Director