

TO: Members of Franklin County Bar Association

RE: Family Law Statewide Institute

On Thursday, November 5, 1981, in the Jury Assembly Room, Franklin County Courthouse, your Bar Association is sponsoring a Pennsylvania Bar Institute Program from 9:30 in the morning to 4:00 o'clock in the afternoon. The topics covered in this family law institute will be the divorce code and equitable distribution, new support rules, tax aspects of separation and divorce, and custody and visitation.

As you may or may not know, the Bar Association, thanks to the joint efforts of our Library Committee and the Pennsylvania Bar Association Trust, have purchased a Sony video tape play back unit with recording capabilities and a Sony television set, and some other accompanying equipment, to allow us to present our own video presentation.

This presentation will be a video presentation and the video faculty will be David E. Auerbach, Esquire, from Media; David L. Creskoff, Esquire, from Philadelphia; Bonnie D. Menaker, Esquire, from Harrisburg; and Charles C. Shainberg, Esquire, from Philadelphia.

The tuition is \$45.00 (\$36.00 if admitted after 1/1/71); (\$22.50 for Judges and their law clerks). All registrants will receive a course manual. As you can see, this video presentation is cheaper than the live presentation.

Since I will have to make provisions for an additional TV set in the event that we have any more than 30 registrants, I must know whether or not you will be attending. To reserve your admission, please make a check payable for your tuition to the Pennsylvania Bar Institute and either enclose it to me or directly to the Pennsylvania Bar Institute. In any event, if you enclose your admission check to the Pennsylvania Bar Institute, you must notify me of your registration. This presentation will be new in two instances, (1) It is a video presentation and (2) It will be held in the Jury Assembly Room of the Franklin County Courthouse. Hopefully, we will find that the Jury Assembly Room will suit our purposes; if not, we'll have to move to some location such as the Holiday Inn, which may add additional expenses and which might be more inconvenient.

In any event, register now to reserve your admission.

Respectfully,

RICHARD K. HOSKINSON, Chairman
Franklin County Bar Association
Continuing Legal Education Committee

P.S. We'll be holding a video presentation on the Economic Recovery Tax Act of 1981 on Thursday, December 10, 1981, from 9:00 in the morning until 5:00 P.M. at the same location. I will give you additional information on this presentation in the near future.

ferred until it is completed and filed. The defendant shall appear for sentencing on the call of the District Attorney.

Exceptions are granted the defendant.

COMMONWEALTH v. SHOOP, C.P. C.D. Franklin County Branch, No. 111 of 1981

Criminal Law - Unlawful sale of liquor and beer - forfeiture of liquor and beer - Burden of proof

1. Possession of liquor and beer is not illegal unless it is shown that an unlicensed person keeps it for sale.
2. The burden is on the Commonwealth to prove intent to keep liquor for sale.
3. Size of inventory alone will not prove keeping for sale.
4. There are no provisions in the Liquor Code that make it unlawful to keep malt or brewed beverages for sale.

David W. Rahausser, Esq., Assistant District Attorney

Blake E. Martin, Esq., Public Defender

OPINION AND ORDER

EPPINGER, P.J., September 30, 1981:

Leroy M. Shoop was an employee of Detrich Brechbill Post No. 612 of the American Legion in St. Thomas, a dry township in Franklin County. On January 18, 1981 agents of the Pennsylvania Liquor Control Board were served liquor and beer by the defendant at the Legion. Then the agent went to a Justice of the Peace and obtained a search warrant for the premises to look for other liquor and beer, alleging that the agents had been served but that defendant would not accept money. It was stated in the affidavit that they had seen others pay money for drinks.

The search warrant was obtained and on January 20, 1981 the Legion was raided. Apparently no sales were observed on

this occasion but quantities of liquor and beer were seized.

Shoop was prosecuted for the sales on January 18th, but no criminal complaints were filed against the Legion as a result of the raid on January 20th. Shoop's case came to court and he was placed on Accelerated Rehabilitative Disposition. Included in the order by the Court was the following statement:

The contraband alcoholic beverages seized are forfeited and shall be disposed of by the Sheriff of Franklin County per Order of Court to the extent that I may authorize such action.

This case is now before us on a Motion filed by the Legion alleging that the seized liquor and beer were not contraband and that since the inventory was owned and possessed by the Legion, Shoop had no authority to authorize its forfeiture and disposition. ¹

No answer was filed and no evidence was taken. The Commonwealth and the Legion agreed that the sole issue was a legal one. The Assistant District Attorney who represented the Commonwealth represented to the Court that in this matter, in addition to serving his prosecutorial function, he felt he was representing the Pennsylvania Liquor Control Board and had numerous contacts with them.

Whether this liquor and beer may be forfeited and disposed of depends on whether it was illegal for the Legion to possess it. For as we said in *Commonwealth vs. Dile*, No. 12, 1968 (unpublished opinion dated January 8, 1969): "Possession of liquor and beer is not illegal." However, it becomes illegal to possess liquor if it is shown that an unlicensed person keeps it for sale. The Liquor Code, the Act of 1951, April 12, P.L. 90, Sec. 491, 47 P.S. Sec. 4-491(1).

As we said earlier, no evidence was offered by the Commonwealth to show that the Legion was keeping the beer and liquor for sale on January 20th. It was not alleged or argued by the Commonwealth that an inference could be drawn from the sizeable inventory that it was being kept for sale. Perhaps that is understandable because size of the inventory alone would not prove keeping for sale. Nor was it contended that because a sale had been made on an earlier date, this liquor and

¹ There is nothing to show that Shoop granted such authority, but even if he did, it would not affect the outcome of this case. The sole question is whether the Court had authority to direct its forfeiture.

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beer was being held for subsequent sale. Absent such evidence, it was not illegal for the Legion to have it and it does not become contraband subject to forfeiture and disposition by the Sheriff.

Commonwealth v. Bianco DiVerona Wine, 250 Pa. Super. 544, 378 A.2d 1282 (1977), and *Commonwealth v. Liquor*, 46 Pa. Cmwlth. 490, 407 A.2d 83 (1979), cited to us by the Commonwealth, both deal with unlawfully imported liquor and therefore unlawfully possessed liquor, Liquor Control Act, supra Sec. 491(2), 47 P.S. Sec. 4-491(2). It is significant that Sec. 491(2) as passed placed the burden upon the possessor to prove that it was acquired from a Pennsylvania Liquor Store. This provision was held to be unconstitutional, because it permitted an inference of the presumed fact and shifted the burden to the defendant. *Commonwealth v. Wasley*, 18 Adams 145 (1976).

But even if this legislative declaration was constitutional, there is no similar provision in Sec. 4-491(1), supra. The conclusion seems clear, the Commonwealth must prove the intention to keep liquor for sale.²

There seem to be no provisions in the Liquor Code sections dealing with malt or brewed beverages, Sec's. 492 and 493, 47 P.S. Sec's. 4-492, 4-493, that make it unlawful to keep malt or brewed beverages for sale.

So we conclude that under the facts of this case, we have no authority to declare the liquor and beer forfeited and order its disposition. We will order it returned to the owner, the Legion.

ORDER OF COURT

September 30, 1981, the inventory of liquor and beer seized from the Detrich Brechbill Post No. 612 of the American Legion in St. Thomas on January 20, 1981 is ordered to be returned to the Legion Post. Cost of this proceeding shall be paid by the Legion Post.

² Though the Legion is not a defendant in a criminal case, the only way the inventory could become contraband is if the evidence shows facts to establish a successful prosecution.

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