

liability, but this is not a sufficient reason in and of itself to reject a late joinder.

Third, while it is true that the 60 day time period was not strictly complied with, here, the time period "in and of itself, is not determinative," upon the motion for late joinder. *Zakian v. Liljestrand*, 438 Pa. 249, 264 A.2d 638 (1970). Also, we consider that the period of delay was reasonable since motions for removal and consolidation were pending throughout this period.

Finally, we believe that concern for matters of judicial economy supports our position for permitting this late joinder. "We believe it is the Court's duty to direct the joinder . . . at this time in order to obviate any possibility of delay in the ultimate determination of the issues. It will avoid a multiplicity of suits, and (as it should be), compel every interested party to appear . . . in a single action." *Coppage v. Smith*, 381 Pa. 400, 113 A.2d 247 (1955). Pa. R. C. P. Sec. 126 provides the trial judge with broad discretion in such matters: "The rules shall liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantial rights of the parties." In addition, the joinder will serve to simplify and expedite the disposition of this matter involving numerous parties, *Zakian*, at 256.

Accordingly, since no prejudice will result to any of the parties from the late joinder, reasonable justification for the delay has been established, and a multiplicity of suits will be avoided, the defendant's petition for the late joinder of the Borough of Chambersburg, Officer Christman, and Officer Haldeman, is granted.

ORDER OF COURT

June 7, 1982, the rule issued upon the proposed additional defendants, the Borough of Chambersburg, Mark L. Christman and Chris L. Haldeman, to show cause why they should not be joined as additional defendants is made absolute and it is ordered that L.B.T. Corporation, doing business as Hoxie Bros. Circus may join the Borough of Chambersburg, Mark L. Christman and Chris L. Haldeman as additional Defendants, for indemnity and contribution.

FORDYCE FOOD DISTRIBUTORS V. VALLEY INN-KEEPER, INC., C.P. Franklin County Branch - A.D. 1082 - 106

Assumpsit - Attorney General's opinion - Levy on Liquor License

1. An opinion of the Pennsylvania Attorney General is binding on state officials, but it is not binding on others until ratified by the courts.
2. While it is unsettled whether a decision of the Commonwealth Court, sitting as a trial court, is binding on the trial courts as appellate court precedent, it does have precedential value to a trial court.
3. A liquor license is not a property right upon which a creditor may levy.

David C. Cleaver, Esq. Attorney for Valley Innkeeper, Inc.

Thomas J. Finucane, Esq., Attorney for Fordyce Food Distributors

OPINION AND ORDER

EPPINGER, P. J., June 11, 1982:

Fordyce Food Distributor, plaintiff, has a judgment against Valley Innkeeper, Inc., defendant. The latter has a liquor license that is posted on the wall of the padlocked premises where Valley formerly conducted its business. Fordyce directed the sheriff to levy on the license, breaking into the premises if necessary. The sheriff refused and Fordyce applied to this court for supplementary relief, asking that the court direct the sheriff to make the levy.

Earlier the Attorney General of the Commonwealth rendered an opinion holding that a liquor license is a property right and that creditors may levy on a judgment debtor's liquor license upon directions to the local sheriff to "seize and sell" the license, taking physical possession of the license and returning it to the Liquor Control Board within two working days. The license was then to be listed for sale. In a decision subsequent to the Attorney General's opinion, Judge Blatt, of the Commonwealth Court, sitting in equity granted a judgment/debtor, 1412 Spruce Street, Inc., a temporary injunction enjoining the Pennsylvania Liquor Control Board from issuing or transferring 1412's restaurant liquor license as the result of a public sale under the execution process. The court determined that a liquor license is not personal property which may be subjected to a judicial levy. *1412 Spruce Street, Inc., v. Com-*

Fordyce urges us to follow the Attorney General's decision as binding upon the court, arguing that Judge Blatt's decision was only binding on the specific matter before that court.

The Attorney General is not a judicial officer; he is part of the executive branch. His opinions are binding upon state officials,¹ but they do not have the same effect as judicial decisions and are not binding upon others until ratified by the courts. *Rouse's Estate*, 1 Fiduciary Rptr. 514, 525 (1952); *Brotherhood of R.R. Trainmen Insurance Dept., Ins. v. Smith*, 74 Dauph. 346 (1960); *Di Nubile v. Kent*, 466 Pa. 572, 575-576, 353 A.2d 839 (1976). When the opinion of the Attorney General is "judicial or quasi-judicial" in nature it has no binding effect as far as courts are concerned. *Liquor Control Board v. Kusic*, 7 Pa. Cmwlth. 274, 278, 299 A.2d 53 (1973). The adjudication of issues of law is within the province of the trial court alone. *Di Nubile*, supra.

While it is unsettled whether a decision of the Commonwealth Court, sitting as a trial court is binding, as would be an appellate court precedent, upon the trial courts of the Commonwealth, we are persuaded by the reasoning of the 1412 *Spruce Street* and conclude that a liquor license does not constitute "personal property." Our commonwealth since its inception has applied the doctrine of stare decisis reverently. *In Re Borsch's Estate*, 362 Pa. 581, 67 A.2d 119 (1949). Likewise, a trial court must base its opinion "on the present state of the law" and not upon "what [it] feels the law should be." *Lowery v. Pittsburgh Coal*, 216 Pa. Super. 362, 368, 268 A.2d 212 (1970).

The only opinion of precedential value to this court is the 1412 *Spruce Street* case. Accordingly we conclude that the current state of the law in Pennsylvania is that a liquor license is not a property right upon which a creditor may levy.

¹In a memorandum directed to all sheriffs following Judge Blatt's decision in 1412 *Spruce Street, Inc.*, the Attorney General said to them: ". . . it may be in your best interest *not* (emphasis in original) to execute on liquor licenses until the Supreme Court has finally decided the issue."

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LEGAL NOTICES, cont.

SIXEAS First and final account, statement of proposed distribution and notice to the creditors of John A. Shelly, Administrator c.t.a. of the estate of Norma V. Sixeas late of Peters Township, Franklin County, Pennsylvania, deceased.

STINE First and final account, statement of proposed distribution and notice to the creditors of Robert E. Stine, executor of the Estate of Laura V. Stine late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pennsylvania
7-9-82, 7-16-82, 7-23-82, 7-30-82

COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT
OF PENNSYLVANIA
FRANKLIN COUNTY BRANCH

LEGAL NOTICES, cont.

MISCELLANEOUS DOCKET
VOLUME Y, PAGE 143

NOTICE

Notice is hereby given that on July 2, 1982, the petition of Carrie Lynn Brown, a minor, by Sandra Louise Gress, her guardian, was filed in the above-named court, praying for a decree to change the name of said minor to Carrie Lynn Gress.

The Court has fixed Monday, August 9, 1982, at 9:30 A.M., in Courtroom No. 1, as the time and place for the hearing of said petition, when and where all persons interested may appear and show cause, if any, they have, why the prayer of said petition should not be granted.

Graham and Graham
314 Chbg. Trust Co. Bldg.
Chambersburg, PA 17201
7-9-82, 7-14-82, 7-23-82, 7-30-82

ORDER OF COURT

June 11, 1982, the application of Fordyce Food Distributors, Plaintiff, for supplementary relief to direct the Sheriff of Franklin County to levy upon the liquor license of Valley Innkeeper, Inc., Defendant, is denied. Costs shall be paid by the Plaintiff.

COMMONWEALTH V. DEVLIN, C. P. Franklin County Branch, No. 140 of 1978

Criminal Law - Alibi defense - Ineffective assistance of Counsel

1. In order to establish a complete alibi defense, the testimony must cover the whole time in which the crime by any possibility might have been committed.
2. Where defendant's counsel gave the district attorney improper notice of an alibi defense and defendant's alibi witnesses were not permitted to testify, counsel was not ineffective because his failure was not prejudicial to the defendant.
3. In order to establish ineffective assistance of counsel, it must appear that the lawyer's omission was arguably ineffective and that it is likely that such ineffectiveness was prejudicial to the defendant.

District Attorney

Public Defender

OPINION AND ORDER

EPPINGER, P. J., June 29, 1982:

Ronald Devlin was convicted of criminal mischief by a jury after he fired five shotgun blasts into the windows of the home of Mary Jane Kolbe located near the village of Doylesburg in Franklin County. This occurred at about 6:30 in the evening. Devlin contended at trial that he couldn't have fired the shots because from 5:45 until 6:00 he was in Blain, a village about 14 miles from the scene.

Prior to trial defendant's attorney notified the District Attorney of an alibi, but the notice was found to be defective. A second notice was also defective and defendant's alibi

THE FRANKLIN COUNTY BAR ASSOCIATION
ANNUAL SUMMER MEETING

shall be held at the Waynesboro Country Club Thursday, August 5, 1982—afternoon and evening.

Golf, tennis and swimming is available—make your own arrangements and pay green fees and tennis and pool charges directly to the Club.

CASH BAR — DINNER at 7:15

For reservations, call Denis DiLoreto at 264-2096, Mike Finucane at 264-4104, or Frank Martin at 762-3188 on or before August 2, 1982.