

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1673

May 17, 1966

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - CHANCERY LANE, INC. v. TRENTON.
2. APPELLATE DECISIONS - MARCELLA BAR, INC. v. GLOUCESTER CITY.
3. APPELLATE DECISIONS - NEW RARITAN LIQUORS, INC. v. RARITAN and GEODI LIQUORS, INC.
4. APPELLATE DECISIONS - CAPRI, INC. v. TRENTON.
5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1965 THROUGH MARCH 31, 1966.
6. DISCIPLINARY PROCEEDINGS (Lyndhurst) - SALE TO A MINOR - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Hoboken) - SALE ON ELECTION DAY - LICENSE SUSPENDED FOR 15 DAYS - NO REMISSION FOR PLEA ENTERED ON HEARING DATE.

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1673

May 17, 1966

1. APPELLATE DECISIONS - CHANCERY LANE, INC. v. TRENTON.

CHANCERY LANE, INC.,	)	
t/a HOTEL HILDEBRECHT,	)	
	)	
Appellant,	)	ON APPEAL
	)	CONCLUSIONS
v.	)	AND ORDER
	)	
CITY COUNCIL OF THE CITY	)	
OF TRENTON,	)	
	)	
Respondent.	)	

-----  
James J. McLaughlin, Esq., by John A. Waldron, Esq., Attorney  
for Appellant.  
Robert R. Ross, Esq., by John A. Brieger, Esq., Attorney for  
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant herein appeals from a fifteen-day suspension, effective January 25, 1966, of its Plenary Retail Consumption License C-160 for premises 27 West State Street, Trenton. The suspension was imposed by respondent after appellant pleaded non vult to charges alleging that on October 22, 1965, it sold, served and delivered alcoholic beverages to minors, in violation of Section 4 of local Ordinance 41, which reads as follows:

"No licensee and no employee or agent of a licensee shall sell, serve or deliver any alcoholic beverage to a person under the age of twenty-one (21) years, or to a person actually or apparently intoxicated; nor shall a licensee allow, permit or suffer the sale, service or delivery to, or consumption by any such person or persons upon the licensed premises."

After serving six days of the fifteen-day suspension, an appeal was filed by appellant and an order entered staying the balance of the suspension pending the appeal hearing and until further order of the Director. R.S. 33:1-31.

Appellant's petition of appeal states that respondent "was operating under a mistake of fact when it imposed the penalty hereinbefore referred to since this penalty infers that the City Council acted under the assumption that two, rather than one, charges were involved herein."

Respondent's answer denies the aforesaid allegations and, by way of defense of its action, says:

"That the matters herein contained in the petition as a basis for appeal were informally presented to City Council in one of its regular conferences on January 25, 1966, at which time a vote was taken as to whether the proof of such facts as alleged would have changed the penalty imposed in this matter and City Council voted in the negative. That is to say, City Council acting as a body on a liquor matter indicated by vote that even with all of the factors as presented taken as true, the imposition of punishment would have remained unchanged."

A stipulation of the facts in this matter by the attorneys for the respective parties discloses that two police officers observed a minor seated at the bar in the licensed premises being served alcoholic beverages by the bartender and also saw the same bartender serve three bottles of beer to another minor. Both of the minors were subsequently ascertained to be nineteen years of age.

Appellant contends that the complaint made in the municipal court showed two separate offenses and, upon the entry of a plea of non vult, the magistrate entered one judgment of conviction and then suspended sentence. Thus, appellant's attorney argues that although there were actually separate sales to the two minors at the time in question, it was the appellant's impression that it would be treated by respondent as "one transaction." However, in the disciplinary proceedings respondent thought otherwise and imposed a suspension of appellant's license of twenty days, less five days for the non vult plea entered by appellant. Thereafter appellant, through its attorney, appeared before respondent requesting a lesser penalty than that imposed, but respondent refused to modify the suspension.

The matter sub judice is somewhat analogous to In re Club 17, Inc., 26 N.J. Super. 43, in which the licensee pleaded non vult to charges based on alleged liquor violations and upon revocation of its license by the Director, requested permission to retract the aforesaid plea and, in lieu thereof, enter a plea of not guilty to the charges. In upholding the Director's denial of the request, Judge Jayne, speaking for the court, stated:

"It is not apparent that any microbe of deception, coercion, or unfairness on the part of the representatives of the Division wormed its way into the premeditations of those acting for the licensee. Cf. State v. Miller, 16 N.J. Super. 251 (App. Div. 1951); State v. Lenkowski, 24 N.J. Super. 444 (App. Div. 1953). To the contrary, it is manifest that the course ultimately pursued by the licensee had been duly premeditated and freely chosen. In reality, that which is objectionable to the licensee is the degree of the resultant penalty."

Appellant has no prior adjudicated record. Appellant contends that the penalty imposed in this matter was excessive in that other licensees who had committed similar violations and who had prior records received the same or even a lesser penalty. No such specific instances were cited by appellant. In the nature of things, penalties can be identical only by accident. The statute contemplates individual treatment of offenses and offenders and, in the absence of arbitrary, discriminatory, oppressive or otherwise palpably unjust treatment, the courts will not interfere. DeFebb v. Davis (App. Div. 1962), not officially reported, reprinted in Bulletin 1482, Item 1. The power of the Director to

reduce or modify a penalty imposed by a municipal issuing Authority always has and will be sparingly exercised and only with the greatest caution. Russo v. Lincoln Park, Bulletin 1177, Item 7. See also Benedetti v. Trenton, Bulletin 1040, Item 1.

Appellant appeared before respondent requesting a reduction in the penalty in this matter, but respondent determined that such action was inadvisable.

Under the circumstances, it is recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective dates for the nine-day balance of the suspension which was not served by appellant and stayed by the Director pending the entry of the order herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the facts stipulated by the parties herein, the oral argument in summation presented by the attorneys for the respective parties, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of March, 1966,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Consumption License C-160, issued by the City Council of the City of Trenton to Chancery Lane, Inc., t/a Hotel Hildebrecht, for premises 27 West State Street, Trenton, be and the same is hereby suspended for nine (9) days, commencing \* at 2:00 a.m. Monday, April 4, 1966, and terminating at 2:00 a.m. Wednesday, April 13, 1966.

JOSEPH P. LORDI  
DIRECTOR

\* By order dated April 7, 1966, the suspension was reimposed to commence at 2:00 a.m. Monday, April 4, 1966 and terminating at 2:00 a.m. Monday, April 11, 1966, and again commencing at 2:00 a.m. Tuesday, April 12, 1966 and terminating at 2:00 a.m. Thursday, April 14, 1966.

2. APPELLATE DECISIONS - MARCELLA BAR, INC. v. GLOUCESTER CITY.

MARCELLA BAR, INC.	)	
t/a MARCELLA BAR,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	CONCLUSIONS
	)	AND ORDER
COMMON COUNCIL OF THE CITY	)	
OF GLOUCESTER CITY,	)	
Respondent.	)	

-----  
 Frank M. Lario, Esq., Attorney for Appellant.  
 William D. Dilks, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal from the action of respondent Mayor and Common Council of the City of Gloucester City (hereinafter Council) whereby on September 3, 1964, it suspended appellant's license for a period of forty-five days effective September 10, 1964, upon its determination that (as stated in its resolution of September 3, 1964) the "License Committee upon hearing testimony and reviewing evidence, have recommended that the above license be suspended." The License Committee found the appellant guilty of the charge that the licensee conducted its place as a nuisance in that it permitted females impersonating males on its licensed premises and allowed such persons to frequent and congregate in and upon the licensed premises on July 23, 24 and 25, 1964, in violation of Rule 5 of State Regulation No. 20. Appellant's premises are located at 115 No. Burlington Street, Gloucester City.

Upon the filing of the appeal an order was entered by the Director on September 10, 1964, staying Council's order of suspension until further order herein. R.S. 33:1-31.

Appellant in its petition of appeal alleges that the action of Council was erroneous because:

1. The proceedings were not in accordance with R.S. 33:1-31.
2. The License Committee did not constitute a legal authority as provided by R.S. 33:1-24.
3. Respondent failed to answer appellant's "Bill of Particulars."
4. The verdict or recommendation was erroneous and contrary to the weight of the evidence; was the result of "mistake, partiality, prejudice or passion" and is "inconsistent with substantial justice."
5. Appellant was "not guilty" of the said charge.

Council in its answer alleges that it acted properly based upon sufficient evidence and puts appellant to its proof with respect

to other allegations set forth in the petition of appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. There is no transcript of the proceedings before the License Committee or Council, nor of the minutes of the hearing upon which a determination was made, produced before me at this de novo hearing.

My examination of the entire record satisfies me that the allegations of the petition of appeal, which challenge the statutory and jurisdictional validity of the said hearing, are of such substantial merit as to be dispositive of this appeal. The record discloses that on August 7, 1964, appellant was lawfully served with "Notice to licensee of charges and hearing" which alleged:

"That on July 23, 1964, July 24, 1964 and July 25, 1964 licensee allowed, permitted and suffered the licensed place of business to be conducted in such a manner as to become a nuisance in that licensee allowed, permitted and suffered persons who appeared to be homo-sexuals, viz: females impersonating males, in and upon the licensed premises, and allowed, permitted and suffered such persons to frequent and congregate in and upon the licensed premises and otherwise conducted the licensed place of business in such a manner offensive to common decency, in violation of Rule 5 of the State Regulation No. 20."

The hearing on the said charge took place on August 19 and August 25, 1964, and was conducted by two members of a "License Committee."

The Council consists of nine members, including the Mayor. The License Committee, consisting of three members of the Council, was designated by the Council to hear matters relating to, among other things, suspensions and revocations of liquor licenses. It is admitted that Gloucester City has no municipal Board of Alcoholic Beverage Control (R.S. 33:1-5) and hence the sole authority in alcoholic beverage matters resides in the Council.

The hearing was held on the aforesaid charge before the License Committee and apparently only two members of that Committee heard the testimony. Counsel for Council asserts that several other members of the Council were present during this hearing although he offered no testimony in support thereof. Upon conclusion of the said hearing, the License Committee recommended to Council that the appellant's license be suspended. Accordingly, by resolution dated September 3, 1964, Council ordered the suspension of the subject license, as aforesaid.

As indicated hereinabove, neither the resolution nor a copy of the minutes of the meeting was produced at this de novo appeal nor, indeed, were any members of the Council or its Clerk or any witnesses produced by the Council to testify with respect to what transpired at this hearing and before the Council. Counsel for Council admitted that it did not make a stenographic record of those proceedings.

R.S. 33:1-24 provides that it shall be the duty of the municipal issuing authority to conduct hearings in disciplinary proceedings and the municipal issuing authority may, pursuant to R.S. 33:1-31, "suspend or revoke any license issued by it" provided it has first given the licensee five days notice of the charges preferred against him and afforded the licensee a "reasonable opportunity to be heard" at a public meeting. When a

municipal authority conducts disciplinary proceedings it is performing a quasi-judicial function. It is accordingly improper for such issuing authority to delegate its authority to a License Committee unless it retains for itself the final power to make a determination based upon its examination of the evidence. See footnote in Caruso v. Jersey City, Bulletin #694, Item 1. In that case the then Commissioner stated that, while the conduct of a public hearing may be delegated as in the case of administrative duties generally, the final adjudication must be made by the issuing authority "after the members thereof have considered the entire record including, of course, the testimony presented at the hearing." In order for them to properly undertake to make such determination, a provision must be made for an "accurate, verified stenographic record of the proceedings." The licensee would then be entitled to be heard by the issuing authority with respect to the admissibility of evidence and the "issuing authority is not bound by the findings of the hearer or by his recommendation. It must reach its own independent conclusion." There is no affirmative showing that the Council, as the local issuing authority, considered the entire record, or even a report thereof, in grounding its action by resolution as aforesaid. These fundamental and controlling principles governing such procedure were enunciated by the late Commissioner Burnett in Ricker and Bauer v. West New York, Bulletin 229, Item 1. There the Commissioner held that the municipal board, in the absence of statutory provision to the contrary, may not delegate matters which are of a quasi-judicial nature, as distinguished from those functions which are of an administrative or ministerial nature. In that case the local issuing authority delegated its Director of Public Safety to conduct hearings; however, he was required to transmit to it his findings, together with a stenographic record of the entire proceedings, for the board's determination of the facts, its adjudication of the charges and imposition of penalty, if any. The Commissioner held that such delegation was merely ministerial and administrative, and not discretionary in character. The board was not bound by his findings of fact; said the Commissioner:

"After all is said and done it is the Board's own decision which is finally reached. It is the merits of such final decisions which count, not the mechanics by which they were reached."

Clearly that case is distinguishable from the matter sub judice because the Council herein did not act independently except in so far as it imposed the penalty. Cf. Mazza v. Cavicchia, 15 N. J. 498, reprinted in Bulletin 1019, Item 1. State Regulation No. 16, Rule 6.

This same principle has been upheld with respect to other administrative agencies. Thus in City of Asbury Park v. Dept. of Civil Service, 17 N.J. 419 (1955) the court was dealing with the propriety and validity of the hearing procedure followed by the Civil Service Commission. The testimony of some of the witnesses had been heard by one member of the Commission while that of the remaining witnesses had been taken before two other members of the Commission. The court observed that the controlling statutes required that the hearing be conducted by the full Commission, or at least by a quorum, and held the decision to be a nullity since none of the three commissioners who participated had heard all of the testimony.

In Jersey City v. Hudson County Board of Taxation, 130 N.J.L. 309, it was held that a county board of taxation could not delegate its power of determination to a single member

of the board but such determination can validly be made only by the entire board. The court added that this is not only a requirement of the applicable statute, but "it is an incident to the ordinary requirements of 'fair play.'" *Morgan v. United States*, 304 U.S. 1; 82 L. Ed. 1129; *Redcay v. State Board of Education*, 128 N.J.L. 281.

In Redcay the court quoted *Morgan v. United States*, supra, as follows:

"Thus when, as here, the jurisdiction of a statutory quasi judicial tribunal (State Board) is invoked, that tribunal must exercise its jurisdiction on the fundamental requirements of 'fair play.' *Morgan v. United States*, 304 U.S. 1; 82 L. Ed. 1129. The value of helpfulness of the recommendations and conclusions of the 'Law Committee' could only be determined if and when the members of the State Board who voted to adopt them had in the exercise of fair play read and considered the proofs, the briefs and oral arguments made." *Morgan v. United States*, 298 U.S. 468; 80 L. Ed. 1288.

Accordingly I find that the hearing before the License Committee was a nullity because the Council admittedly did not base its determination and action upon the evidence and proof adduced, but merely acted in fixing the penalty upon receipt of final determination of guilt by the said License Committee. The total effect, therefore, is as though no hearing was afforded to the appellant before the local issuing authority in the first instance.

Since the defect goes to the jurisdiction and not to a functional irregularity (cf. Nordco, Inc. v. State, 43 N.J. Super. 277), due process would require under our statute that this matter be remanded to respondent Council for a hearing in conformity with R.S. 33:1-31.

Under the cited statute the local issuing authority is invested, in the first instance, with the authority and obligation to hear these matters. Due process requires that this be done. As Justice Jacobs, speaking for the court in New Jersey Zinc Company v. Board of Review etc., 25 N.J. 235, at p. 240, said:

"... decent regard for the legislative policies and the interests of the parties directs that the underlying factual findings and the determination thereon be made first within the agency." Cf. *Fifth St. Pier Corp. v. City of Hoboken*, 22 N.J. 326, 336 (1956); *In re Masiello*, 25 N.J. 590, 603 (1958).

I therefore recommend that the matter be remanded to respondent Council for a statutory hearing by it in accordance with the principles enunciated herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of March, 1966,

ORDERED that this matter be and the same is hereby remanded to respondent Common Council of the City of Gloucester City for its further action consistent with this opinion and for the purpose hereinabove set forth.

JOSEPH P. LORDI  
DIRECTOR

3. APPELLATE DECISIONS - NEW RARITAN LIQUORS, INC. v. RARITAN and GEODI LIQUORS, INC.

NEW RARITAN LIQUORS, INC., )  
Appellant, )  
v. )  
TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF RARITAN, COUNTY OF )  
MONMOUTH, AND GEODI LIQUORS, INC. )  
Respondents. )

ON APPEAL  
CONCLUSIONS  
AND ORDER

-----  
Fredric Baar, Esq., Attorney for Appellant.  
Philip J. Blanda, Jr., Esq., Attorney for Respondent Township Committee.  
Levin & Chenkin, Esqs., by Calvin Chenkin, Esq., Attorneys for Respondent Geodi Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee (hereinafter Committee) which, by unanimous vote, granted a plenary retail distribution license to Geodi Liquors, Inc. (hereinafter Geodi) for premises located at and in Shop Rite Foodarama Supermarket on Highway 36 in the Township of Raritan.

Appellant contends in its petition of appeal that the action of the Committee was erroneous for the following reasons:

"1. There is no public need nor public necessity for the installation of a plenary retail distribution license at the site proposed.

"2. The needs and requirements of the public in and about the area of the proposed site are more than adequately served by presently existing installations.

"3. The placement of the subject license at the proposed site is contrary to the interests of the public in that there are several areas of Raritan Township in which this facility is needed greatly.

"4. The site of the proposed installation in a shopping center which is located within 200 feet of planned Parochial School and Convent facilities is totally unsuited for the installation proposed.

"5. Principals of Geodi Liquors, Inc. presently have direct or indirect ownership interests in whole or in part of licensed premises in excess of the number permitted by law.

"6. The plans and specifications allegedly filed by applicant with the Clerk of Raritan Township, are vague, incomplete and indefinite to the extent that they do not meet the provisions of the law."

The answers filed by respondents deny the aforesaid allegations and the amended answer filed by the Committee further states:

"Respondent states that at the time of hearing, all of the objections of appellant were not founded upon fact or law and further that respondent was of the conviction that there was a present need for another active Plenary Retail Distribution License and that the best interests of the community would be served by such issuance to respondent, Geodi Liquors, Inc., and that Geodi Liquors, Inc. was qualified pursuant to the Laws of the State of New Jersey and that pursuant to the Laws of the State of New Jersey, respondent had the legal right to issue said license."

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

J. Arthur Fell, Executive Secretary and Director of Monmouth County Retail Liquor Stores Association, testified that appellant's liquor store is "Pretty near three miles" distant from the proposed premises of Geodi. He further stated that he has no knowledge of the population in said three-mile area, but that his testimony is based on distances between liquor outlets. Mr. Fell testified that as a result of a survey made by him of Raritan Township and other surrounding municipalities which contain many existing liquor outlets, he is of the opinion that no need exists for a liquor license at the proposed site.

Harold Nydick testified that he holds a plenary retail consumption license for premises which are operated as a "liquor store" in Raritan Township eight-tenths of a mile from the proposed location of Geodi; that when solicited for a pledge toward the cost of erecting a parochial school, he was shown a map whereon the school building to be constructed "is less than two hundred feet away" from the proposed site of Geodi. Mr. Nydick stated that he did not know the distance between the entrance of the proposed school and that of the licensed premises.

Three officers and stockholders of Geodi were called as witnesses by appellant's attorney and examined with reference to the number of shares of stock each held and their official status in Foodarama Supermarkets, Inc. (hereinafter Foodarama), which is the holder of two liquor licenses in this state. Their testimony indicated each is a vice-president of Foodarama and has no interest in any other liquor license. The stock of Foodarama is traded daily in an over-the-counter market by more than one member of a national or affiliated securities association (listings on pink sheets shown in National Daily Quotation Service from October 25 to November 10, 1965, marked as an exhibit herein, confirms this fact). An affidavit dated November 16, 1965, signed and sworn to by the secretary of Foodarama, certifies that there are one million shares of Foodarama.

stock (one dollar par value) issued and outstanding. The number of shares of stock held by the respective persons interested in Geodi is considerably less than ten per cent of the corporate stock of Foodarama, so their holdings cannot be considered as a beneficial interest in the liquor licenses held by Foodarama. R.S. 33:1-12.36.

H. Thomas Carr, civil engineer, surveyor and city planner employed as Township Engineer, who prepared a sketch drawn to scale (Exhibit R-4), testified that the way a person would travel from the entrance of the proposed school on Aumack Lane to that of the proposed licensed premises off Route 36 is approximately a half mile. Mr. Carr further testified that there are approximately twelve hundred homes in the vicinity of the proposed site of the licensed premises.

Mayor Marvin Olinsky testified that he voted in favor of the issuance of the liquor license to Geodi at the site in question because he was of the opinion that not only did a need exist for such license, but the best interest of the community would be served thereby.

James G. McAdam, Zoning Officer for Raritan Township, testified that the proposed licensed premises are in a commercial zone which permits sale of alcoholic beverages in original containers for off-premises consumption.

It is quite apparent from the testimony of Mr. Carr, and the sketch prepared by him, that the distance between the entrance to the proposed school and the entrance to the proposed licensed premises exceeds two hundred feet, and thus the statute with reference thereto does not apply. R.S. 33:1-76.

I shall now consider whether the Committee abused its discretion in granting to Geodi the license in question.

It has been well established that a local issuing authority's discretionary power is broad when called upon to determine whether a liquor license should or should not be granted. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Larijen, Inc. v. Atlantic City, Bulletin 1306, Item 1.

Mayor Olinsky's testimony was that there is a need for a plenary retail distribution license and the best interest of the community would be served by the issuance of a license in the area where the proposed premises are located. Moreover, the Committee voted unanimously to grant the license to Geodi. In Ward v. Scott, 16 N.J. 16 (1954), the Supreme Court, in deciding an appeal from a zoning ordinance, set forth the following general principles:

"...Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.'

Graham v. United States, 231 U.S. 474, 480, 34 S.Ct. 148, 151, 58 L.Ed. 319, 324 (1913)."

In Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, 321, it was stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511."

In a memorandum filed by appellant's attorney, it is asserted that the procedure followed before the Committee in hearing objections in this matter was irregular in that applicant (now respondent) Geodi was not directed to proceed first. This complaint at best is technical rather than substantial. As was stated by Judge Jayne in In re 17 Club, Inc., 26 N.J. Super 43:

"While statutes creating an administrative agent or body quite uniformly confer upon the agent or body the power to prescribe rules of practice and procedure to govern the proceedings before them, yet we have little, if any, doubt of the implied power of such agencies to adopt any fair and reasonable practice and procedure conducive to the ascertainment of the facts upon which the agency is authorized to decide and act and which will promote the ends of justice in the administration and effectuation of the statutory purpose. 73 C.J.S., Public Administrative Bodies and Procedure, sec. 71-113, pp. 399-434; 42 Am. Jur. 447; Cooper, Am. Agencies and the Courts (1951), p. 102."

Since in this appeal the entire matter was heard de novo, and any objector afforded an opportunity to be heard, if there was any apparent irregularity, it has been rectified. There has been no evidence presented to indicate that the Committee acted arbitrarily or abused the discretion vested in it by approving the grant of the license in question.

After careful examination of the entire record presented herein, I conclude that appellant has failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15. See Shiloh Baptist Church v. Atlantic City et al., Bulletin 1387, Item 2, and cases cited therein.

At the instant hearing the attorney for Geodi stated that the said licensee was operating at the proposed premises. Apparently the terms of the special conditions imposed when the license was granted have been met.

For the reasons aforesaid, it is recommended that an order

be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of March, 1966,

ORDERED that the action of the Township Committee of the Township of Raritan (Monmouth County) be and the same is hereby affirmed and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI  
DIRECTOR

4. APPELLATE DECISIONS - CAPRI, INC. v. TRENTON.

CAPRI, INC.,	)	
t/a VILLA CAPRI	)	
	)	
Appellant,	)	ON APPEAL
	)	ORDER
v.	)	
	)	
CITY COUNCIL OF THE CITY	)	
OF TRENTON,	)	
	)	
Respondent.	)	

-----  
John S. Piersanti, Esq., Attorney for Appellant.  
John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its license for fifteen days effective February 21, 1966, for sale to minors, after four days of the suspension had been served. Upon filing of the appeal, I entered an order staying the eleven-day balance of the suspension pending the determination of the appeal.

Prior to the hearing on appeal, by letter of March 30, 1966, appellant advised me that the appeal was withdrawn and requested that the balance of the suspension be reimposed to commence on April 4th. No reason appearing to the contrary,

It is, on this 31st day of March, 1966,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the eleven-day balance of the suspension be reinstated against Plenary Retail Consumption License C-101, issued by the City Council of the City of Trenton to Capri, Inc., t/a Villa Capri, for premises 209 Phillips Avenue, Trenton, commencing at 2:00 a.m. Monday, April 4, 1966, and terminating at 2:00 a.m. Friday, April 15, 1966.

JOSEPH P. LORDI  
DIRECTOR

## 5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1965 THROUGH MARCH 31, 1966

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	3rd Quarter Jan., Feb., March	Total
<b>ARRESTS:</b>				
Total number of persons arrested	51	56	59	166
Licensees and employees	32	32	42	106
Bootleggers	19	24	17	60
<b>SEIZURES:</b>				
Motor vehicles - cars	1	1	-	2
- trucks	2	1	-	2
Still - over 50 gallons	1	-	-	1
- 50 gallons or under	1	2	1	4
Alcohol - gallons	22	13.28	-	35.28
Mash - gallons	125	195	250	570
Distilled alcoholic beverages - gallons	15.67	11.75	12.206	39.626
Wine - gallons	67.43	40.80	2.525	110.755
Brewed malt alcoholic beverages - gallons	119.07	81.93	75.70	276.70
<b>RETAIL LICENSEES:</b>				
Premises inspected	1,931	1,895	2,169	5,995
Premises where alcoholic beverages were gauged	1,579	1,549	1,738	4,866
Bottles gauged	25,412	24,456	26,691	77,059
Premises where violations were found	211	160	188	559
Violations found	317	262	281	860
Unqualified employees	158	144	151	453
Application copy not available	37	38	57	132
Reg. #38 sign not posted	23	11	12	46
Other mercantile business	16	14	9	39
Disposal permit necessary	19	3	-	22
Prohibited signs	4	2	5	11
Improper beer taps	2	-	3	5
Other violations	58	50	44	152
<b>STATE LICENSEES:</b>				
Premises inspected	81	67	77	225
License applications investigated	28	15	17	60
<b>COMPLAINTS:</b>				
Complaints assigned for investigation	1,146	1,161	1,067	3,374
Investigations completed	1,092	1,008	1,106	3,206
Investigations pending	(204)	(750)	725	725
<b>LABORATORY:</b>				
Analyses made	346	287	246	879
Refills from licensed premises - bottles	118	85	101	304
Bottles from unlicensed premises	51	23	22	96
<b>IDENTIFICATION:</b>				
Criminal fingerprint identifications made	20	16	14	50
Persons fingerprinted for non-criminal purposes	1,281	995	987	3,263
Ident. contacts made w/other enforcement agencies	825	612	665	2,102
MV identifications via N.J.State Police teletype	1	-	-	1
<b>DISCIPLINARY PROCEEDINGS:</b>				
Cases transmitted to municipalities	28	25	26	79
Violations involved	32	29	28	89
Sale during prohibited hours	19	21	15	55
Sale to minors	8	7	11	26
Failure to close prem. dur. prohibited hours	4	1	2	7
Single instance of other violations	1	-	-	1
Cases instituted at Division	56*	82*	77*	215*
Violations involved	73	110	116	299
Sale to minors	15	11	27	53
Sale during prohibited hours	20	14	15	49
Possessing liquor not truly labeled	10	10	7	27
Fraud in application	5	11	6	22
Beverage Tax Law non-compliance	2	11	2	15
Permitting lottery activity on premises	1	2	10	13
Permitting immoral activity on premises	-	8	5	13
Sale to intoxicated persons	3	6	2	11
Hindering investigation	2	1	7	10
Permitting hostess activity on premises	1	3	6	10
Permitting gambling on premises	2	2	5	9
Sale below filed price	2	4	3	9
Permitting foul language on premises	2	3	4	9
Failure to close prem. dur. prohibited hours	3	4	1	8
Conducting business as a nuisance	1	4	3	8
Unqualified employees	-	-	4	4
Sale to non-members by club	1	2	1	4
Failure to file notice of change in application	2	-	2	4
Sale outside scope of license	-	4	-	4
Permitting bookmaking on premises	-	-	2	2
Fraud and front	-	-	2	2
Furnishing gift with retail sale	-	-	2	2
Single instance of other violations	1	7	-	8

\*Includes four cancellation proceedings - license improvidently issued to licensee convicted of crime involving moral turpitude; to licensees not U.S. citizen and non-resident, and to licensee not bona fide club at time of issuance of license.

	1st Quarter July, Aug., Sept.	2nd Quarter Oct., Nov., Dec.	3rd Quarter Jan., Feb., March	Total
<b>DISCIPLINARY PROCEEDINGS (Continued)</b>				
Cases brought by municipalities on own initiative and reported to Division	54	62	66	182
Violations involved	70	75	87	232
Sale to minors	35	41	42	118
Sale during prohibited hours	8	13	10	31
Permitting brawl, etc. on premises	7	4	6	17
Failure to close prem. dur. prohibited hours	4	2	5	11
Hindering investigation	4	2	2	8
Conducting business as a nuisance	-	5	3	8
Unqualified employees	2	-	4	6
Permitting lottery activity on premises	1	2	2	5
Failure to afford view into prem. during proh. hr.	2	-	2	4
Employing persons w/o ident. cards (local reg.)	1	1	1	3
Permitting minors on prem. unaccomp. by parents or guardians (local reg.)	-	-	3	3
Permitting bookmaking on premises	-	2	1	3
Employee working while intoxicated	-	2	-	2
Permitting minors to congregate on premises	-	-	2	2
Permitting gambling on premises	2	-	-	2
Single instance of other violations	4	-	4	8
<b>HEARINGS HELD AT DIVISION:</b>				
Total number of hearings held	122	113	111	346
Appeals	13	13	8	34
Disciplinary proceedings	73	61	75	209
Eligibility	22	18	22	62
Seizures	10	7	4	21
Tax revocations	2	9	2	13
On petition	2	-	-	2
Applications for license	-	5	-	5
<b>STATE LICENSES AND PERMITS ISSUED:</b>				
Total number issued	5,531	4,864	3,122	13,517
Licenses	692	3	3	698
Solicitors' permits	148	92	123	363
Employment permits	1,320	864	761	2,945
Disposal permits	310	200	186	696
Social affair permits	1,377	1,123	1,050	3,550
Wine permits	-	910	7	917
Miscellaneous permits	644	682	447	1,773
Transit insignia	757	771	473	2,001
Transit certificates	83	119	72	274
<b>OFFICE OF AMUSEMENT GAMES CONTROL:</b>				
Licenses issued	20	106	297	423
State Fair licenses issued	329	-	-	329
Premises inspected	1,196	-	-	1,196
Premises where violations were found	221	-	-	221
Number of violations found	222	-	-	222
Enforcement files established	228	65	14	307
Disciplinary proceedings instituted	16	-	1	17
Violations involved	23	-	1	24
Operating controlled game	14	-	-	14
Non-registered employees	3	-	-	3
Deceptive practices	3	-	-	3
Redemption of prize for money	1	-	1	2
Redemption for prize other than merchandise	1	-	-	1
Fraud and front	1	-	-	1

JOSEPH P. LORDI  
 Director of Alcoholic Beverage Control  
 Commissioner of Amusement Games Control

Dated: April 25, 1966

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
136 Stuyvesant Avenue, Inc.	)	
t/a Upstairs	)	CONCLUSIONS
136 Stuyvesant Avenue	)	AND ORDER
Lyndhurst, N. J.	)	
Holder of Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the Township of Lyndhurst.	)	

-----  
 Licensee, by Charles E. Leiner, Jr., President, Pro se.  
 Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on March 11-12, 1966, it sold drinks of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20, and (2) on March 12, 1966, it hindered investigation (by destruction of evidence), in violation of R.S. 33:1-35.

Absent prior record, the license will be suspended on the first charge for ten days (Re Mill's Triangle Bar & Grill, Inc., Bulletin 1661, Item 9) and on the second charge for ten days (Re Tranchita, Bulletin 1613, Item 6), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 4th day of April, 1966,

ORDERED that Plenary Retail Consumption License C-27, issued by the Board of Commissioners of the Township of Lyndhurst to 136 Stuyvesant Avenue, Inc., t/a Upstairs, for premises 136 Stuyvesant Avenue, Lyndhurst, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, April 11, 1966, and terminating at 2:00 a.m. Tuesday, April 26, 1966.

JOSEPH P. LORDI  
 DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY - LICENSE SUSPENDED FOR 15 DAYS - NO REMISSION FOR PLEA ENTERED ON HEARING DATE.

In the Matter of Disciplinary Proceedings against

PATRICK KEANE  
304 River Street  
Hoboken, New Jersey

)  
)  
) CONCLUSIONS  
AND ORDER  
)

Holder of Plenary Retail Consumption License C-95, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

-----  
Maurice Gottlieb, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

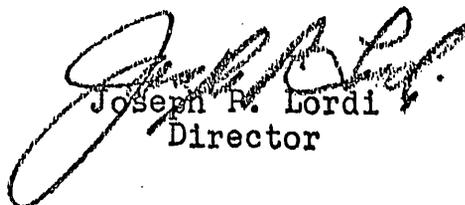
On the date fixed for hearing (being the fifth adjourned date) the licensee pleaded non vult to a charge alleging that on Tuesday, November 16, 1965, a special election day in the City of Hoboken, he sold a case of twenty-four 12-ounce cans of beer during polling hours, in violation of Rule 2 of State Regulation No. 20.

Licensee (then in partnership with Michael Prendergast) t/a Keane's Tavern at the same address, has a previous record of suspension of license by the Director for ten days effective September 7, 1948, for false statement in the license application. Re Keane & Prendergast, Bulletin 816, Item 1.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days (Re Viespoli, Bulletin 1567, Item 11), without remission for the plea untimely entered on the hearing date (Re Curley's, Inc., Bulletin 1518, Item 3).

Accordingly, it is, on this 4th day of April 1966,

ORDERED that Plenary Retail Consumption License C-95, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Patrick Keane for premises 304 River Street, Hoboken, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Monday, April 11, 1966, and terminating at 2:00 a.m. Tuesday, April 26, 1966.

  
Joseph R. Lordi  
Director