STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2406 July 7, 1981

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2406 July 7, 1981

1. APPELLATE DECISIONS - GASKIN'S RESTAURANT, INC. v. LONG BRANCH.

#4427 GASKIN'S RESTAURANT, INC., A N.J. CORP., Appellant, v. CITY COUNCIL OF THE CITY OF LONG BRANCH, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

Morgan & Palvo, Esqs., by Peter S. Palvo, Jr., Esq., Attorney for Appellant.
Pappa, Manna & Kreizman, Esqs., by John C. Manna, Esq., Attorneys for Respondent.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

Dated: April 23, 1980 - Received: April 24, 1980

BY THE DIRECTOR:

Written exceptions to the Hearer's Report were filed by the appellant pursuant to N.J.A.C. 13:2-17.14. No answer to the said exceptions was filed by respondent.

In its Exceptions, the appellant reiterates its principal argument advanced at the initial hearing below, namely that Mari v. City of Long Branch and Court Liquors, Bulletin 2170, Item 3, (affirmed by the Appellate Division of the Superior Court, certification denied by the New Jersey Supreme Court,) substantially modified case of Karam v. Division of Alcoholic Beverage Control, 102 N.J. Super. 291 (App. Div. 1968) and Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con., 53 N.J. Super. 271 (App. Div. 1959).

I have carefully analyzed the cases cited by the appellant and respondent, and I am satisfied that Mari is limited to its own special facts and circumstances, and does not substantively modify the principle set forth in Karam.

As the Court stated in Karam, 102 N.J. Super. at page 297:

> "On countless occasions our courts have emphasized the sensitive nature of liquor control legislation. Local ordinances attuned to the public policy involved in this area should be fairly enforced, not

> regarded as nuisance hurdles to be sidestepped or evaded in the interest of a municipal policy, not reflected in any ordinance, of a contrary import. The obvious purpose of the 500-foot ordinance is the salutary one to prevent an undue concentration of licensed premises in any area. It should be administered in the spirit of its policy, not grudgingly."

I, therefore, agree with the conclusion reached by the Administrative Law Judge that Karam is not substantively modified by Mari. I have assayed the Exceptions, and find that they have been identified and correctly resolved in the Initial Decision, and are lacking in merit.

Thus, having carefully considered the entire record herein including the transcript of testimony, the exhibits, the Initial Decision below, and the exceptions filed by appellant to the said Initial Decision, I concur in the finding and the recommendation of the Administrative Law Judge and adopt them as my conclusions herein.

Accordingly, it is, on this 3rd day of June, 1980,

ORDERED that the action of the respondent City Council of the City of Long Branch be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

Joseph H. Lerner
Director

GASKIN'S RESTAURANT, INC., A NEW JERSEY CORPORATION, APPELLANT,	:	INITIAL DECISION
V.	:	DKT. NO. ABC 5870-79 AGENCY DKT. NO. 4427
CITY COUNCIL OF THE CITY OF LONG BRANCH, MONMOUTH COUNTY, RESPONDENT.	:	

APPEARANCES:

Morgan & Falvo, Esqs., by Peter S. Falvo, Jr., Esq., on behalf of Gaskin's Restaurant, Appellant

Pappa, Manna & Kreizman, Esqs., by John C. Manna, Esq., on behalf of City Counsel of Long Branch, Respondent

BEFORE THE HONORABLE J. ROGER PERSICHILLI, A.L.J.

DOCUMENTS IN EVIDENCE:

Joint Exhibits:

J-1 Linear Measurement Survey prepared by Charles C. Widdis, P.E. & L.S., dated April 3, 1979
J-2 Resolution denying place-to-place transfer, dated October 23, 1979
J-3 Copy of Long Branch Ordinance 8-4, entitled "Limitations on Location"

For the Appellant:

A-1 Site plan prepared by Craig Fordyce Haaren, A.I.A.
A-2 Conclusion and Order of the Director in the Matter of William Mari v. City Council of the City of Long Branch and Court Liquors, Inc.; the unpublished decision of the Appellate Division affirming the Mari appeal; and the Supreme Court's denial of certification.

DKT. NO. ABC 5870-79

The matter sub judice is an appeal from the action of the City Council of the City of Long Branch which, by Resolution dated October 23, 1979, denied appellant's application for a place-to-place transfer of Plenary Retail Consumption License No. 1325-33-006-002, also known as C-59. Notice of Appeal and a Petition of Appeal were served on November 8 1979 to Joseph H. Lerner, Director, Division of Alcoholic Beverage Control, Department of Law and Public Safety. An Answer was filed on behalf of the City Council of the City of Long Branch and the matter was transmitted to the Office of Administrative Law for determination, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on February 13, 1980. The facts in this matter are not in dispute and counsel set forth their respective legal positions on record. Legal Briefs were requested and the hearing record was closed on March 17, 1980.

The parties concur that this case was originally commenced by the filing of an application for a place-to-place transfer of Plenary Retail Consumption License No. 1325-33-006-002 issued by the City of Long Branch to Gaskin's Restaurant, Inc. The appellant initially purchased said liquor license from Brown's Castle, Inc. for premises located at 35 Fay Street, Long Branch, New Jersey. The appellant seeks to transfer said license from 35 Fay Street to appellant's primary business location of Gaskin's Restaurant, Inc. located at 200 New Ocean Avenue in the City of Long Branch.

On October 16, 1979 and October 23, 1979, hearings were held before the City Council of the City of Long Branch. The City Council denied the transfer on the basis that the premises sought to be licensed was within 500 feet of another licensed premises of a similiar class. The present appeal is from the action taken by the City Council.

The undisputed facts establish that in June of 1979, the Department of Transportation, as part of its realignment of Ocean Boulevard, served notice on Gaskin's Restaurant, Inc. that its property at 35 Fay Street would be the subject of a partial condemnation, which included a realignment of the corner of Fay Street as well as a portion of the premises that would face Ocean Boulevard. The appellant determined that its ability to do business at this location would be severely impaired and it filed an application for a place-to-place transfer before the City Council of the City of Long Branch in June of 1979. City Council determined that the premises were the subject of condemnation and therefore, pursuant to Ordinance Section 8-4.2b, a 500 foot distance limitation should apply. The next issue before City Council was the manner of measurement. City Council adopted the position that the measurement of 500 feet should be taken between a point on the public sidewalk where the entrance to the two premises in question, i.e., Gaskin's Restaurant, Inc. and the nearest licensed premises of the same class, Yesterday's, intersected that public sidewalk. Gaskin's Restaurant, Inc. argued that

due to the fact that its business was set back from the street and particularly the fact that its entrance was some sixty feet from the street and that the same situation applied to the adjacent liquor license holder, Yesterday's, that the distance measurements should be continued up the walkway from the public sidewalk to a point in those walkways opposite the entrance to the respective premises. If appellant's method of measurement were deemed to be the correct method, the distance between the licensed premises and Gaskin's site would be 538.98 feet rather than 430.28 feet. (J-1 in evidence) Thus, the sole issue to be determined in this appeal is the proper method of measuring distances between licensed premises.

The relevant portion of the Long Branch Ordinance applicable herein states:

> "b. The city council, at its discretion, may allow the transfer of licenses unrestricted by the 1,000-foot limitation in the event that any licensed premises shall be taken by the power of eminent domain for any municipal, county, state or federal project, provided, nevertheless, that the premises to which the license is sought to be transferred shall not be located within a distance of 500 feet of existing licensed premises for which the same class of license is issued as the one sought to be transferred. In the event a transfer of a license shall be allowed as provided for in this subsection, no other license shall thereafter be transferred to the premises or any part thereof by the transfer, nor within a radius of 1,000 feet. The 500-foot distance provided for in this section shall be measured in the same manner as that required by statute for the measuring of distances between licensed premises and schools and churches." (Section 8-4.2b)

The pertinent portion of N.J.S.A. 33:1-76, which prohibits sales of alcoholic beverages within 200 feet of any church or school, sets forth the manner of measurement, as follows: "said 200 feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed..."

Counsel for the respondent argues that the proper method of measuring the distances between licensed premises is to measure the distance between a point at which the line between the sidewalk and the premises proper would intersect a line from the entrance door to the nearest sidewalk which a pedestrian would normally traverse in leaving or entering the premises. The method of measurement under N.J.S.A. 33:1-76, cited supra, was interpreted in Karam v. Alcoholic Beverage Control, 102 N.J. Super. 291, 293 (App. Div. 1968), in the following manner:

> "Of the various ways, if more than one, by which a pedestrian can properly go from one place to another, the shortest is to govern. Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con., 53 N.J. Super. 271, 279 (App. Div. 1958). Finally, applying the practical construction by the Division for many years of the term, 'nearest entrance', as recognized by us in the case just cited, the measurement should be 'between points on the sidewalk intersecting any walk which a person would use in entering the properties in question.'"

Thus, he concludes, that this is the appropriate method to employ in measuring such distances. Furthermore, if a statute is doubtful on its face, the long continued practical construction of a statute by the adminiatrative authorities charged with its enforcement, particularly where contemporaneous with the adoption and early years of operation under the act, is persuasive evidence of its meaning. No. Central Counties Retail Liquor, etc. v. Edison Township, 68 N.J. Super. 351, 359 (App. Div. 1961). Responsibility for administration and enforcement of alcoholic beverage laws relating to the transfer of liquor licenses from place-to-place is primarily committed to the municipal authorities. Lyons Farm Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970). A local governing body has no jurisdiction to grant or transfer a liquor license in violation of the terms of a local ordinance. Petrangelli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954).

Counsel for the appellant, referring to the Linear Measurement Survey (J-1 in evidence), states that the measurements on the public sidewalk between Gaskin's Restaurant and Yesterday's Restaurant, is 430.28 feet when measured from a point in the middle of the sidewalk. The same map also shows that from a point on the west side of New Ocean Avenue to a point opposite the front entrance of Gaskin's Restaurant, depicts a distance of 67.5 feet. In similiar fashion, the measurement from the point in the sidewalk of the west side of New Ocean Avenue to the front of Yesterday's Restaurant is 41.1 feet. Adding these respective distances, 67.5 feet plus 41.1 feet, to the total 430.28 feet clearly exceeds the 500 foot prohibition. Thus, he argues, that when measuring over the paved sidewalk, which would be the normal way a pedestrian would properly walk from Yesterday's to Gaskin's, the distance is in excess of 500 feet and is in conformance with the local ordinance.

Counsel for the appellant states that the Presbyterian Church and Karam cases, supra, have been modified in the decision of Mari v. City Council of the City of Long Branch, et al. decided by the Division of Alcoholic Beverage Control on October 18, 1974. This decision was appealed to the Appellate Division of the Superior Court and was affirmed on September 17, 1975. On

Janury 29, 1976 the Petition for Certifications in New Jersey Supreme Court, filed by the plaintiff was denied. (A-2 in evidence) Counsel states that in the Mari case, supra, the Division of Alcoholic Beverage Control recognized that a real distinction exists between churches and clubs, and places of business, and also realized that, at least in cases where an entrance to a licensed premise does not face directly on a public street, the set back distance on the property must be taken into account when dealing with the distances between licenses. He suggests that the reasons for those distinctions is obvious if one were to consider the area within the city and the adjacent communities where the application of the nearest entrance theory would wrought an undue hardship. The reality of the factual situations is that, in order to enter Yesterday's or Gaskin's, you must travel an additional forty to sixty-seven feet at each establishment for a combined total distance of approximately 107 feet and therefore, this distance must be computed in order to realistically access or apply the method of measurement as set forth in N.J.S.A. 33:1-76.

Counsel for the respondent takes the position that in Mari, supra, the Division concluded that when called upon to determine the proper measurements of distance across or through parking areas where one of the establishments was located in a shopping center, and could be reached only be crossing the asphalt parking lot and along a private walkway inside the lot, these ways were properly included in the measurements. He suggests that the Mari case is clearly distinguishable on the facts and limited to a shopping center situation.

Appellant's counsel does not suggest that Gaskin's Fish Market and Gaskin's Restaurant comprise a shopping center "in the traditionally sense of the word." He nevertheless highlighted the fact that Gaskin's Fish Market and Gaskin's Restaurant, both of which operate separate and apart from the other, are housed in a building which is set back on a property with extensive parking. Access to both of these establishments is not by pedestrian traffic but by vehicular traffic. However, it must likewise be recognized that, in the event pedestrian traffic is utilized, the additional distance from the public sidewalk to the entrance of each of the respective establishments, Gaskin's and Yesterday's, must be traversed by the pedestrian. Therefore, he concludes, those additional distances should be computed.

Appellant's Petition alleges that respondent's transfer denial was "improper, arbitrary, capricious, unreasonable and discriminatory" and that the method of computing the 500 feet was erroneous and not supported by the record and law. I do not concur.

The proper method of measurement as defined in Karam and Presbyterian cases, supra, is clearly applicable herein. In citing Presbyterian (Id. at p. 276) the Karam Court stated that

the "nearest entrance" is measured "between points on the sidewalk intersecting any walk which a person could use in entering the properties in question." The Court construed this language in the following manner:

> "We take this to mean the point at which the line between the sidewalk and the premises proper would intersect a line from the entrance door to the nearest sidewalk which a pedestrian would normally traverse in leaving or entering the premises, as the case may be."

Applying this method of measurement to the present case, I find the distance between Yesterday's and the proposed premises to be 430.28 feet as depicted in J-1 in evidence. This measurement is from a point where a line from Yesterday's entrance intersects the sidewalk in front of said entrance to a similiar point drawn from a line from Gaskin's Restaurant entrance to the sidewalk in front of said entrance. Thus, the measurement does not include the 67.5 foot private walkway which extends from the intersecting point of the public sidewalk to the entrance of Gaskin's Restaurant nor does the measurement include the 41.1 foot private walkway which extends from the intersecting point of the public sidewalk to the entrance of Yesterday's. Thus, the proper measurement only includes the intersecting entrance points of the premises proper and not the area which extends from the entrance door to the nearest sidewalk that a person would use in entering the properties in question. Premises proper and properties are defined to include land and appurtenance structures.

Appellant's counsel suggests that the Mari case modifies the Karam and Presbyterian cases, supra, and that, the set back distances must be considered when computing the distances between licenses. I find the Mari case limiting and factual distinct from the case sub judice. It was decided in the context of a shopping center situation, i.e., it was only accessible by crossing an asphalt parking lot and along a private walkway located inside the lot. Such are not the facts herein. Thus, the method of measurement as defined in the Karam and Presbyterian Church cases must be applied in this instance.

The general grant or denial of an alcoholic beverage license rests in the sound discretion of the local licensing authority in the first instance. In order to prevail in an appeal, the appellant must show unreasonable action on the part of the local authority, constituting a clear abuse of their discretion. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484, 1962; Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970); and Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 68 N.J. 44 (1975). The burden of proof in establishing the action of the Board was erroneous rests

entirely with appellant. See Downie v Sumerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). The decision of the Board should not be reversed unless the Court finds as a fact that there was a clear abuse of discretion, unwarranted finding of fact, or mistake of law. (See Nordco, supra.)

The appellant has not established the allegations set forth in his Petition of Appeal. The record before me establishes the propriety of the local board's actions and I, therefore, FIND and CONCLUDE that the respondent employed the proper method of measurement as prescribed in Long Branch Ordinance 8-4.2b and defined by N.J.S.A. 33:1-76.

Accordingly, it is hereby ORDERED that the denial by the City Council of the City of Long Branch of the application for a place-to-place transfer of Plenary Retail Consumption License No. 1325-33-006-002 from 35 Fay Street, Long Branch to 200 New Ocean Avenue, Long Branch, New Jersey, be AFFIRMED.

This recommended decision may be affirmed, modified or rejected by the head of agency, Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the head of the agency does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, my Initial Decision in this matter and the record in these proceedings.

2. DISCIPLINARY PROCEEDINGS - LICENSEE GUILTY OF ALLOWING, PERMITTING AND SUFFERING UNLAWFUL POSSESSION, ACTIVITY AND SALE OF C.D.S. UPON THE PREMISES - POSSESSION AND ACTIVE USE OF STOLEN PROPERTY - EMPLOYING PERSONS WHO HAD BEEN CONVICTED OF CRIMES INVOLVING MORAL TURPITUDE - FAILURE TO MAINTAIN CURRENT EMPLOYEES LIST - POSSESSION OF ALCOHOLIC BEVERAGES IN BOTTLES WHICH LABELS DID NOT TRULY DESCRIBE THEIR CONTENTS - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against Linda Taylor, Inc. t/a Linda's Room 1700-06 Baltic Avenue Atlantic City, N. J. Holder of Plenary Retail Consumption License No. 0102-33-141-001 issued by the Board of Commissioners of the City of Atlantic City.	CONCLUSIONS AND ORDER	S-12,533 X-53,598 H-7479-79 and S-12,575 H-7380-38

Nathan W. Davis, Jr., Esq., Attorney for Licensee.
Jerome A. Ballarotta, Esq., Deputy Attorney General for Division.

BY THE DIRECTOR:

Two separate sets of charges were preferred against the licensee which pleaded not guilty to each of them. They will be consolidated in this Conclusion and Order.

On January 22, 1980 the licensee was charged as follows:

1. On or about July 26, 1979, you, or persons employed by you, allowed, permitted and suffered in and upon your licensed premises, unlawful activity pertaining to controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et. seq.), viz., that on the aforesaid date, you, or persons employed by you, allowed, permitted and suffered offers to and arrangements with a customer or patron for the purchase of cocaine from your employee, John A. Williams; in violation of N.J.A.C. 13:2-23.5(b).

2. On August 2, 1979, you, or persons employed by you, allowed, permitted and suffered in and upon your licensed premises, the unlawful possession of controlled dangerous substances as defined by the New Jersey Dangerous Substances Act (N.J.S.A. 24:2-1 et. seq.), viz., that on the aforesaid date, you, or persons employed by you, allowed, permitted and suffered the unlawful possession of cocaine in and upon your licensed premises; in violation of N.J.A.C. 13:2-23.5(b).

3. From on or about July 26, 1979 to August 2, 1979, you allowed, permitted and suffered your licensed premises to be used in furtherance and aid of and accessible to an illegal activity and enterprise, viz., you allowed, permitted and suffered your licensed premises to be used for the packaging and sale of cocaine, a controlled dangerous substance as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:2-1 et. seq.); in violation of N.J.A.C. 13:2-23.5(c).

4. On or about August 2, 1979, you allowed, permitted and suffered your licensed premises to be used in furtherance and aid of and accessible to an illegal activity and enterprise, viz., you allowed, permitted and suffered the possession of stolen property in the form of an IBM Selectric typewriter, serial number 26-3319348 stolen from New Jersey Bell on October 30, 1978 and an IBM Selectric typewriter, serial number 26-2854836 stolen from the Wildwood High School on November 20, 1978 to be in, upon, and available for use in the office of your premises; in violation of N.J.A.C. 13:2-23.5(c).

Thereafter on March 13, 1980 the following supplemental charges were preferred against the licensee:

1. On or about February 15, 1980, you allowed, permitted and suffered in and upon your licensed premises unlawful activity pertaining to controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et. seq.); viz., you allowed, permitted and suffered the possession and/or distribution of cocaine in and upon your licensed premises; in violation of N.J.A.C. 13:2-23.5.

2. In or about February, 1980, you allowed, permitted or suffered your licensed premises or business to be used in furtherance of or in aid of or to be accessible to an illegal activity or enterprise, viz., the receiving and/or possession of stolen property; in violation of N.J.A.C. 13:2-23.5(c).

3. In or about February, 1980, you employed or had connected with you in a business capacity persons who had been convicted of crimes involving moral turpitude, and whose statutory disqualification resulting from such convictions had not been removed by order of the Director; in violation of N.J.A.C. 13:2-14.1.

4. In or about February, 1980, you conducted your licensed business without keeping on the licensed premises a list, in form prescribed by the Director of the Division of Alcoholic Beverage Control, containing the names and addresses of, and required information with respect to, all persons then currently employed on the licensed premises, and available for inspection by authorized persons; in violation of N.J.A.C. 13:2-23.13(3).

5. On or about February 22, 1980, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises alcoholic beverages in bottles which bore labels which did not truly describe their contents; in violation of N.J.A.C. 13:2-23.23.

I decided to hear this matter personally rather than having it heard by an Administrative Law Judge, as permitted by N.J.S.A. 52:14F-8(b). The entire building in which this facility is located at 1700-1706 Baltic Avenue, Atlantic City is licensed and is operated by the licensee under the subject plenary retail consumption license and was so licensed on the dates herein charged.

John Williams was employed at the subject premises as its manager from January 19, 1978 to the present time. This was corroborated not only by the written statement given by John Williams to ABC Agent K——— but was corroborated by Cynthia Williams, a 1% stockholder who testified at this hearing to that effect. There are 9 counts in the total charges set forth hereinabove which I shall discuss briefly:

Count 1 - This Count alleges the purchase of cocaine from licensee's employee in violation of N.J.A.C. 13:2-23.5(b). The record herein establishes that John Williams, the manager of the licensed premises, sold cocaine to a confidential informant of the Atlantic City Police Department in the men's room of the said premises on July 6, 1979. Cocaine is a controlled dangerous substance as defined by N.J.S.A. 24:21-1 et seq.

The uncontradicted testimony of Detective Anthony Ward described how he and Detective Greenidge remained at a point of observation outside the premises while the confidential informant entered and purchased a bag of cocaine for $50.00 from said John Williams. The analysis set forth in the State Police laboratory report shows that the substance purchased was, in fact, 0.17 grams of cocaine.

No testimony was introduced by the licensee to contradict the aforesaid testimony or, indeed, any of the following counts in the said charge. I find the licensee guilty of the said charge.

Count 2 - This Count alleges the possession by licensee's employees in the licensed premises of heroin and cocaine, in violation of N.J.A.C. 13:2-23.5(b). The record establishes that on August 2, 1979 a confidential informant employed by the Atlantic City Police Department purchased heroin from Reese Ford at the licensed premises. Detective Ward testified that he and Detective Greenidge stood at a point of observation outside the licensed premises while the confidential informant entered the said premises and purchased $50.00 worth of heroin from Reese Ford.

Heroin is a controlled dangerous substance defined by N.J.S.A. 34:21.1 et seq. A State Police laboratory report submitted into evidence reveals that the heroin purchased amounted to 0.30 grams of heroin. The evidence further establishes that Reese Ford was, in fact, an employee of the licensed premises at the time of the said transaction.

Thereafter, on August 2, 1979 the Atlantic City Police Department executed a valid search warrant, on the basis of which Atlantic City Detectives Ward and Pincus searched the premises and found large quantities of cocaine hidden in a large soda container located in storage room No. 1. This storage room, which contained other bar supplies and paraphernalia, was located within the private non-public part of the licensed premises.

Moreover, this entire area of the licensed premises was sealed off by a large metal and wooden door located just beyond the TV lounge area; this door had to be physically forced in order to gain entry. It is clear that the licensee's employees had exclusive control over this area. Furthermore, John Williams admitted to the two officers that he and his wife Brenda Williams had the keys to all of the doors in the establishment. The cocaine seized at this time was also submitted to the State Police laboratory and a report established that the large quantity of the substance seized was, in fact, cocaine. This charge has been established by a fair preponderance of the credible evidence. I find the licensee guilty thereof.

Count 3 - This Count alleges the unlawful packaging and sale of cocaine, in violation of N.J.A.C. 13:2-23.5(c). The facts hereinabove are fully applicable to the allegations set forth on Counts 1 and 2 of the charges preferred on January 22, 1980 and I find that this Count has been established by a fair preponderance of the credible evidence. I find the licensee guilty of this Count.

Count 4 - This Count charges briefly that the licensee permitted its premises to be used in the furtherance and aid of and accessible to an illegal activity and enterprise, viz., that it permitted and suffered the possession of stolen property, in violation of N.J.A.C. 13:2-23.5(c).

The evidence establishes, thru the testimony of Detective Troiano, that during the raid on the premises on August 2, 1979 he found two IBM electric typewriters in the office area of the licensed premises. This fact was stipulated by the defense. It was further established that these typewriters were stolen property; one from the Wildwood High School in Wildwood and the other from the New Jersey Bell Telephone Company in Atlantic City. No testimony was offered by the licensee in contradication, explanation or rebuttal thereof.

The attorney for the licensee argues, in his written summation, that the Superior Court, Atlantic County "suppressed the money and typewriters as evidence because the search warrants were defective. Neither item was contained in the search warrants". He asserts that this matter must be distinguished from State v. Zurawski 89 N.J. Super. 488 (App. Div. 1965) and State v. Ransom 169 N.J. Super. 511 (App. Div. 1979).

He reasons that, in Zurawski, gambling paraphernalia was found during the search; and in Ransom a controlled dangerous substance and weapons were found. He argues that "gambling paraphernalia, weapons and controlled dangerous substances are presumed to be in violation of the law upon sight; that there is no such presumption when money and typewriters are found in an office of a tavern".

I reject that argument as frivolous, and contrary to the applicable law, and the facts herein. The licensee appears to apply applicable criminal statutes (N.J.S.A. 2A:139-(1) which relate to receiving stolen property; but not to the applicable provisions of N.J.S.A. 33:1-4(d) and 35. Under the Alcoholic Beverage Law, as cited, investigators have full authority to conduct any investigation and have authority to arrest without warrant for violations of the Alcoholic Beverage Law committed in their presence, and "shall have all the authority and powers of police officers to enforce this chapter". This was restated and emphasized in Zurawski, Supra.

These stolen items were found in the possession of the licensee on the licensed premises, and the licensee did not offer any defense or explanation as to how this property came to be found on the licensed premises. I, therefore, conclude that the Division has established by a fair preponderance of the credible evidence that the licensee is guilty of allowing, permitting and suffering the licensed premises to be used for the storage of stolen property in violation of N.J.S.A. 33:1-31. Thus, I find the licensee guilty as charged.

I shall now consider the 5 counts set forth in the charges preferred on March 13, 1980:

Count I - This Count, in effect, charges the licensee with the possession and/or distribution of cocaine in violation of N.J.A.C. 13:2-23.5.

The Division produced Detective Clyde Davis of the Atlantic City Police Department who testified as follows:

He supervised a controlled dangerous substance buy of cocaine by a confidential informant from John Williams, the manager of and at the licensed premises, on December 1, 1979 and February 14, 1980. A preliminary field test of the substance purchased by the said confidential informant revealed that the substance purchased was cocaine. Thereupon, a search warrant was obtained and executed by him, together with ABC Agents, on February 15, 1980.

During this raid he and Detective Anthony Ward discovered large quantities of cocaine in both storage room No. 1 and a liquor storage room of the subject premises. Both of these areas are private non-public areas of the licensed premises. A State Police laboratory report confirmed the initial test, to the effect that the substance found was, in fact, cocaine.

In addition to the seizure of the cocaine, various implements such as sifters, measuring spoons and partially used boxes of tin foil were also seized at this time. Based upon his experience as a police officer, engaged in investigations of narcotics activities, Detective Ward explained that these implements are often used in the processing, cutting and distribution of cocaine. The witness pointed out that the cocaine which was purchased by and delivered to the confidential informant on December 1, 1979 and February 14, 1980 were wrapped in tin foil; and that a large quantity of heroin found in the raid on February 14, 1980 was also wrapped in 16 small tin-foil packages.

As noted hereinabove, no defense was offered with respect to this charge. The only witness produced on behalf of the defense was Cynthia Williams who stated that she was not present on any of the occasions set forth in the charges herein, but that she believed her brother John Williams, when he stated to her, after the first raid, that he was not involved in narcotics activity.

I am convinced that this charge has been established by a fair preponderance of the credible evidence, and I find the licensee guilty thereof.

Count 11 - This Count charges the licensee with receiving and/or possession of stolen property in violation of N.J.A.C. 13:2-23.5(c).

The Division introduced into evidence testimony, by stipulation of the attorney for licensee, to the following: on February 15, 1980 during the execution of a search warrant, Detective Troiano found a Motorola 2-way radio in the office area of the licensed premises. This radio had been stolen from the Atlantic City Department of Public Affairs in or about June of 1978. The attorney for the Division noted that in Count No. 4 the applicable criminal statute (N.J.S.A. 2C:20-7) should be considered. This statute, which became effective on September 1, 1979 states, in pertinent part:

"B. (Presumption of Knowledge) The requisite knowledge or belief is presumed in the case of a person who:

* * *

(2) Has received stolen property in another transaction within the year preceeding the transaction charged."

I find that this presumption is applicable in the facts herein. Furthermore, the licensee has offered no defense or explanation with regard as to how this radio came to be on the licensed premises.

I, therefore, conclude that the Division has established by a fair preponderance of the credible evidence, that the licensee has allowed, permitted and suffered its licensed premises to be used for storage of stolen property. I find the licensee guilty of the said charge.

Count III - This charge alleges that the licensee employed persons who had been convicted of crimes involving moral turpitude in violation of N.J.A.C. 13:2-14.1. It has been previously established that John Williams was the manager of the licensed premises on the dates charged herein.

Agent K—— testified that John Williams admitted to him that he employed Ronny Williams as a clean-up man in the licensed premises, and deliberately omitted his name from the E141A form (list of employees) because he believed that Ronny had a disqualifying criminal conviction. An arrest report from the Egg Harbor Township Police Department, submitted into evidence, reflects the fact that Ronny Williams was employed at the licensed premises.

Agents K—— and B—— testified that, when they visited the licensed premises on February 22, 1980, Reese Ford was employed there as a doorman and made statements to the said agents to that effect.

Documentary evidence was then submitted and established the following: "John Williams had been convicted on August 1, 1962 for the crime of breaking and entering; on October 23, 1970 of attempted larceny; and on September 16, 1974 of distribution of a controlled dangerous substance. All of these convictions are crimes which involve the element of moral turpitude.

Reeves Ford had been convicted on May 18, 1973 of the possession of a dangerous instrument; and on May 23, 1975 of possession of a controlled dangerous substance with intent to distribute the same. Both of these convictions involve crimes containing the element of moral turpitude. It was further established that these three employees did not have a current valid Rehabilitation Work Permit issued by this Division for 1980 and, in fact, there was no record of such valid Rehabilitation Work Permit having ever been issued to Ronny Williams.

No defense was offered on behalf of the licensee to this count.

I am convinced that the substantial evidence clearly establishes the guilt of the licensee on this charge and, I so find.

Count IV - This Count alleges that the licensee failed to keep on its licensed premises a list containing the names and addresses of the persons currently employed, in violation of N.J.A.C. 13:2-23.13(e).

The evidence establishes that Ronny Williams, Reese Ford and Betty Lewis were employed on the licensed premises on the dates charged herein. The employment of Ronny Williams and Reese Ford had been previously established in Count III.

Agent K—— testified that on February 22, 1980 he observed Betty Lewis on duty as a barmaid, mixing drinks and waiting on customers at the licensed premises. The E141 form, employees list, for the licensed premises does not include the names of Ronny Williams, Reese Ford or Betty Lewis. No evidence was produced by the licensee to contradict this testimony.

I, therefore, find the licensee guilty of the said charge.

Count V - This charge alleges that the licensee possessed bottles which bore labels which did not truly describe their contents, in violation of N.J.A.C. 13:2-23.23. Testimony in this charge can be capsulated as follows:

Agent K—— searched the premises during the execution of a search warrant on February 15, 1980 and observed a large funnel resting on top of the partially filled bottle of Popov Vodka located in the liquor store room. John Williams admitted to him that he refills the contents of bottles from inexpensive brands, such as Popov Vodka or Millschire Gin, into bottles which once contained more expensive brands of alcoholic beverages. Williams physically demonstrated how he accomplished this procedure. Furthermore, Agent B—— testified that on February 22, 1980 when he and Agent K—— returned to the licensed premises, Williams acknowledged, in writing, the subject violation.

A bottle of Chevas Regal Scotch whiskey seized by Agent B—— on February 22, 1980 was analyzed by the New Jersey State Police chemist, and the laboratory report shows that this bottle seized at the licensed premises was, in fact, tampered, and not genuine.

No defense was offered with respect to the allegations contained herein. I find licensee guilty of this charge.

As to Penalty

A liquor license is a mere privilege Paul v. Gloucester County, 50 N.J.L. 585 (E & A 1888); Mazza v. Cavicchia, 15 N.J. 498 (1954). And as Judge Jayne, speaking for the Court in In re 17 Club, Inc., 26 N.J. Super 43,52 (App. Div. 1953), said:

"The governmental power extensively to supervise the conduct of the liquor business and to confine the conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support."

This Division has consistently taken a very dim view of licensed premises where narcotics are possessed and peddled, particularly where such activities are carried on by the agents and employees of the licensee. Re Frances Richards, Bulletin 1838, Item 1. Such activity cannot and must not be tolerated in this State.

The sum total of all of the violations by this licensee constitutes a flagrant abuse of the license privileges. In view of the serious social consequences resulting from the traffic in narcotics, and the egregious nature of the charges considered herein, the only proper penalty mandated is outright revocation of the license. Re Smithpaul Corporation, Bulletin 1777, Item 1; Re Gnewcenski, Bulletin 1722, Item 1; Re Fel's, Inc., Bulletin 2028, Item 1.

The attorney for the licensee urges, in his written summation, that if this license is to be revoked, the licensee be given an opportunity to sell said license because "life earnings went into the purchase of the license and real property". I must deny such request because the public interest and welfare is paramount and superior to the economic interest of the individual licensee.

In view of the fact that the licensed premises constitutes a nuisance, and is clearly a trouble spot, the request is denied. See Nordco, Inc. v. State, 43 N.J. Super. 277, 288 (App. Div. 1957).

Accordingly, it is, on this 6th day of June, 1980,

ORDERED that Plenary Retail Consumption License No. 0102-33-141-001 issued by the Board of Commissioners of the City of Atlantic City to Linda Taylor, Inc., t/a Linda's Room for premises 1700-06 Baltic Avenue, Atlantic City be and the same is hereby revoked, effective immediately.

Joseph H. Lerner
Director