

Ambrose R

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

BULLETIN 1999

September 15, 1971.

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

BULLETIN 1999

September 15, 1971

1. NOTICE TO LICENSEES - IMPLEMENTATION OF THE PRESIDENT'S EXECUTIVE ORDER AS RELATED TO THE 10% SURCHARGE ON IMPORTS.

NOTICE TO ALL LICENSEES:

This is issued in connection with the President's Executive Order setting August 16, 1971 as the effective date upon which a 10% surcharge is to be imposed on all imports. Until further notice the existing rules and regulations, particularly State Regulations 30 and 34 dealing with price regulation, continue to be in full force and effect.

Wholesalers may not bill or sell at other than the filed price. In other words, he may not pass on any surcharge that he may have paid on any imports since August 16th.

The retailer may not sell to the consumer below the filed price and must continue to advertise only at that filed minimum consumer resale price.

It is expected that further directives in connection with this matter will be issued to the trade in the near future.

Dated: August 19, 1971

2. ORDER TO LICENSEES - FILING OF WHOLESALE AND MINIMUM CONSUMER RETAIL PRICES AS AMENDED.

TO ALL FILERS OF MINIMUM CONSUMER RESALE PRICES:

This directive is issued to supplement my notice of August 19, 1971 concerning the President's Executive Order of August 15, 1971.

I find that an emergency exists in connection with the administration of State Regulations No. 30 and 34 by reason of the imposition by the President's Executive Order of a 10% surcharge on all imported alcoholic beverages effective August 16, 1971. Accordingly, I am hereby authorizing the filing of amended wholesale and minimum consumer resale prices for all imported alcoholic beverages, including multiple, private label and exclusive brands, to amend the currently effective prices of said brands to be effective September 1, 1971 and until further notice. The reopening of these price filings is limited to the addition of the exact amount of the above mentioned 10% surcharge, without any markup or any other additional charge on same.

In order to publish the new prices, the Division hereby directs that any price filer who wishes to amend his currently effective filings with respect to imported alcoholic beverages must file in this office on or before 4:00 p.m. Wednesday, August 25, 1971 the amount of the 10% surcharge applicable to each container of his imported product. A new supplemental pamphlet will then be published by the Division to include a separate column alongside the existing minimum consumer resale price listing which will indicate the amount of the 10% surcharge. This new price listing will apply to all sales on and after September 1, 1971 both at the wholesale and consumer levels, and the surcharge portion thereof will also apply to all price filings for the fourth quarter of this year, to become effective October 1, 1971.

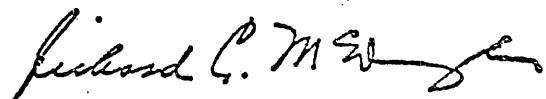
In order to facilitate preparation of the new supplemental price list, filers should utilize tear sheets of the currently effective third quarter minimum consumer resale price pamphlet to list the surcharge amounts to be filed with the Division on or before August 25, 1971.

Filers are advised that although they are not required to file the amount of the surcharge on either their wholesale or consumer prices, their failure to do so will result in their products being subject to the existing filed prices without the surcharge. This in turn may affect the marketability of the filers' products.

Licensees are cautioned to abide by my ruling of August 19, 1971 with respect to the sale of imported items between August 16 and September 1, 1971. During such period, the 10% surcharge may not be added to the currently effective wholesale or consumer filed prices.

Your cooperation is requested to accomplish these matters in an orderly fashion.

Dated: August 20, 1971



Richard C. McDonough  
Director

## 3. NOTICE TO LICENSEES - MINIMUM STANDARDS OF FILL (HALF-PINTS).

## NOTICE TO ALL LICENSEES AND OTHER INTERESTED PERSONS - MINIMUM STANDARDS OF FILL.

Pursuant to Notice of Intention of May 25, 1971, public hearing was held on July 14, 1971 to afford opportunity to interested persons to express their views with respect to a proposed revision of N.J.A.C. 13:2-257 (Rule 1 of Division Regulation No. 23) which would reduce the minimum standard of fill of certain alcoholic beverages.

At such public hearing, most of those persons present spoke in favor of lowering the minimum standard of fill to one-half pint, but most opposed further reduction to one-tenth pint (so-called "miniature"). Correspondence received from interested citizens and members of the industry contained views similar to those expressed by such persons at the hearing.

Heretofore, cordials, liqueurs, cocktails, gin fizzes, and bottled highballs were the only alcoholic beverages permitted to be sold in one-half pint containers. The minimum fill for other distilled spirits has been three-fourths pint, four-fifths pint or one pint, depending upon the type of distilled spirits.

In order to market the distilled spirits in one-half pint containers in this state, many manufacturers have added sufficient sugar to their products so that they would qualify as "liqueurs" or "cordials." These products have come to be known as "sugar whiskies."

The public should not be compelled to accept a sugared product in order to purchase a half-pint. They should be able to buy the same liquor in a half-pint that they may buy in a pint. In this connection, it is noted that with the adoption recently by the State of New York of a minimum size fill of one-half pint, New Jersey remains the last state in the country to prohibit its citizens from having the opportunity of purchasing whiskey in half-pints.

With regard to the question of miniatures, in addition to the opposition expressed at the hearing and in correspondence received at the Division, I note that of the 50 states, only 7 permit the uncontrolled distribution of miniatures, 16 states place varying degrees of restriction on their distribution, and the remaining 27 totally prohibit them. In view of this and the opposition expressed, I find no public need for the inclusion of miniatures in the standard of fill, and I will therefore not further reduce the standard of fill at this time to include one-tenth (1/10th) pint.

After carefully considering the entire record therein, I find that the public interest can best be served by the adoption of a standard of fill of one-half pint for all distilled spirits. This change will serve the public's convenience and bring New Jersey in line with the rest of the nation, without having an adverse effect upon our temperance policies. Accordingly, I have this day revised N.J.A.C. 13:2-257 (Rule 1 of Division Regulation No. 23) effective January 1, 1972, to read as follows:

"No retail licensee, except a plenary retail transit licensee, shall purchase, accept delivery of, possess, sell or deliver any alcoholic beverage in the original container if the fill thereof is less than one-half pint, except as to the following:

- (a) In wines, the minimum standard of fill shall be six (6) fluid ounces, except champagnes and sparkling wines, as to which the minimum standard of fill shall be four (4) fluid ounces.
- (b) In beer and other malt alcoholic beverages, no minimum standard of fill is prescribed."

Richard C. McDonough  
Director

Dated: August 24, 1971



below was submitted in accordance with Rule 8 of State Regulation No. 15, and was supplemented by additional testimony adduced at the hearing on appeal.

Several persons voiced their objections at the hearing held by the Board on June 30, 1970.

Joyce Dichiarante, who resides across the street from the licensed premises (which contains a bar area, a billiards area and a ballroom), testified that "beer blasts" were sponsored by students attending various colleges in the general area on the nights of February 10, 11, 12 and 13, 1970. Cars bearing college insignia were seen parked in front of fire hydrants, bus stops, driveways of homes and on the sidewalk. The youths engaged in yelling and used obscene four-letter words.

Specifically, on February 13 police were summoned and cruised the area at frequent intervals due to the "screaming and yelling" of the youths. During that week she observed youths exit from the licensed premises, drinking beer from mugs, throwing the beer around, and urinating in the street. She also observed patrons of the subject premises urinating in the street in January and March 1970 and in December 1969.

During the past two years, the police were dispatched to that area between sixty and seventy times, including sixteen times on the night of March 6, 1970. In the latter part of 1969 she observed a youth who was intoxicated assisted from the ballroom. When the ballroom is not in use, the premises are conducted in an orderly manner.

On cross examination the witness acknowledged that she did not see anyone drunk.

Charles T. Miller, who resides approximately two hundred feet distant from the tavern and whose bedroom faces the tavern, testified that during the past two years when the ballroom was in use he heard "all kinds of noises and disturbances". He also observed that the driveways are often cluttered with beer cans and bottles. This was caused by patrons exiting from the licensed premises. He summoned the police on two occasions because he could not sleep due to the noise. The disturbances were not caused by people attending wedding receptions; they were caused by the college-age youths frequenting the premises.

Margaret Callahan, who resides across the street from the licensed premises, testified that there were "beer blasts" during the week of February 9, 1970. The music disturbed her sleep; therefore, she called the tavern operator to lessen the sound. Continuing, she testified:

"People were coming out of there, I would say, absolutely drunk. They were young. If they were of age, they were just barely of age. They would throw beer cans around, make a lot of noise, there were cars parked in our driveway blocking our driveways. When they would take off in the cars they would make a terrific noise. On one occasion in particular they played follow the leader in the middle of the road. They were hitting the curbs and as they went along, they came close to hitting cars that were parked there that had nothing to do with the bar."

On February 13, 1970 she observed that "several of the boys came out of the bar, ran into the back yard and jumped on the garbage cans and they used the back yard to urinate in." Generally, the participants were drunk. The noise usually occurred from 8:00 p.m. to 2:30 a.m. She made telephone calls to the licensed premises on three occasions in order to complain of the noise.

On cross examination the witness asserted that the disturbances were caused by the fraternity "beer blasts".

Frances Dichiarante, mother of Joyce Dichiarante, asserted that her testimony would be repetitive of the testimony offered by her daughter.

John Ruppi, who resides across the street from the licensed premises, testified that when the "beer blasts" were conducted, he observed youths exit from the licensed premises, regurgitate in the street and in his alleyway. The police responded to calls about fifty or sixty times. Upon remonstrating with the youths, they used abusive and indecent language.

Upon being recalled to the witness stand, Joyce Dichiarante asserted that there were twenty persons present at the hearing who objected to the renewal of the license and that a petition containing the names of sixty or seventy objectors had been presented to the Board.

Reuben A. Edelson, principal stockholder of the corporate licensee, who actively managed the business conducted by it, testified that he rented the ballroom to college fraternities during the year 1969 and up to March 1970, when he terminated this activity because his dance hall license was discontinued. He intended to discontinue renting the hall to fraternities.

At the hearing on appeal, Edelson testified that, after renting a part of the building where the licensed premises are located to the Paterson Task Force (which is a community action group consisting mainly of black persons) in 1968, the neighbors sought to harass him by making various complaints against the operation of his establishment. He admitted renting the premises to college groups in February and March 1970. The only complaint he ever received was when a female called one Friday at 10:30 p.m. and said that the band was too loud. He was never informed of the occurrence of disorderly acts outside of the premises. Every time a dance was held, the police visited the premises. No complaints or arrests were made as a result of these visits. Subsequent to March 6, he discontinued renting the hall to college groups.

Hildur Edelson, wife of Reuben A. Edelson, testified that she customarily was in attendance at the licensed premises from 8:30 p.m. until closing time. She was in the premises in February and March when the college groups rented the ballroom. She walked outside the premises frequently and observed no disorderly conduct, nor did she hear obscene language being used. She, therefore, had no need to call the police.

Paul Ottavio, the elected alderman of the ward wherein the licensed premises is situated, testified that prior to the time that Paterson Task Force rented a part of the premises from Edelson he received very few complaints relative to the operation of appellant's establishment. Thereafter, he received numerous complaints. Upon arriving at the licensed premises in early April 1970 (upon receiving numerous calls) he found no justification for the calls. It was his opinion that the complaints were an expression of resentment to the location of the Paterson Task Force in that building.

On cross examination the witness testified that he did not personally investigate the numerous complaints received by him during the very early morning hours in February and March. However, he did call the police to investigate the complaints.

I am of the opinion that the complaints voiced by the neighbors on the occasions that college students sponsored "beer blasts" in the ballroom are not without substance and are justified.

In view of the impressive array of witnesses who testified before the Board, describing conditions caused by patrons who exited from the licensed premises (in various degrees of sobriety), the noise both inside and outside in the premises, the numerous calls made by police to the area, I find Mrs. Edelson's testimony to the effect that she observed no disorderly conduct is incredible.

The grant or denial of an alcoholic beverage license is a discretionary matter and, in order to prevail, Edelson must show unreasonable action on the part of the Board, constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955); Blanck v. Magnolia, 38 N.J. 484 (1962). Thus, if the Board acted reasonably, this contention is insubstantial and must be rejected.

The dispositive issue in this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. In analyzing the testimony, it would be helpful to state the applicable legal principles pertinent to a determination hereof. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup. Ct. 1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382; affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

As early as in Conte v. Princeton, Bulletin 139, Item 8, the well-established principle was cited to the effect that a licensee is responsible for conditions both in and outside his licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1, where the Director cites Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947), as follows:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee, regardless of knowledge, where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority. Guastamachio v. Brennan, 128 Conn. 356; Atl. Rep. (2d) 140."

Finally, I cannot be unmindful of the conclusion reached by the Supreme Court in Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), wherein Justice Francis stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

After carefully considering all of the evidence herein, it is my view that the Board exercised its discretion circumspectly, reasonably and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

It is, therefore, recommended that respondent's action in denying appellant's application be affirmed, and that the appeal herein be dismissed.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by appellant pursuant to Rule 14 of State Regulation No. 15.

I find that the matters contained in the exceptions have either been considered by the Hearer in his report or are without merit.

Consequently, having considered the entire record, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions with respect thereto, I

concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 22nd day of July, 1971,

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

Richard C. McDonough  
Director

5. APPELLATE DECISIONS - ORDER.

Reuben A. Edelson, t/a )  
Southside Bar & Billiards, )  
Ruby's Gay 90's, )

Appellant, )  
v. )

On Appeal

Board of Alcoholic Beverage )  
Control for the City of )  
Paterson, )  
Respondent. )

O R D E R

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Joseph M. Keegan, Esq., Attorney for Appellant  
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for  
Respondent

BY THE DIRECTOR:

By order dated July 19, 1971, the term of appellant's 1969-70 plenary retail consumption license for premises 155-157 Pennsylvania Ave. and 74-76 Alabama Ave., Paterson, which was extended during the 1970-71 license period pending determination of an appeal from the denial of renewal by respondent, was further extended for the 1971-72 license period pending determination of an appeal from denial for the present license period.

It further appears that on July 22, 1971 I entered Conclusions and Order affirming the action of respondent in its denial for the 1970-71 license period. Therefore, the extension of the term of said license for the 1971-72 period, which was based upon the prior extension, will now be vacated.

Accordingly, it is, on this 28th day of July 1971,

ORDERED that extension for the 1971-72 license period of License C-229, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Reuben A. Edelson, t/a Southside Bar & Billiards, Ruby's Gay 90's, for premises 155-157 Pennsylvania Ave. and 74-76 Alabama Ave., Paterson, be and the same is hereby vacated, effective immediately.

Richard C. McDonough,  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE BELOW FILED PRICE - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 Rose's Corner, Inc. (A Corporation)  
 t/a Rose's Corner Bar  
 1449 S. Clinton Avenue  
 Trenton, N. J.  
 Holder of Plenary Retail Consumption License C-204 issued by the City Council of the City of Trenton.

CONCLUSIONS AND ORDER

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 Licensee, Pro Se.  
 Edward F. Ambrose, Esq. Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 26, 1971 it sold one-half gallon bottle of whiskey below filed price, in violation of Rule 5 of State Regulation No. 30.

Licensee has a previous record of suspension of license by the local issuing authority for five days effective February 5, 1968 for sale to a minor, and by the Director for ten days effective October 1, 1968 for sale below filed price (Re Rose's Corner, Inc., Bulletin 1824, Item 6). In addition, the license then held by Rose N. Barbuto, officer and stockholder of the licensee corporation was suspended for five days in 1956 for sale at less than minimum resale price, and the license then held by Nicholas Barbuto, at another premises was suspended for five days in 1945 by local issuing authority for sale to a minor.

The prior record of suspensions occurring in 1956 and 1945 disregarded, but the record of suspensions for similar and dissimilar violations within the past five years considered, the license will be suspended for twenty-five days (Re Caputo's Liquor Corp., Bulletin 1874, Item 5) with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 22nd day of July 1971,

ORDERED that Plenary Retail Consumption License C-204 issued by the City Council of the City of Trenton to Rose's Corner, Inc., A Corporation, t/a Rose's Corner Bar for premises 1449 S. Clinton Avenue, Trenton, be and the same is hereby suspended for twenty (20) days commencing 2:00 a.m. Friday, August 6, 1971 and terminating 2:00 a.m. Thursday, August 26, 1971.

Richard C. McDonough  
Director

7. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED UPON CONDITION.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-13 from

E. L. Kerns Co. 302-304 North Broad Street Trenton, N.J.,

to

W/S Route 206, 1/2 Mile North of Intersection Amwell Road and Route 206 Hillsborough Township, N.J.

CONCLUSIONS and ORDER

Victor Walcoff, Esq., Attorney for Applicant Joseph Zimmerman, for Somerset County Tavern Owners Association

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On April 30, 1971, E.L. Kerns Co. filed an application for a place-to-place transfer of State Beverage Distributor's License SBD-13 from premises located at 302-304 North Broad Street, Trenton, to premises located at W/S of Route 206, Hillsborough Township. The proposed new location is more precisely described in the application for transfer as being one-half mile north of the intersection of Amwell Road and Route 206.

Written exceptions to the granting of the application for transfer were filed and hearing was duly held thereon.

The objections may be summarized as follows:

- (1) The Township of Hillsborough contains sufficient alcoholic beverage outlets and no need presently exists for additional outlets.
(2) The existing licenses in the Township would suffer severe economic hardship as the result of this transfer.

It should be noted that on the date of hearing, May 26, 1971, and after the commencement of the hearing, a letter dated May 26, 1971 from the attorney for and on behalf of Hillsborough Township was received at the Division offices requesting an opportunity to be heard to voice objections to the transfer.

At the hearing held herein, William E. Pearson, vice-president and general manager of the applicant, testified that the license was acquired approximately one year prior to the date of hearing and the applicant has actively sought to re-locate it. The applicant has been a manufacturer and distributor of soft drinks since 1899. Applicant intends to operate a retail outlet at the Route 206 location. The license presently prohibits sales to retail licensees.

He further testified that the present location is within one mile of two plenary retail consumption licenses and within two miles of two additional retail liquor licensees. The proposed site is presently operated by Forsgate Farms, Inc., as a retail outlet for its dairy products with an adequate, paved parking area. However, the dairy outlet will terminate if this transfer application is successful.

On cross examination, he indicated that applicant intends to conduct a business in the retail sale of beer and soft drinks, "Our primary business hopefully would be pick-ups from our premises."

George Farley, holder of a plenary retail consumption license in Hillsborough Township, representing the ten plenary retail consumption licensees and the one plenary retail distribution licensee existing in the Township testified that the main objection of the present plenary retail licensees is that there are already sufficient retail distributors in the area. Further, the existence of this retail outlet of Kern's would add undue and unwarranted competition into an area already adequately served. He added that while no other distribution licenses were located in the Township, eight wholesale distribution licenses presently service the community (although none of these serve the retail consumer).

He further testified that he has been active in the retail liquor business in the Township since 1956 and his father was so engaged many years prior. He estimated, from his knowledge of the community and his experience in business therein, that the present population of the Township is approximately 10,000.

Division records disclose that the population of Hillsborough Township by 1970 Federal census figure is 11,061. The records further disclose the presence of ten plenary retail consumption licenses and one plenary retail distribution license presently active in the Township.

The objectors argue, with merit, that no new plenary retail consumption license may be issued until the population of the Township increases five-fold. Nonetheless the applicant herein may circumvent this statutory prohibition although admittedly limited by the rather stringent limitations imposed upon the sale to retailers by R.S. 33:1-11(2c) which provides that such licensees may sell and deliver unchilled malt alcoholic beverages in quantities of not less than 144 fluid ounces both to licensed retailers and consumers, with sales for consumption on the licensed premises expressly prohibited.

While the policy of this Division has been well established to the effect that the privileges of a State Beverage Distributor's license is State-wide and that the question of public necessity and convenience cannot be determined on the narrow basis of the single municipality in which the prospective licensee would have his principal warehouse (Re Nicholson's, Bulletin 1650, Item 5), this policy has generally applied in situations wherein the applicant is restricted to the extent that he may make no sales to consumers on the licensed premises. See Nicholson's, supra, wherein such condition was expressly imposed by the Division. See also Re Watchung Spring Water Co., Inc., Bulletin 1581, Item 6; Re Mustardo, Bulletin 1654, Item 5; Re Mustardo, Bulletin 1810, Item 6; Re Bayside Beer & Soda Distributors, Inc., Bulletin 1874, Item 2; Re Gillhaus, Bulletin 1975, Item 5.

In Gillhaus, supra, the Director held that the objection to the transfer by the local plenary retail licensees with respect to increased competition was substantially diluted by the special condition imposed on that license that the applicant shall make no sales at retail on its premises.

In re Nectar, Bulletin 36, Item 5, the then-Commissioner Burnett took the position that the avowed purpose of the Act (Ch. 177, P.L. 1934, creating the State Beverage Distributor's licenses) was to restore the beer distributor the status he occupied before prohibition. Later the State Beverage Distributor's license was described as a hybrid-type license and permitted holders thereof to sell not only to licensed retailers but also to sell unchilled malt beverages in quantities not less than 144 fluid ounces at retail "to be delivered by such licensee to the person for consumption at home - the so-called beer route." Re Schwartz, Bulletin 337, Item 2.

In an interpretation of this type of license by the then-Commissioner Driscoll, a State Beverage Distributor's license is continually referred to in terms of "truck, truck load, movable warehouse" etc., Re Horuvitz, Bulletin 543, Item 3. In re Walkiewicz, Bulletin 1172, Item 5, then-Director Davis stated that "...the great percentage of the business of a State Beverage Distributor is home-to-home delivery on order rather than over the counter ... State Beverage Distributor licensees deliver throughout the State and, as a rule, do not conduct a retail business (over the counter) of any substance."

Thus, it may readily be seen that as a general proposition, the objection posed by local retailers that such a license in the community would cause undue competition loses considerable force since over the counter sales generally are an insignificant part of the business of the State Beverage Distributor licensee. The accepted function is generally, the home delivery of beer.

In the instant matter, however, the proposed use of the license is that of retail sales on the premises, and the community is already abundantly supplied with outlets for the purpose (approximately one outlet for each one thousand residents); therefore, the objection that no need or necessity exists for what is contemplated as another retail outlet is well taken.

The testimony reveals that no State Beverage Distributor's license presently exists in the community. It is, therefore, reasonable to conclude that such a license, providing the services for which it was intended, would benefit the community.

The transfer of a license, whether State or municipal, to other premises, is not a privilege inherent in the license. Re Sunrise Market, Inc., Bulletin 1841, Item 7.

A transfer such as that sought herein may be expressly conditioned to preclude the sales to consumers on the licensed premises. Re Gillhaus, supra.

I, therefore, recommend that the pending application be granted subject to the further express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises. Re Gillhaus, supra.

#### Conclusions and Order

Exceptions to the Hearer's report were filed by the applicant herein. No answer to said exceptions was filed by the objector herein.

I have fully analyzed and considered the exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

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

Accordingly, it is, on this 22nd day of July 1971,

ORDERED that the application for transfer of State Beverage Distributor's License SBD-13 by E. L. Kerns Co. from premises 302-304 North Broad Street, Trenton, to premises W/S Route 206, 1/2 Mile North of Intersection Amwell Road and Route 206, Hillsborough Township, be and the same is hereby granted subject to the express condition that no deliveries of alcoholic beverages to consumers be made on the licensed premises and that the applicant notify the Director forthwith, in writing, of its intention to comply with said condition.

Richard C. McDonough  
Director

8. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION No. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

LUIGI MENDITTO  
t/a Lou's Tap Room  
816 Cookman Avenue  
Asbury Park, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-59 issued by the City Council of the City of Asbury Park.

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Thomas F. Shebell, Esq., Attorney for Licensee.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, May 16, 1971 he sold a pint bottle of gin for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Morning Glory, Inc., Bulletin 1969, Item 6. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$510. in lieu of suspension.

Accordingly, it is, on this 22nd day of July 1971,

ORDERED that the payment of a \$510. fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough  
Director

9. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY  
Labeled - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA -  
APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED -  
PENALTY DEFERRED BECAUSE OF SURRENDER OF LICENSE BY LICENSEE.

In the Matter of Disciplinary )  
Proceedings against )

Gertrude Markowitz )  
t/a Mindy's )  
340 Federal Street )  
Camden, N. J. )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption )  
License C-105 issued by the Municipal )  
Board of Alcoholic Beverage Control )  
of the City of Camden. )

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Markowitz and Zindler, Esqs., by Joseph Markowitz, Esq.,  
Attorneys for the Licensee.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on  
February 2, 1971 she possessed alcoholic beverages in two bottles  
bearing labels which did not truly describe their contents, in  
violation of Rule 27 of State Regulation No. 20.

Licensee has a prior record of suspensions of license  
by the Director for 100 days effective November 1960 for conducting  
premises as a nuisance in violation of local regulations (Re Markowitz,  
Bulletin 1371, Item 5) and for 215 days effective October 16, 1963  
also for conducting business as a nuisance (Re Markowitz, Bulletin 1538,  
Item 1). The prior record of suspensions for dissimilar violations  
occurring more than five years ago disregarded, the license would  
normally be suspended for fifteen days (Re Piez, Bulletin 1975,  
Item 6) with remission of five days for the plea entered leaving a  
net suspension of ten days. However, the licensee has made application  
for the imposition of a fine in lieu of suspension in accordance  
with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question,  
I have determined to accept an offer in compromise by the licensee  
to pay a fine of \$400. in lieu of suspension. However, subsequent  
to my determination to accept the said offer in compromise by the  
licensee to pay a fine in lieu of suspension, the attorney for the  
licensee notified me by letter dated July 14, 1971 that the said  
licensee has now surrendered the license to the Municipal Board of  
Alcoholic Beverage Control of the City of Camden and has gone out  
of business. Under the circumstances, the penalty imposed herein  
will be deferred until the said licensee acquires a new license.

Accordingly, it is on this 21st day of July 1971,

ORDERED that the suspension of ten days or payment by  
the licensee of a fine of \$400. be and the same is hereby deferred  
and shall be reimposed if and when the said licensee acquires a  
new license.

Richard C. McDonough  
Director

10. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE  
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE  
IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

JOHN VICTOR KLIMAS  
t/a Tavern Rest Hotel  
Highway 46  
Independence Township  
R.D. 2, Hackettstown, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-7 issued by the Township Committee of Independence Township.

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Stover & Stover, Esqs. by Edward E. Stover, Esq., Attorneys for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 15, 1971 he permitted the sale of alcoholic beverages to two minors, ages 18 and 20, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension of license by the Director for twenty-five days effective November 24, 1947 for having bottles of alcoholic beverages on the premises that did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20. The prior record of suspension for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for fifteen days with remission of five days for the plea entered leaving a net suspension of ten days. Re G. & J. Lounge, Inc., Bulletin 1960, Item 8. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400. in lieu of suspension.

Accordingly, it is, on this 22nd day of July 1971,

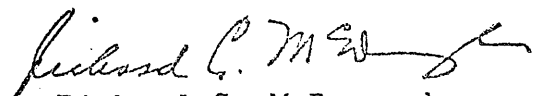
ORDERED that the payment of a \$400. fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.

Richard C. McDonough  
Director

11. STATE LICENSES - NEW APPLICATION FILED.

Montesino, Carbonell & Co., Inc.  
24 Commerce Street  
Newark, N. J.

Application filed September 13, 1971 for limited  
wholesale license.

  
Richard C. McDonough  
Director