

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

BULLETIN 1860

June 10, 1969

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1. APPELLATE DECISIONS - EMPIRE LIQUOR CO. v. NEWARK.

Empire Liquor Co., t/a )  
Franklin Liquor, )  
Appellant, )  
v. ) On Appeal  
Municipal Board of Alcoholic ) SUPPLEMENTAL CONCLUSIONS  
Beverage Control of the City ) AND ORDER  
of Newark, )  
Respondent. )  
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Robert C. Gruhin, Esq., and Hart, Mandis, Rathe & Woodcock, Esqs.,  
by Joseph C. Woodcock, Jr., Esq., Attorneys for Appellant  
Philip E. Gordon, Esq., by Charles J. Farley, Esq., Attorney  
for Respondent

BY THE DIRECTOR:

On February 20, 1969, I entered Conclusions and Order herein adopting the Hearer's report (as to which no exceptions had been filed) and suspended appellant's license for premises 353 Park Avenue and 162 No. 11th Street for twenty days effective February 27, 1969, for sale to a minor. Empire Liquor Co. v. Newark, Bulletin 1847, Item 2.

On February 26, 1969, I entered an order herein vacating the previous order to permit exceptions to the Hearer's report to be filed. Empire Liquor Co. v. Newark, Bulletin 1847, Item 3.

Exceptions now having been filed, I have carefully considered them and find them to be without merit. Hence I shall reaffirm my previous determination and reimpose the suspension.

Accordingly, it is, on this 9th day of April, 1969,

ORDERED that Plenary Retail Distribution License D-102 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Empire Liquor Co., t/a Franklin Liquor, for premises 353 Park Avenue and 162 No. 11th Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Wednesday, April 16, 1969, and terminating at 2:00 a.m. Tuesday, May 6, 1969.

JOSEPH M. KEEGAN  
DIRECTOR

2. APPELLATE DECISIONS - MILLIE & PAUL'S CORPORATION v. HAMPTON and J & A LIQUORS, INC.

Millie & Paul's Corporation, )  
 Appellant, )  
 v. ) On Appeal  
 Township Committee of the ) CONCLUSIONS  
 Township of Hampton, and J & A ) AND ORDER  
 Liquors, Inc., t/a J & A )  
 Liquors, Inc., )  
 Respondents.

-----  
 Edward E. Mishell, Esq., Attorney for Appellant  
 Trapasso, Delan & Hollander, Esqs., by Sanford Lloyd  
 Hollander, Esq., Attorneys for Respondent Township  
 Walter I. Hill, Esq., Attorney for Respondent J & A  
 Liquors, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On December 30, 1968, the Township Committee of the Township of Hampton (hereinafter Committee) granted applications for a person-to-person and place-to-place transfer of a plenary retail distribution license from Adrian Smith and Sandra Smith to J & A Liquors Inc. and from the Country Store at Paulinskill Lake to the Big N Shopping Plaza on Route 206 in Hampton Township.

The granting resolution sets forth in detail the reasons upon which the Committee grounded its action as follows:

- "1. The Big N Shopping Plaza is not only the major shopping area in Hampton Township but is the only shopping center in Hampton Township and therefore the public convenience will be served by having an alcoholic beverage distribution license located there.
- "2. There is a public need for an alcoholic beverage distribution license in the Big N. Shopping Plaza because packaged alcoholic beverages are presently not available in the immediate vicinity of this commercial area of Hampton Township except in restaurants and cocktail lounges which are not set up or make convenient the sale of packaged alcoholic beverages to all members of the public.
- "3. The location of the only alcoholic beverage distribution license in Hampton Township at the Big N. will be compatible with the other businesses presently operating at the Big N and will be compatible with the concept of a family

shopping center where women and children make up a substantial portion of the customers.

- "4. The location of the only alcoholic beverage distribution license in Hampton Township will serve the needs of our growing community in the Township's expanding commercial area and will be convenient to more of our residents and will attract more business to our commercial area and will be of greater benefit to the entire Township at the Big N than at it's present location."

Appellant challenges the action of the Committee in this appeal and asserts in its petition of appeal that the grant of the application was erroneous for reasons which may be briefly summarized as follows: (1) only three of the five members of the Committee were present and voted for the said action, (2) Mayor John Lepes and Committeeman Walter Yetter were interested indirectly in the transferee corporation and, therefore, the hearing should have been held initially before the State Director, (3) there is no need for the said transfer because the area is adequately served, and (4) the Committee "demonstrated its bias against Appellant and for Adrian Smith and Sandra Smith."

The Committee and J & A Liquors Inc. filed separate answers admitting the jurisdictional facts set forth in the petition and denying its substantive allegations. They incorporate in their answers the reasons set forth in the resolution and defend that the Committee acted in the proper exercise of its discretion after a full hearing on the merits of the said application. They specifically deny any disqualifying relationship within the meaning of State Regulation No. 4 or that the Committee entertained any bias against the appellant.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present testimony under oath and cross-examine witnesses.

(Preliminary to a discussion of the allegations raised in the petition of appeal, it should be noted that the appellant (a plenary retail consumption licensee) had heretofore made an application for a transfer of its license from U.S. Highway Route 206 to premises to be constructed at the Big N Shopping Plaza located within three hundred feet south of appellant's premises. Appellant's premises, incidentally, were destroyed by fire in 1961 and it has obtained a renewal of its license every year since that time. Its application for a transfer was denied by the Committee and, upon appeal to the Director of this Division, the said action was affirmed by order dated September 5, 1967. Millie & Paul's Corporation v. Hampton, Bulletin 1758, Item 1. The Director determined that the Committee acted reasonably and not arbitrarily in concluding that the operation of a tavern in a shopping center would not serve the public interest. The Director further found that the economic hardship of the appellant was not sufficient to overcome the primary consideration of the general welfare of the community; that the Committee is the proper representative of the residents of the community and is best equipped to pass initially on the application, and that there was no proof of any improper motivation on the part of the Committee in its determination and action. The Director's order was affirmed

on appeal to the Appellate Division, Millie & Paul's Corporation v. Hampton and Div. of Alcoholic Beverage Control (App. Div. 1968), not officially reported, recorded in Bulletin 1821, Item 1.)

I shall now examine the allegations in the petition of appeal which I consider relevant in the light of the proofs presented herein.

### I

Certain threshold issues raised in the petition of appeal which relate to the proceedings before the Committee will first be considered for resolution. The appellant contends that, although the Committee consists of five members, only three members were present at the hearing and voted upon the resolution and approval on December 30, 1968. Since three members constitute a quorum and voted unanimously for the said resolution, this contention is palpably without merit. Tp. Committee of Freehold Tp. v. Gelber, 26 N.J. Super. 388, 392 (App. Div. 1953); cf. Pyatt v. Dunellen, 9 N.J. 548, 557, 558 (1952); 39 A.L.R. 1476.

Mayor Lepes and Committeeman Yetter abstained in these proceedings and, indeed, were not even present at the hearing on December 9, 1968. Appellant contends that these two individuals were in fact disqualified from participating and their very membership on the Committee tainted the Committee's action because of alleged family relationships. The answer of the Committee sets forth the exact relationships which, by stipulation of counsel for the appellant, are as follows: the sister of the wife of Mayor John Lepes is married to one Thomas Roselli. Thomas Roselli is the brother of the wife of Thomas Jerome (one of the principals of J & A Liquors Inc.). Thomas Jerome's wife has no interest, pecuniary or otherwise, in J & A Liquors Inc. All of the shares of J & A Liquors Inc. are owned by Thomas Jerome, Jean Aceto and Anna Jean Hill. Committeeman Walter Yetter is a second cousin to Sandra Smith (one of the transferors).

The general principle of law respecting disqualifying interest has been set forth in Hudson-Bergen County Retail Liquor Stores Association v. Cliffside Park and Najarian, Bulletin 1767, Item 1. There the Director reiterated the principle that a quasi-judicial action of a municipal body is rendered voidable by the voting participation of a member thereof who is at the time subject to a direct or indirect private interest which is at variance with the impartial performance of his public duty. Aldom v. Borough of Roseland, 42 N.J. Super. 495. See also McNamara v. Saddle River, 64 N.J. Super. 426 (App. Div. 1960). Quaere: Are the interests of Mayor Lepes and Committeeman Yetter such that their mere membership on the Committee, without participation in the matter sub judice, taints the Committee's action? I find the answer to be in the negative.

I have examined the cases involving direct or indirect family relationships and find that none of those cases involves such distant relationships as those reflected herein. Thus, for example, in Tp. Committee of Freehold Tp. v. Gelber, supra, the court held that a member of the Township should

have disqualified himself where an application was made by the brother of a member of the Township Committee. The court there held that the action on the part of that member of the issuing authority infected the action of the whole body and rendered it voidable. Cf. Kuberski v. Haussermann, 113 N.J.L. 162, 169 (Sup. Ct. 1934); Pyatt v. Dunellen, supra.

The facts in the case sub judice indicate that the family relationship of the two officials is so remote as to be disqualifying. As the court stated in Van Itallie v. Franklin Lakes, 28 N.J. 258 (1958):

"Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials...."

I conclude that, under the facts and circumstances of this case, the family relationships were too remote to be considered improperly to influence the committeemen's official judgment, even if they did in fact actively participate and vote in favor of the said resolution. However, and fully dispositive of this contention, both Mayor Lepes and Committeeman Yetter disqualified themselves, did not participate in the hearing on the said application, did not take any part in its deliberation nor did they vote thereon.

The committeemen who did participate vigorously asserted at this plenary de novo hearing that they did not discuss this matter with these two committeemen, nor did Mayor Lepes or Committeeman Yetter attempt in any way to influence the members of the Committee directly or indirectly in their ultimate determination. Therefore this contention must be rejected.

## II

The appellant further contends that, by granting these applications, the Committee manifested bias against the appellant. I find the contrary to be the case. The record shows that, although appellant's premises were destroyed by fire and it has not actually operated under its license since 1961, such license has been renewed each year since then. These renewals have been granted upon the special condition that the appellant reconstruct and rebuild its present premises. Appellant has failed to comply with this special condition. Notwithstanding that, the Committee has tried to deal even-handedly with the appellant and has assisted the appellant in keeping its license alive during this long period of time. Furthermore, it should be noted that the appellant was the only objector to the applications for transfer. The appellant seems to feel that, because it was not granted the right to

have its license transferred to the Big N Shopping Plaza, that manifested bias against it and in favor of the respondent J & A Liquors Inc. Paul N. Schuckhaus (president of the corporate appellant) asserted that Adrian Smith "plays golf with some of the township committeemen. His father-in-law knows all of the committeemen personally. He owns part of the golf course. He was born and raised in those parts, and so were most of the town committeemen." He thus reasons that the Committee was biased in favor of Smith and against the appellant. However, on cross examination he admitted that he did not know, of his own knowledge, whether Smith ever actually played golf with any of the committeemen, but that "that's what I was told." Further, "I mean they knew each other better than I knew them."

I conclude that, on the basis of all of the facts in the record, there is no convincing evidence that the Committee was biased against the appellant. On the contrary, the evidence reflects conscientious and impartial consideration and action by the Committee.

### III

We now come to consideration of the merits of the applications. Several witnesses for the appellant testified in substance that there is no need for the transfer of this license to the Big N Shopping Plaza. It was admitted by these witnesses that this license is the only plenary retail distribution license in this community. However, they contend that there are at least three plenary retail consumption licenses within a reasonable distance from the shopping center which are authorized to sell package goods and where persons may purchase the same. Thus they point out that the Newtonian, the Hampton House and the Red Top are three facilities which dispense package goods.

Edward H. Lester testified that the Newtonian is basically a restaurant and cocktail lounge. The Hampton House (a plenary retail consumption licensee) also has the privilege of selling package goods, and the Red Top is a tavern and bar which also serves sandwiches and has the privilege of selling package goods.

Witnesses for the appellant agree that the Big N Shopping Plaza is the main, and really the only, shopping center in this municipality; that it consists of a supermarket and satellite stores. They also agree that this shopping center has attracted other businesses and has become the major hub of activity in this community. Finally, appellant's witnesses seem to feel that a consumption licensee or saloon-type operation which sells package goods could serve the needs of the residents as well as a distribution licensee. The committeemen who participated in the consideration of this application disagreed with this point of view.

Committeeman John M. Couse gave the following account: If residents of the Township want to shop in the Township, "about the only place where most of them go is in the Big N Plaza." There is presently no package liquor store located there, and the only other places that a person can shop for liquor would be in bars and restaurants. He is opposed to a bar-type operation in a shopping center. "I have seen characters coming out of barrooms, and it doesn't matter how

they are run, but there is a big parking area there without sidewalks, and there are women and children walking across there all the time, and if someone comes out of there just not -- well, not feeling too well, there could be trouble. And another thing. I don't think everybody likes going into a barroom. There are just some people that don't want to go and get package goods in a barroom to take out."

Committeeman Lewis M. Hymers at the outset firmly denied that either he or any member of the Committee gave any special treatment to either Adrian Smith and Sandra Smith or J & A Liquors Inc., but considered the application on its merits. He agreed with the reasons expressed in the adoptive resolution and by Committeeman Couse for granting the said applications. He added that, as the situation existed, persons who wanted to purchase alcoholic beverages would have to cross Highway 206 (a very busy highway) and patronize bars. He also felt that the transfer to this Township's only shopping center would help to draw new business to the Township.

Committeeman Anthony Lorenzo agreed with the reasons expressed by the prior witnesses on behalf of the Committee and also with the statement of reasons embodied in the resolution. He added that, in the opinion of the Committee, it was not in the interest of this Township to have a bar in the shopping center because of the safety hazards; these constituted, in part, the motivation of the Committee in voting against the transfer of the appellant's license. He added the following: "The Big N is one of our largest shopping centers in Hampton Township. It's the only shopping center in Hampton Township, and I think I have been there nights and I have been there in the daytime, and I think seventy-five per cent. of the people in Hampton Township shop in the Big N Plaza at one time or another, and it's the only shopping center, and I think it is the place for a package store in there to create business, and it is the best place for the people of the township to be served." He added emphatically that many people do not want to patronize bars or taverns for the purpose of purchasing package goods.

Frank Aceto (a real estate consultant with an impressive background of experience as an appraiser and real estate broker) testified that he made a feasibility study of these premises, in the course of which he had occasion to discuss the proposed transfer with hundreds of residents of this Township. He found that there was virtually unanimous concensus in favor of the transfer of a package goods store, and strong opposition to the transfer of a bar to these premises. It was his conclusion, on the basis of his findings, that the said transfer would better serve the needs of the entire community.

Adrian S. Smith testified that he and his wife obtained signatures of hundreds of residents on a petition supporting the application for a place-to-place transfer to the Big N Shopping Plaza.

In considering the instant appeal it is well to restate the applicable principles pertinent hereto. The burden of establishing that the action of the local issuing authority was erroneous and should be reversed rests with the objector. Rule 6 of State Regulation No. 15. To be successful the appellant herein must show that the Committee abused its discretion in approving said applications. No one has a right to

the transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license should be transferred to a particular area rests within the sound discretion of the local issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. Township of North Bergen and Najarian, Bulletin 997; Item 2. Each municipal authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse. Passarella v. Board of Commissioners of Atlantic City et als., 1 N.J. Super. 313. And such action, based upon such discretion, will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484. As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414:

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

Further, in evaluating the action of the Committee herein, it might be well to state the view as expressed in Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco, 59 N.J. Super. 306, 322, wherein the following general principle was stated:

"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.... 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)."

The Director's function on appeals of this kind 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; Central Jersey Package Stores Association et als. v. Pohatcong and Falk's etc., Bulletin 1768, Item 2.

The action of the local issuing authority will not be reversed by the Director unless there was evidence that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502, 511.

My examination and assessment of the totality of the record herein persuade me that the Committee acted circum-spectly and reasonably in its determination that there was a need and convenience to be served by the transfer of this license to this particular section of the municipality. It determined that this applicant met the requirements for such transfer.

I am also mindful of the fact that a substantial number of signatures to a petition were obtained by the Smiths favoring such transfer. Petitions are always influential and persuasive. However, I bear in mind that the mere counting of noses cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must, in large measure, depend upon what the petition states, who signs it and how it accords with the policy and common sense of the officials responsible for the administration of law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

One further reflection: It appears to me that the appellant has taken a rather inconsistent position which reflects an insouciant contradiction with respect to the need and convenience to be served by such transfer. First it asserts that there is no need for the transfer of this license to the shopping plaza since the area is already adequately served. On the other hand, it maintains that the shopping center has attracted other businesses, is the hub of the township, and that, if its license were transferred to that plaza, it would serve a convenience. Further, because of the growth of that area, the appellant intends in the near future to rebuild and construct its present premises, presumably to meet the increased needs of the residents.

The reasons stated by the Committee in its adoptive resolution appear to be a logical and realistic approach to the circumstances which generated its ultimate determination.

It should be stated in conclusion that, in matters of this kind involving transfers of licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the public interest. Lubliner v. Paterson, 33 N.J. 428 (1960). As indicated earlier hereinabove, the Director, in these matters, is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Association v. Hoboken, *supra*; cf. Fanwood v. Rocco, *supra*; Cunningham and Drew v. Vernon and Great Gorge, Bulletin 1737, Item 2.

The Committee has in my opinion understood its full responsibility and acted with a reasonable exercise of its discretion in said action.

I have considered the other matters raised in the petition of appeal and find them lacking in merit.

After reviewing the evidence and argument of counsel in summation, I conclude that the appellant has failed to sustain the burden of establishing that the action of the Committee was arbitrary, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that the action of the Committee be affirmed and that the appeal be dismissed.

#### 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, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 17th day of April 1969,

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

JOSEPH M. KEEGAN  
DIRECTOR

3. APPELLATE DECISIONS - STROMME v. RANDOLPH.

Lucille B. Stromme, t/a Randolph	)	
Plaza Liquors,	)	
	)	
Appellant,	)	
	)	
v.	)	On Appeal
	)	
Township Committee of the	)	CONCLUSIONS
Township of Randolph,	)	AND ORDER
	)	
Respondent.	)	

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George Korpita, Jr., Esq., Attorney for Appellant  
 Harry L. Sears, Esq., Attorney for Respondent  
 Maraziti & Maraziti, Esqs., by Joseph J. Maraziti, Esq.,  
 Attorneys for Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal is addressed to the action of respondent Township Committee of the Township of Randolph (hereinafter Committee) which on December 5, 1968 denied appellant's application for person-to-person and place-to-place transfer of a plenary retail consumption license from Hazel Lapadula to appellant and from premises 505 Route #10 to premises to be constructed on Center Grove Road, Randolph Township. The following reasons were stated by the Committee for its determination:

- "1. Petitions containing between 400-600 signatures objecting to the transfer, to the proposed location.
- "2. Proximity to the Fernbrook School, and Buxton's restaurant and ice cream parlor.
- "3. Creating a traffic hazard.
- "4. Health, welfare and safety hazard.
- "5. Objections by the Clergy.
- "6. The license is a Consumption license, therefore, it is a tavern type of license.
- "7. Lowering of property values in the area, if this is permitted."

In her petition of appeal appellant alleges that the action of the Committee was erroneous because (a) it violated the letter and spirit of the applicable law, (b) it was arbitrary, capricious and unreasonable, (c) public need and necessity are not adequately served by the existing outlets, and (d) the Committee abused its discretion in denying the said application.

The Committee in its answer defends that its action was

"within its power, authority and discretion under the laws of New Jersey in denying said transfer because same would not be in the public interest nor would it serve the public convenience and necessity." It adds that the proposed site is adjacent to an "ice-cream parlor" where children congregate and would therefore be "adverse to the public interest."

An answer was also filed on behalf of an objector, Edward Saniewski, substantially to the same effect.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for the parties herein to present evidence and cross-examine witnesses.

The factual and legal complex developed at the hearing raises a crucial jurisdictional issue which is fully dispositive of the appeal herein and renders moot consideration of the matters raised in the pleadings.

It appears from the record that, subsequent to the determination by the Committee to deny the application, the local ordinance was amended and the said Ordinance #25-68 became effective on December 30, 1968. In its pertinent part the amendment sets forth the following:

"e. No new license nor transfer of existing license under this ordinance shall be issued for the sale of alcoholic beverages within six hundred (600) feet of any church or school nor within fifteen hundred (1500) feet of any licensed premises for the sale of alcoholic beverages nor in any residential zone nor on a state highway within two thousand five hundred (2500) feet of any licensed premises for the sale of alcoholic beverages within this township or any other municipality."

The indisputable evidence established that the proposed site where appellant seeks to transfer the license is approximately "four to five hundred feet" from the Brown Jug (a plenary retail consumption license) and is approximately eleven hundred feet from Senatore's restaurant (also a plenary retail consumption licensee).

In her petition of appeal appellant argues that the determination violated the letter and spirit of the pertinent applicable law. However, the Director, on appeal, must be guided by the law as it exists at the time of the hearing on appeal and is bound by the letter of the law. The law in this State has been well established by a long line of adjudicated cases to the effect that the status of the municipal ordinance at the time of the court's decision, and not at the time of the filing of the application, controls. Thus Ordinance No. 25-68 above quoted, which is now in effect (as of the date of the hearing on appeal), is binding and determinative in this action. Parkway Exit #25 Motel, Inc. v. Upper Township, Bulletin 1816, Item 1; Roselle v. Wright, 37 N.J. Super. 507 (1955); Hohl v. Readington Tp., 37 N.J. 271 (1962); Bellings v. Denville Tp., 96 N.J. Super. 351 (1967); DeVries v. Passaic et als., Bulletin 1457, Item 4; Aiello v. West Milford et al., Bulletin 1741, Item 2.

As the court said in Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N.J.L. 112 (Sup. Ct. 1947), at pp. 117-118:

"Moreover, in my opinion, there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision by the court that is controlling. Cf. Westinghouse Electric Cprp. v. United Electrical, &c., America (Court of Errors and Appeals, 1946), 139 N.J. Eq. 97, 105, 106; 49 Atl. Rep. (2d) 896.

"And just as a change in the law between a nisi prius and an appellate decision requires the appellate court to apply the changed law, so, by like token, a change of law pending an administrative hearing or act must be followed in relation, as here, to a permit for the doing of a future act. Otherwise, the administrative body, here the building inspector whose acts are subject to appeal to or review by this court, would issue a permit contrary to the existing legislation. Cf. Ziffrin v. United States, 318 U.S. 73, 78; 87 L. Ed. 621, 625."

In this connection there is a presumption that a municipality, in enacting or amending an ordinance, acted reasonably and that the resulting ordinance is a valid one. Ward v. Montgomery Tp., 28 N.J. 529, 539 (1959); Bellings v. Denville Tp., supra. There has been no evidence nor any suggestion that the Committee has been improperly motivated or influenced in amending the said ordinance. Thus we have the existing ordinance at the time of this hearing on appeal which effectively prohibits the Committee from transferring the subject license to the proposed site. Such transfer would clearly be in violation of the said ordinance and would consequently render that ordinance of no force and effect.

Obviously this Division does not have the authority to render an ordinance invalid or ineffective. If appellant desired to challenge the validity of the said ordinance, such action could only be properly maintained in a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306 (App. Div. 1962), reversed on other grounds 38 N.J. 484. Therefore, in the present status of the law there can be no lawful grant of appellant's application for transfer of the said license.

In addition to the above, my reading of the entire record persuades me that the Committee acted reasonably and circumspectly in denying appellant's application. The Committee reasonably felt that the operation of a bar in the shopping center on premises which would be located adjacent to "an ice-cream parlor where children congregate" would be adverse to the public interest. It also felt that the transfer would locate this license in close proximity to a school and would create a traffic hazard. Finally, it was influenced by between four and six hundred signers of petitions objecting to the said transfer and felt that the preponderant sentiment of the community was opposed to the location of a tavern in the shopping center.

Where the Committee has denied a transfer rather than granted it, it is sufficient to show that this was done in good faith, not with the intention of oppressing the individual applicant or merely because the Committee wanted it that way. "Convenience" to persons seeking to purchase liquor "is rarely, if ever, a valid basis upon which the Director may compel the municipality to grant the transfer." If the motive of the governing body is "pure", its reasons, whether based on morals, economics, or aesthetics, are immaterial. Fanwood v. Rocco, 59 N.J. Super. 306, 320, 323 (1960).

In view of the aforesaid, I conclude that appellant has failed to establish that the Committee's action was unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15. I therefore recommend that an order be entered affirming the said action and dismissing the appeal.

#### Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of April 1969,

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

JOSEPH M. KEEGAN  
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #319 )  
 In the Matter of a Petition to Lift )  
 the Automatic Suspension of Plenary )  
 Retail Consumption License C-6 )  
 Issued by the Mayor and Council of )  
 the Borough of East Rutherford to )  
 )  
 Frank Matriss )  
 t/a Raven Lounge )  
 354-356 Paterson Avenue )  
 East Rutherford, N. J. )

On Petition

O R D E R

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on March 11, 1969, the licensee-petitioner was fined \$150 and \$10 costs in the East Rutherford Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on January 13, 1969, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of the license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that in disciplinary proceedings conducted by the municipal issuing authority, the licensee was found guilty of a charge alleging the same sale to the minor and that sentence was suspended. It appearing that the disciplinary proceedings have been concluded, I shall lift the statutory automatic suspension. Cf. Re Briamonte & DeCiancia, Bulletin 1774, Item 4.

Accordingly, it is, on this 9th day of April, 1969,

ORDERED that the statutory automatic suspension of said license C-6 be and the same is hereby lifted, effective immediately.

JOSEPH M. KEEGAN  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Elmcrest Inn, Inc. )  
321 South Main Street )  
Manville, N. J., )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-20, issued by the Borough Council of the Borough of Manville. )  
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James F. McGovern, Jr., Esq., Attorney for Licensee  
Edward F. Ambrose, Esq., Appearing for Division of  
Alcoholic Beverage Control

BY THE DIRECTOR:

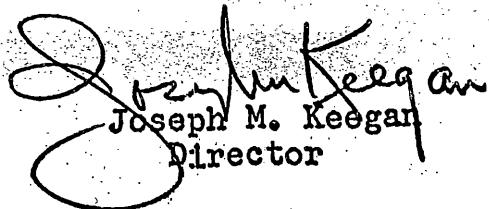
Licensee pleads non vult to a charge alleging that on January 23-24, 1969 it permitted lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that, on the dates alleged, two go-go girls performed in topless manner, without benefit of bra albeit accoutered in pasties and transparent over-blouse.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.  
Re Sunset Strip, Inc., Bulletin 1852, Item 6.

Accordingly, it is, on this 7th day of April, 1969,

ORDERED that Plenary Retail Consumption License C@20, issued by the Borough Council of the Borough of Manville to Elmcrest Inn, Inc., for premises 321 South Main Street, Manville, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, April 14, 1969, and terminating at 2 a.m. Friday, May 9, 1969.

  
Joseph M. Keegan  
Director