Deputy Director Saum

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

December 7, 1966

BULLETIN 1702

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ITEM

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BULLETIN 1702

1. APPELLATE DECISIONS - E.A.V. LIQUORS & BAR, INC. v. PATERSON.

E.A.V. LIQUORS & BAR, INC. Appellant,	)	
v.	)	ON APPEAL CONCLUSIONS AND ORDER
BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	)	

Goodman and Rothenberg, Esqs., by Sylvan G. Rothenberg, Esq. Attorneys for Appellant.
Adolph A. Romei, Esq., by Marino Tedeschi, Esq. Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant E.A.V. Liquors & Bar, Inc., holder of Plenary Retail Consumption License C-281 for premises 302 Market Street, Paterson, was found guilty by respondent of violation of Rule 1 of State Regulation No. 20 in that it sold and delivered alcoholic beverages at its licensed premises to a minor, age 19, and its license was suspended for a period of one hundred eighty days effective May 15, 1966.

It filed this appeal challenging the said conviction, and an order was entered on May 6, 1966 staying respondent's order of suspension until further order of the Director.

In its petition of appeal appellant alleged that respondent's action was erroneous for reasons which may be summarized as follows:

(1) Although respondent Board was advised that the attorney for the appellant was engaged elsewhere and would be delayed, respondent nevertheless proceeded to hear this matter at the appointed hour in the absence of counsel;

(2) Although the appellant's attorney appeared at the hearing before the completion of the testimony, he was not advised of the fact that the "proceedings that were transpiring involved the instant Appellant;"

(3) Since no one on behalf of appellant was present, the appellant was thus "denied an opportunity to cross-examine the witnesses or be heard on his own defense;"

(4) Appellant was denied due process;

(5) The verdict was against the weight of the evidence;

(6) The penalty was excessive.

In its answer the respondent admitted the jurisdictional facts and specifically denied that:

(1) Respondent was advised that the appellant's attorney would be "slightly delayed" in his appearance that evening;

(2) Respondent was aware that appellant's attorney Mr. Goodman, would be "slightly delayed in his appearance that evening and in fact, Sylvan Rothenberg was listed as attorney for appellant;"

(3) The appellant "was denied an opportunity to cross-examine the witnesses or be heard on his own defense;"

(4) The findings were against the weight of the evidence or that the penalty was excessive.

As part of its answer respondent filed four separate defenses, which may be briefly summarized as follows:

(1) The action of the respondent Board was not arbitrary or capricious and was taken after witnesses were heard;

(2) No appearance was made on behalf of the appellant although proper notice was served, and a letter was received by respondent from Mr. Sylvan Rothenberg who "was listed as attorney for appellant", entering a "not guilty" plea to the charges;

(3) Respondent decided the case after an impartial hearing upon the evidence;

(4) The penalty was not excessive under the circumstances in the case.

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

The stenographic transcript of the hearing below was submitted pursuant to Rule 8 of State Regulation No. 15, and was supplemented at this hearing by testimony of witnesses produced on behalf of both the appellant and the respondent Board.

Before considering and analyzing testimony with respect to the substantive charge against the appellant it might be well to dispose of certain matters with respect to the proceedings below which were raised in the petition of appeal. The appellant alleges that, although the matter was tried at the time and place set forth in the notice of charges received by it, appellant was prejudiced by the fact that the respondent Board refused to delay the proceedings until the arrival of appellant's attorney. Appellant further alleges that its attorney, Mr. Robert Goodman, is usually engaged in Union matters in Newark on Wednesday evenings and had so advised the members of the respondent Board on several occasions prior to the date of this hearing of that fact.

Notwithstanding, however, the respondent proceeded to hear this matter at the appointed hour of 8 p.m. in the absence of the appellant or its attorney. Thus the appellant argues it was denied due process because it did not receive a fair opportunity to present witnesses and enter its defense thereto.

While these matters are set forth in the petition of appeal, there has been no testimonial proof offered at this de novo hearing in support of these allegations. Neither witnesses for the appellant not its counsel testified with respect thereto or to any matters relating to such alleged deficiencies in the proceedings before the respondent Board. I am thus limited to the facts as reflected in the transcript which was introduced in evidence.

It is quite evident from the transcript of the proceedings that none of the appellant's witnesses was present at the time stated in the notice of hearing, which said notice admittedly was received by the appellant and by its attorney. Surely it cannot be argued, nor was it contended, that appellant's witnesses were engaged in other matters. It was incumbent upon appellant's witnesses to be present at the time and place set forth in the said notice, and to have advised the respondent of their presence and availability, as well as of its attorney's prior engagement.

Nor does appellant's attorney assert that he notified the respondent Board that he would be delayed and, accordingly, requested that respondent delay the trial of this matter until his arrival. He merely states that on "several occasions prior to the hearing date in question" the members of the respondent Board had been advised that he was engaged in Union matters in another city and would be delayed in his appearance. There is nothing in the record to show that the members of respondent Board either knew or had been advised at any time of the prior commitments of appellant's attorney. It would have been a very simple matter for the attorney to have notifed the respondent in writing of that fact and to have made a request for a delay until he arrived. It seems quite evident that respondent was unaware of that fact and in good faith proceeded with the taking of testimony.

It was further pointed out, according to the transcript, that the plea of "not guilty" to this charge was made in appellant's behalf by Mr. Sylvan Rothenberg, an attorney, and that respondent was not aware of the fact that Mr. Robert Goodman was in fact scheduled to represent the appellant in these proceedings. Therefore it cannot be reasonably maintained that respondent acted arbitrarily or capriciously when it called the matter at 8 p.m. (the time scheduled for such hearing) and, when no one appeared and answered on behalf of appellant, it proceeded to take testimony thereon.

In any event, as stated hereinabove, the appellant was not prejudiced because it now had a full opportunity at this de novo hearing to present witnesses on its behalf and cross-examine the witnesses for respondent.

In this connection it is important to observe that the minor, who allegedly made the purchase which formed the basis of the charge against appellant, was not produced at this de novo hearing. Counsel for appellant argues that the minor should have been produced at this hearing in order to afford the appellant an opportunity to fully explore the charge and enable it to cross-examine the said minor. The minor was apparently available since, on the date of the appeal hearing,he was incarcerated in the county

jail. Thus he was similarly available to the appellant's attorney who could have effected his presence at this hearing. In this connection it should be noted that Rule 8 of State Regulation No. 15 provides that where, as here, the respondent gives notice of intention to rely on the transcript below, the appellant may subpoena any of the witnesses below. Having failed to do so, it cannot now complain that he was prejudiced by the absence of the minor at this hearing.

The testimony reflected from the transcript below and at this hearing presents the following picture:

William ---,nineteen years of age on the date alleged, entered appellant's licensed premises on March 26, 1966, at 8:30 p.m., and purchased several pints of wine. These were sold to him by a clerk whom he identified as Gaetano A. Verduci and who he recognized as having sold him alcoholic beverages on several prior occasions. Although he was asked for identification on a prior occasion three months before the date charged herein, he was not asked for any identification on this occasion nor was he ever requested or required to make any written representation of his age.

Upon leaving the licensed premises with the wine, he entered a motor vehicle in which his three companions were waiting, and was driven from the said premises.

Detective Alexander Clark of the local Police Department, testifying both at the hearing before the respondent and at this hearing, gave the following account: On March 26, 1966, at approximately 8:30 p.m., he observed this minor enter the licensed premises empty-handed and, shortly thereafter, the minor emerged therefrom with a brown paper bag in his arms. The minor entered a motor vehicle in which three other youths were present and the officer, whose suspicions were aroused because he believed this youth (the purchaser) to be a minor, followed the car. He noted that two of the youths were drinking from two bottles of wine, and it was his observation that the youths in the car were under twenty-one years of age. When the car stopped for a red light this officer emerged from his car, went over to the said vehicle and identified himself. Upon questioning, he ascertained that several of its occupants, including William, were under twenty-one years of age, and William admitted that he had purchased the wine from appellant. The occupants of the car were then taken to police headquarters and questioned, after which this witness proceeded to the licensed premises and spoke to Verduci, the president of the corporate appellant. Verduci thereupon admitted that he sold the wine to this minor; that he remembered him because he had made a purchase several months prior thereto while in a navy uniform,and at that time had shown "proper identification, armed forces identification card." Verduci was then taken to police headquarters where he was further identified by the minor as the person who sold him wine on the date alleged. At the time of confrontation the minor stated that he was born July 26, 1946, in the City of Paterson, and he further identified the wine that he purchased on the date set forth in the charge. The minor also stated that he was not asked for proof of age on this occasion and that he made purchases three or four times prior thereto. On cross examination the officer admitted that he did not see the contents of the brown bag which the minor carried from the licensed premises, although it was his conviction that "he had purchased alcoholic beverages" and that he was in fact a minor. He also stated that he knew that the bottles contained wine on the basis of the labels on the bottles.

Joseph Generoso, called as a witness on behalf of respondent, testified that he was one of the occupants of the motor

vehicle in which William was riding. The occupants decided that they wanted to have some wine so he gave William fifty cents and told him to purchase some wine. He saw William enter the licensed premises and the minor then emerged from the premises with a brown bag. When William entered the car he noted that the brown bag contained two bottles of wine. William gave one bottle to the occupants in the rear of the car, and he drank from one of them. This witness then drove the car from the premises until he was stopped by a police officer. The officer questioned them and, upon ascertaining the facts as hereinabove noted, took them to police headquarters. On cross examination he insisted that he saw the minor enter the licensed premises without any package and that, when he returned from the liquor store, he had two bottles of wine with him. He also added that he did not drink any wine during this episode because he was the driver of the car.

On behalf of the appellant, Gaetano A. Verduci, corporate appellant's president and principal stockholder, testified that he saw the minor at police headquarters and thought that he remembered him being present at the licensed premises on March 26, 1966. He insisted, however, that the time of his arrival was 7:30 p.m., and not 8:30 p.m. He denied that he sold him any alcoholic beverages because the minor did not have any identification. On cross examination he admitted that this minor had visited these premises on prior occasions, but that he didn't sell him any wine. He was then asked:

"Q You never sold him liquor at any time?
A I don't remember. I don't think so.
* * * * *
Q You aren't sure whether you sold him liquor or not either?
A No.

Q. And so you could very possibly have sold him liquor?
A It is possible."

Interrogated about his conversation with the police officer, he denied admitting to the police officers that he had sold alcoholic beverages to this minor.

On rebuttal, Officer Clark was recalled and asked the following question:

"Q Did Mr. Verduci admit selling liquor to this boy?
A Yes, sir. In the store in the presence of Lieutenant Ignoffo and I he stated he remembered the youth because he came in in uniform but he had proper identification. He told us he doesn't see very well and he didn't know what the dates were."

During the course of the hearing the attorney for the appellant moved for a reversal of the conviction and a dismissal of the charge on the ground that the legal age of the minor was not adequately proved since it was established solely by his testimony. However, the rule in these proceedings is that testimony by the minor himself is legally sufficient to establish his age. State v. Huggins, 83 N.J.L. 43; State v. Koettgen, 89 N.J.L. 678; State v. Girone, 91 N.J.L. 498; Melstan Corporation v. Randolph, Bulletin 1496, Item 1.

Appellant further argues that, since no chemical analysis was made of the contents of the bottles of wine purchased by the said minor, it has not been established that the same were in fact alcoholic

Beverages. The answer to this is that the minor ordered and was sold a muscatel wine and that the police officer saw a label on the bottles which represented that the contents were in fact wine. He also added that he tasted and smelled the contents and was satisfied that the bottle contained wine. The rule is well established that, where a person is served a bottle of wine pursuant to an order therefor, a permissible inference may be drawn that the said alcoholic beverage has an alcoholic content of more than one-half of one per cent. by volume and hence constitutes an alcoholic beverage within the statutory definition. R.S. 33:1-1(b). It is further permissible to infer that a bottle which contains a label which represents that its contents are wine is in fact an alcoholic beverage. Cf. Rule v. Parsippany-Troy Hills, Bulletin 1226, Item 1; State v. Marks, 65 N.J.L. 84; Lewinsohn v. United States, 278 F. 421, 425, 426; Holmes v. Cavicchia, 29 N.J. Super, 434 (reprinted in Bulletin 1003, Item 1); R.S. 33:1-1.1. These arguments, therefore, are without merit and must be rejected.

The pivotal issue in this case has been clearly delineated, namely, whether this minor (whose statutory ineligibility to purchase alcoholic beverages has been clearly established) was sold alcoholic beverages in violation of the applicable statute and rules and regulations of this Division.

My evaluation of the testimony inclines to the conviction that the testimony of respondent's witnesses represents the true situation and stands in a better posture than that of the witness for the appellant. I have had an opportunity to observe appellant's witness as he testified before me and find that he was equivocal, uncertain and lacking in forthrightness. On the other hand, the testimony of the minor, his companion Generoso, and the police officer appears to be a true and factual account of what transpired on the date alleged in this charge. This Division is, as was indeed the respondent, bound by the imperative legislative provisions, and I find that there was herein an unmistakable statutory violation.

In R.S. 33:1-77 the statute contains the following proviso:

> "...that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Emphasis ours)

It is abundantly clear that at no time was this minor requested or required to make a written representation by the appellant's agent. Thus an essential element of a defense was lacking and fails to satisfy the regulatory requirements. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J.Super. 449 (App. Div. 1951); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

I am satisfied that the respondent has proved its case by a fair preponderance of the credible evidence, indeed by substantial evidence. The appellant has failed to meet the burden of establishing that the action of the respondent herein was erroneous. Rule 6 of State Regulation No. 15.

Appellant finally advocates that the penalty of one hundred eighty days suspension imposed herein was excessive under the circumstances. It asserts that such penalty is of "such nature as to impose termination of this man's activities or this corporation's activities." He points out that the City of Paterson on similar occasions in similar situations has imposed penalties which "nowhere nearly equal the number of days in this particular incident."

It should be observed that, in the nature of things, penalties can be identical only by accident. The statute contemplates individual treatment of offenses and offenders and, in the absence of arbitrary, discriminatory, oppressive or otherwise palpably unjust treatment, the courts will not interfere. DeFebb v. Davis, (App. Div. 1962), not officially reported, reprinted in Bulletin 1482, Item 1; In re Larsen, 17 N.J. Super. 564, 573, and cases cited therein.

In reviewing the prior adjudicated record of this licensee it appears that within the past five years its license was suspended by respondent on three prior occasions, and by the Director on one occasion (Re E.A.V. Liquors & Bar, Inc., Bulletin 1528, Item 8) for two similar and three dissimilar violations (File X-39,666). It seems evident that the respondent Board felt that this licensee displayed a flagrant disregard for the Alcoholic Beverage Law and the Rules and Regulations of this Division, and respondent may very well have properly revoked its license. R.S. 33:1-31. Such sentiment was in fact expressed by a member of respondent Board.

In Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra (at p. 382), the Court stated:

> "The Director is not inalterably bound by any doctrine of stare decisis in the imposition of penalties. The liquor control laws and regulations must be administered in the light of changing conditions. Prior measures of enforcement may have failed their mark. Recurrent instances of particular violations must be dealt with accordingly. The penalty imposed upon appellant may reflect an administrative attitude that more stringent enforcement is necessary...."

The power of the Director to reduce or modify a penalty imposed by a municipal issuing authority has always been and will be sparingly exercised, and only with the greatest caution. Chancery Lane, Inc. v. Trenton, Bulletin 1673, Item 1; Russo v. Lincoln Park, Bulletin 1177, Item 7. See also Benedetti v. Trenton, Bulletin 1040, Item 1. Cf. Nordco, Inc. v. State, 43 N.J. Super. 277. In any event, under the facts and circumstances herein, I do not find that the action of the respondent was unreasonable and manifested an abuse of discretion.

Accordingly it is recommended that an order be entered affirming respondent's action, dismissing the appeal and fixing the effective date of suspension which was stayed by the Director pending the entry of the order herein.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exception to the Hearer's report was filed by the attorney for appellant. In the said exception, appellant repeats the allegations set forth in its petition of appeal that respondent abused its discretion in the imposition of the penalty. The Hearer has fully considered and evaluated the said allegation and has found that respondent acted reasonably and did not manifest an abuse of discretion in the imposition of the said penalty.

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

Accordingly, it is, on this 5th day of October, 1966,

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

ORDERED that Plenary Retail Consumption License C-281, issued by the Board of Alcoholic Beverage Control for the City of Paterson to E.A.V. Liquors & Bar, Inc. for premises 302 Market Street, Paterson, be and the same is hereby suspended for one hundred eighty (180) days, commencing at 3:00 a.m. Wednesday, October 12, 1966, and terminating at 3:00 a.m. Monday, April 10, 1967.

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - SPRINGDALE PARK, INC. v. ANDOVER TOWNSHIP and VIEBROCK.

SPRINGDALE PARK, INC. Appellant, v. TOWNSHIP COMMITTEE OF THE TOWNSHIP OF ANDOVER, and CORD VIEBROCK, t/a VIEBROCK'S MOTEL, Respondents.	)	ON APPEAL CONCLUSIONS AND ORDER

Sol D. Kapelsohn, Esq., Attorney for Appellant

Van Blarcom, Silverman & Weber, Esqs., by Albert G.W. Silverman, Esq., and Frank G. Schlosser, Esq., Of counsel, Attorneys for Respondent Viebrock.

No Appearance on behalf of Respondent Township Committee

BY THE DIRECTOR:

The Hearer has filed the following report herein.

Hearer's Report

This is an appeal from the action of the respondent Township Committee of the Township of Andover (hereinafter Committee)

whereby it approved an application of the respondent Cord Viebrock, t/a Viebrock's Motel (hereinafter Viebrock) for place-to-place transfer of plenary retail consumption license to include property which adjoins his premises now licensed thereunder located on Route 206, Andover Township. The granting resolution specified that the said transfer was subject to the special condition that "...said transfer shall not be endorsed and effective until such time as building shall meet the approval of the Andover Township Committee, in accordance with Revised Statute, 33:1-32."

Appellant alleges in its petition of appeal that the action of the Committee was erroneous and should be reversed for reasons which may be briefly summarized as follows: (1) no lawful hearing was held before the Committee because respondent Viebrock failed to attend the hearing or present any witnesses on his behalf "to prove justification or basis for the grant of his application", (2) no evidence was submitted to show that Viebrock was in fact the owner or lessee of the premises "to which transfer of the liquor license was sought", (3) there is no public need or necessity for the said transfer, (4) the application was for an enlargement "of the existing license C-11" and not for a transfer, (5) the additional premises sought to be covered are not "designed or intended to be, any part of applicant's motel" and therefore is in violation of the applicable statute, (6) the said grant is in violation of the applicable law under which "the license C-11 was issued and continues", (7) the action of the Committee was contrary to the weight of the evidence, and (8) the application for transfer was "incomplete and defective."

The answer of the respondent Cord Viebrock admits the jurisdictional allegations but denies the substantive charges set forth in the petition. It maintains that the action of the Committee is valid and proper under the laws and statutes of New Jersey.

The Committee did not file an answer in these proceedings nor was it represented at the hearing on appeal. This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

I

I shall first consider and dispose of those matters in the petition of appeal which relate to the application filed herein and to the hearing held thereon before the Committee. I have examined the application filed by Viebrock and find that it is regular in form. The Committee apparently found no defect or deficiencies therein, nor has there been any evidence introduced which would indicate or specify the particulars of such alleged deficiencies or defects. The application clearly identifies the premises and the additional premises sought to be encompassed in this application. It sets forth that Viebrock is the owner of the motel premises and has entered into a lease for the adjoining premises which are included in the said application.

The appellant asserts that the hearing before the Committee was invalid because the applicant Viebrock was not present nor did he produce any witnesses or testimony in his behalf. The only one present for Viebrock was his attorney. Appellant admits, however, that appellant's witnesses "did appear before the Township Committee and presented testimony...."

There is no requirement in the law or in the rules and regulations of this Division that an applicant must personally appear or present testimony at the hearing before a local issuing authority. What is required is that an objector (in this case, the appellant) be given the opportunity to be heard and to set forth its objections. This admittedly was afforded to the objector which was ably represented by its counsel. As Judge Jayne stated in In re 17 Club, Inc., 26 N.J. Super. 43, at p.48:

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

The Committee was familiar with this matter since it had considered an earlier application by Viebrock for the issuance of a plenary retail consumption license pursuant to R.S. 33:1-12.20 which was granted by the same Committee on December 15, 1964. The grant was affirmed on appeal by the Director after a lengthy hearing by order dated October 20, 1965 (Springdale Park, Inc. v. Andover and Viebrock, Bulletin 1649, Item 1). At the instant hearing before the Committee the appellant was afforded the opportunity and did in fact present testimony in support of its objections. Thus it cannot, as a matter of fairness, claim to have been prejudiced in the circumstances presented. Cf. Nordco, Inc. v. State, 43 N.J. Super. 277, 288; Neiden Bar and Grill v. Municipal Bd., etc., of Newark, 40 N.J. Super. 24, 29 (App. Div. 1956); Handlon v. Town of Belleville, 4 N.J. 99, 105 (1950).

In any event, the entire matter was head de novo and the appellant was afforded a full opportunity to be heard. If there was any apparent irregularity, it has been rectified. The appellant was given the additional opportunity at this de novo hearing to subpoena witnesses, including the members of the Committee, and to interrogate them with reference to their actions. The appellant did not avail itself of its right to elicit from the Committee such relevant testimony as may be supportive of its allegations.

II

I shall now discuss the substantive merits of the allegations set forth in the petition of appeal. Appellant produced as a witness in its behalf Henry M. Fulkrod, the president of the Sussex County Licensed Beverage Association, who testified that in his opinion the community was already over-licensed and that there was, therefore, no public convenience or necessity for further extension of Viebrock's premises. He opposed the extension to the adjoining parcel saying, "In my judgment, I don't think that they need any more room than what they have."

On cross examination this witness admitted that he has never been inside Viebrock's motel nor is he familiar with its operation. He did, however, admit that the building intended to be included as part of the enlarged premises is adjacent to the present property; that the motel is the only motel of its kind in the municipality and that Sussex County, wherein it is located, is in an area of expanding population.

George Tsitsiragos, the president of the corporate appellant, was also produced as a witness both at the hearing before the Committee and at this de novo hearing. He testified that he is the operator of liquor licensed premises located about "a thousand feet" from Viebrock's southerly line; that he has not been in the Viebrock motel since the issuance of the original license and that he is not familiar with the exact operation of the said license. He insisted that in his opinion there are adequate facilities for obtaining liquor in the township with the existing facilities and that there is no present need for expansion of any existing licensed premises.

On cross examination this witness conceded that the leased building was approximately thirty feet from the present motel building. However, it was his opinion that the motel building was constructed "by block" whereas the leased building is constructed of glass and brick.

Cord Viebrock testified that the present application was made on the basis of a long-term lease entered into by him and the owner of the property adjoining his motel. The leased tract contains a building forty feet in front, part brick and part glass, displaying about two thousand square feet of interior space, and this building is readily adaptable for use in conjunction with the operation of the motel. He added that the leased property conformed to the contour of the motel and introduced photographs in evidence to show a similarity in appearance between the leased building and the motel structure.

He further testified that the extension of licensed privileges to this building would enable him to enlarge his operation to accommodate an expected influx of newcomers to the area; that an expansion of the motel made it easy to acquire this property once it became available.

He stated that the building known as the T & M building had formerly been used as a storage facility for a thirty thousand gallon tank, together with hundreds of tanks containing propane gas under pressure, and that the presence of these tanks constituted a hazard to the motel and its patrons. Thus the removal of this hazard was an additional factor in the interest of safety of the residents of the community. He pointed out, further, that in a large motel facility, such as he now operates, there is a need for a "tremendous lot of sewerage disposal and leaching beds. We have no city water there. And if we -- we get around to adding the other facilities, restaurant and cocktail lounge, that again needs a lot of leaching beds and sewerage facilities; plus future expansion of motel rooms, which I expect will be needed in the very near future."

Finally, he added that the motel presently contains no cocktail lounge, no restaurant and no lunch counter; that in fact there is no room at present for such facilities. It is, therefore, his intention to install a cocktail lounge and probably a coffee shop in the leased building in accordance with plans filed with the township.

The respondent Viebrock obtained a grant of his application for an extension of his license and not for issuance of a new license. Thus it would seem that the testimony with respect to the existence of sufficient outlets in the community is merely an exercise in technical delight and is irrelevant to the specific issue presented on this appeal.

The Committee had recently considered the specific matter advocated as to the alleged sufficiency of other liquor outlets at the time of its hearing prior to the grant of Viebrock's application for license on December 15, 1964. Its determination to grant was arrived at after extensive hearings, and was affirmed by the Director after an extensive de novo hearing on appeal. Springdale Park, Inc. v. Andover and Viebrock, supra.

It has been well established that a transfer of the license to cover adjacent premises or an addition to existing premises, even though an additional entrance was provided thereby, does not require a new license in the old premises and the addition thereto constitutes a single place of business. Essex County Retail Liquor Stores Association et al. v. Newark and Pere, Inc., Bulletin 1302, Item 2; New Jersey Licensed Beverage Assn. et al. v. Camden and Viviani, Bulletin 215, Item 5; Garrigues v. Wildwood and Stuski, Bulletin 731, Item 8. Cf. Essex Co. etc., Stores Ass'n v. Newark, Bev. Cont., 64 N.J. Super. 314, 322.

It has been well established that a local issuing authority's discretionary power is broad when called upon to determine whether a liquor license should or should not be transferred. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Freehold Suburban Tavern Owners Association et als. v. Howell and Ho-Jan Corp., Bulletin 1687, Item 1; Broadley v. Clinton and Klingler, Bulletin 1245, Item 1. 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 and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were 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)."

In the Rocco case, supra,it was stated, at p. 321:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits,

> the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511...."

I am satisfied from my analysis of the testimony that the Committee acted common-sensibly and circumspectly in granting this application for an enlargement of Viebrock's premises by grant of transfer of his present liquor license. I am persuaded that the building which was leased by Viebrock would properly form a part of its premises and would enable him to make more effective use of his license. Although not entirely relevant to our inquiry, it should be noted that the adjoining building is constructed along the same general lines as those of the motel and would appropriately fit in as part of its general operation.

Extension and enlargement of premises, in these circumstances, under one single license has been consistently upheld by the Division and the courts for many years. For example, in Re Dodd, Bulletin 241, Item 8, it was ruled that a single license could cover two social halls on the opposite sides of a highway - - one used in the summer and the other in winter -- if "so arranged and operated that they could be said to constitute a single place of business ...." Essex Co., Stores Ass'n v. Newark, etc., Bev. Cont., supra.

In Bivona v. Hock, 5 N.J. Super. 118 (App. Div. 1949) the Director had affirmed the denial of a transfer of an application for transfer of a license by a local issuing authority to newly purchased property. The grounds relied upon in affirming were that the locus was in a low economic area and that the enlarged facility of the proposed new location would result in greater patronage and greater sale of liquors and an area in which social improvement was desired. The court reversed the denial, concluding that this was not a proper basis for denial of an application for transfer. And, as pointed out, the present application was not for a new license, hence did not increase the number of licenses issued for this municipality.

I am further convinced that the Committee was fully familiar with the situation and acted reasonably. The Committee was obviously persuaded that the use of the license would be optimalized by its extension to the adjoining building which would permit Viebrock to operate a necessary facility which it requires in the full and efficient exercise of its license privileges. There has been no evidence presented to indicate that the Committee was improperly motivated or abused its discretion by granting the transfer of the license in question. It is quite evident that its action was justified by the best interests of the community.

After careful examination and consideration of the entire record herein, including the exhibits and the written memoranda of counsel submitted in summation, I conclude that the appellant has failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15; Shiloh Baptist Church of Atlantic City v. Atlantic City and Shore Lanes, Inc., Bulletin 1387, Item 2, and cases cited therein.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

No exceptions were taken 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 testimony, the exhibits, the written memoranda 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 4th day of October, 1966,

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

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANGELO J. DeCASTRO 102 Talmage Avenue Bound Brook, New Jersey Holder of Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Bound Brook	CONCLUSIONS and ORDER

Leahy, Barbati & Berdinella, Esqs., by Michael W. Berdinella, Esq., Attorneys for Licensee.

David S. Piltzer, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 1, 1966, he 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 had a previous record of suspension of license by the Commissioner for fifteen days effective January 10, 1946, for similar violation. Re DeCastro, Bulletin 689, Item 3.

The prior record of suspension of license for similar violation occurring more than ten 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 Frank & Jim's Grove Tavern, Inc., Bulletin 1689, Item 11.

Accordingly, it is, on this 5th day of October, 1966,

ORDERED that Plenary Retail Consumption License C-6, issued by the Borough Council of the Borough of Bound Brook to Angelo J. DeCastro for premises 102 Talmage Avenue, Bound Brook, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, October 10, 1966, and terminating at 2:00 a.m. Thursday, October 20, 1966.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - POSSESSION OF PIN BALL MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	
SEVENTIETH STREET RECREATION CENTER, INC. 301-303 - 70th Street Guttenberg, New Jersey	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-6, issued by the Board of Council of the Town of Guttenberg	

Theodore Cohen, 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 August 31, 1966, it permitted two pin ball machines on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Montvale Recreation, Inc., Bulletin 1613, Item 11.

Accordingly, it is, on this 3d day of October, 1966,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Council of the Town of Guttenberg to Seventieth Street Recreation Center, Inc. for premises 301-303 70th Street, Guttenberg, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m. Monday, October 10, 1966, and terminating at 3:00 a.m. Saturday, October 15, 1966.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

MONOLA GOODMAN
T/A G M TAVERN
341 Johnston Avenue
Jersey City, New Jersey

Holder of Plenary Retail Consumption License C-448, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

CONCLUSIONS and ORDER

Licensee, by George F. Goodman, Manager, Pro se

Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 2, 1966 she sold a pint bottle of wine for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, 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 Fixler, Bulletin 1693, Item 9.

Accordingly, it is, on this 11th day of October 1966,

ORDERED that Plenary Retail Consumption License C-448, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Monola Goodman, t/a G M Tavern, for premises 341 Johnston Avenue, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, October 18, 1966, and terminating at 2 a.m. Friday, October 28, 1966.

Joseph P. Lordi,
Director.