STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 991 NOVEMBER 17, 1953.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 991 NOVEMBER 17, 1953.

1. COURT DECISIONS - PRICE v. MILLBURN - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-622-52

JAMES and ALICE PRICE, trading as MILLBURN INN,

Appellants,

-vs-

THE EXCISE BOARD OF THE TOWN OF MILLBURN,

Respondent,

-and-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL IN THE DEPARTMENT OF LAW AND PUBLIC SAFETY,

Intervening-Respondent.

Argued October 26, 1953; Decided November 5, 1953.

Before Judges Clapp, Goldmann and Ewart.

Mr. Paul N. Belmont argued the cause for appellants (Messrs. Van Riper & Belmont, attorneys).

Mr. Reynier J. Wortendyke, Jr. argued the cause for the respondent, The Excise Board of the Town of Millburn.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the intervening-respondent, Division of Alcoholic Beverage Control in the Department of Law and Public Safety (Theodore D. Parsons, Attorney General).

The opinion of the court was delivered by

EWART, J.A.D.

This is an appeal from an order made June 12, 1953 by the Director of the Division of Alcoholic Beverage Control affirming the action of the Township Committee of the Township of Millburn, sitting as an excise board, in having denied appellants' application for a plenary retail consumption license for premises situate at #5 Old Short Hills Road in the Township of Millburn.

The premises for which the application was made consist of a very old dwelling house in which appellants have operated for upwards of seven years past a restaurant under the name of "Millburn Inn". The premises have never heretofore been licensed to sell intoxicating beverages. It is situate on the same side of the street and adjacent to the Millburn High School, there being less than 200 feet in distance separating the Inn and the High School building.

An earlier application for a license for the same premises was made by the same applicants on December 19, 1951. That earlier

application was likewise denied on January 7, 1952 upon a technical ground, viz., upon the ground that there was less than 200 feet distance from the nearest entrance to the school to the nearest entrance to the Inn, measured in the normal way a pedestrian would properly walk. R. S. 33:1-76. No appeal was taken from the denial on January 7, 1952. Instead, the applicants constructed a cinder block wall effectively closing that entrance to the Inn which was nearest the high school building and erected a fence part-way across the entrance to the auto parking lot used by the Inn's patrons so that, as a result of these structural changes, the distance from the entrance to the Inn to the nearest entrance to the high school building, measured in the normal way a pedestrian would properly walk, was extended to a distance of 205.8 feet. There was no change in the location of either the inn building or the high school building. Thereupon, appellants renewed their application for a plenary retail consumption license; a hearing was had before the Township Committee on October 20, 1952; and the three members of the Committee then present at the meeting voted unanimously to deny the application. From that denial the applicants appealed to the Director of the Division of Alcoholic Beverage Control who affirmed the action of the Township Committee by an order made June 12, 1953, as aforesaid, and from that decision of the Director this appeal has been prosecuted.

No question has been raised as to the character or fitness of the applicants for the license.

The basis upon which the Committee denied the second application for the license is set forth in the testimony of Clarence A. Hill, chairman of the Township Committee, as follows:

> "Q. Will you state to the Director, through the Hearer, the grounds upon which you cast your vote against the application? A. Well, primarily on the ground that this inn is much too close to the high school. The high school happens to be the next door neighbor of the inn. It is the next property to the inn. And we didn's consider it a proper location for a place serving liquor."

And later the same witness was questioned as to the effect of the structural changes made by the applicants for the license between the denial of the first application on January 7, 1952 and the filing of the second application at a later date, with the following result:

> "Q. What, if any, effect upon your judgment, as one of the members of the local issuing authority, in denying the latest application did the presence of those changes to the premises in question have? A. I don't think they changed the situation one bit. In effect, we still have an inn which is in exactly the same position that it was when the prior application was denied. And nothing that has been done by way of installing a couple of rails in a driveway, or anything else for that matter, has removed the inn from its too close proximity to the high school."

And on cross-examination the witness was questioned as to the effect upon him of protests lodged with the Committee by the Board of Education and by certain civic associations and the following testimony was adduced:

> "Well, you were influenced, I take it, to a certain extent by what you thought were the views of certain of your constituents? A. In this particular case I can't say that I was influenced unduly, although, naturally -- Q. I don't mean unduly. A. Well, all right. I would say that in an

official action, if you do your sworn duty, you have to consider the wishes of the people. But in this case where I personally feel there is a much larger issue involved, I think it is one that has been indicated in the State Laws, as at least a yardstick of what it generally considered the proper relationship of places that serve liquor to places of education, and I believe that insofar as my decision was concerned, that was the controlling influence.

"Q. Do I take it, Mayor, that you mean by that, that you felt that in view of the fact that the State Law said there should be no licensed place within 200 feet of the school, that this came within that restriction? A. In addition to that I had my own conviction that a place that serves liquor has no place next to a high school, or other school."

And another member of the Committee, William B. Gero, testified as follows:

"Q. Now, the minutes say that you said that after due and careful consideration of this application, and referring to the first application made by the same parties and the then normal and natural entrance to the premises sought to be licensed, noted that the entrance had now been moved more than 100 feet to a position by extending the fence so a pedestrian would now have to walk along the fence, thence through the new entrance, and then back toward the building. This change has not altered the essence of the problem and the building was still in the same place and it was your opinion that the application should not be granted. Does that represent what you said there, Mr. Gero? A. I think so.

"Q. I take it that what that refers to is to the discussion which took place at the first hearing on the first application as to whether or not the inn was within 200 feet of the high school? A. That was one factor. That is correct.

"Q. Now, isn't that what you referred to when you said that you considered the first application and the then normal and natural entrance to the premises, and that the new entrance had not altered the essence of the problem? A. The only thing that had been changed between the first application and the second application was this entrance.

"Q. Yes. That's correct. A. The other factors stayed the same.

"Q. And you felt, did you not, that the changing of the entrance and making it a longer distance to walk from the high school to the inn did not change the distance question which was discussed at the first meeting? A. My thought was that it was an attempt to get a technical compliance, but did not change the essence of the problem."

"Q. I wouldn't ask this question if it had not been brought out on direct examination. Let's disregard any feeling which we might have or observation which we might have because of our personal situation. Do you feel that the serving of liquor at meals in the Millburn Inn would be injurious in any way to the students in that high school? A. Well, the serving of liquor in the immediate vicinity of a high school carries to that area an influence which it would be just as well, and it is recognized by the law in putting restrictions on it, if it could be avoided."

It is well settled in this state that the issuing authority (in this case the Township Committee) is vested with a sound discretion in the granting or refusing to grant licenses for the sale of intoxicating beverages and that the court should not interfere with the

actions of the constituted authorities unless there has been a clear abuse of discretion. Bumball v. Burnett, 115 N.J.L. 254 (Sup. Ct. 1935); Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949). Cf. Ring v. North Arlington, 136 N.J.L. 494, 498 (Sup. Ct. 1948), affirmed 1 N. J. 24 (1948), appeal dismissed 335 U.S. 889. And the burden of proving an abuse of discretion rests upon the appellants. Bumball v. Burnett, supra; Biscamp v. Teaneck, supra; Ring v. North Arlington, supra.

Appellants also allege that the Committee unlawfully discriminated against them in that two other establishments have been licensed for many years to sell intoxicating beverages in the Township, one known as the Chanticler described as being located across the street from a parochial school, although what distance there may be separating the parochial school building from the Chanticler does not appear, and the other being a tavern known as Mario's, located on the same street and the same side of the street as the appellants' Inn, but described as being more than 500 feet further away from the high school than the location of the appellants' Inn. It was claimed that school children attending the Millburn High School pass Mario's Tavern in large numbers. Be that as it may, and even assuming that the issuance of licenses to the Chanticler and to Mario's Tavern were ill-advised, that circumstance would not entitle the appellants here to a license. Biscamp v. Teaneck, supra; Shipman v. Township of Montclair, 16 N. J. Super. 365, 370 (App. Div. 1951).

We find that the Township Committee acted within its discretionary authority in denying appellants' application for a license under the circumstances shown by the proofs to exist; that the proofs do not support the charge that appellants have been unjustly discriminated against as compared with the establishments known as the Chanticler and Mario's Tavern; that appellants have not carried the burden of establishing by the proofs any abuse of discretion on the part of the Township Committee; and that by reason of these conclusions the order appealed from should be affirmed.

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2. COURT DECISIONS - DAL ROTH, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL, ET AL. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-594-52

DAL ROTH, INC., a corporation of New Jersey,

Appellant,

-vs-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY, et als.,

Respondents.

Argued October 26, 1953 -- Decided November 6, 1953.

Before Judges Clapp, Goldmann and Ewart.

Mr. Robert E. Wall argued the cause for appellant Dal Roth, Inc. (Messrs. Wall & Whipple, attorneys);

Mr. Samuel B. Helfand, Deputy Attorney-General, argued the cause for the Division of Alcoholic Beverage Control (Mr. Theodore D. Parsons, Attorney-General, attorney);

Mr. Charles Hershenstein argued the cause for the remaining respondents (Mr. Sidney Simandl, attorney for respondent Jersey City Liquor Dealers' Association; Messrs. Halpern & Halpern, attorneys for respondents Finbar Inc., Gray's Eating Places of New Jersey, Journal Square Bakery, Inc., Ace Shirt Shop Inc., John Maske, John DeDousis, Theodore G. Antos d/b/a/ Theodore The Florist, Mangor Drink Stores d/b/a/ Gormans and Terminal Cafe; Mr. Charles Hershenstein, attorney for respondent Tube Bar Inc.).

The opinion of the court was delivered by:

GOLDMANN, J.A.D.

This is an appeal from the determination and order of the Division of Alcoholic Beverage Control reversing the action of the Board of Alcoholic Beverage Control of the City of Jersey City in granting appellant Dal Roth, Inc. a transfer of a plenary retail consumption license from person-to-person and place-to-place. The transfer from person-to-person was from Joseph A. Davis, as receiver of Commuters Bar, Inc., to appellant, while the transfer from place-to-place was from 35 Enos Place to store 9-B, Journal Square Station Building, Tube Concourse, both in Jersey City.

The same license, premises and local ordinance, quoted below, were involved in the case of Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (App. Div. 1952). Commuters Bar, Inc. was in 1951 the licensee for the premises at 35 Enos Place. It leased store 9-B, Tube Concourse, and then applied for a transfer of its license to those premises. There was in effect at the time, and still is, an ordinance limiting the number of plenary retail consumption and plenary distribution licenses to sell alcoholic beverages at retail in the City of Jersey City which, so far as is here pertinent, provides:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. ***"

The proposed new location for the license at store 9-B was within 750 feet of 12 other licensed premises. It was, however, less than 500 feet from 35 Enos Place. The local board granted the transfer over the opposition of some of the present respondents who contended that the transfer would be in direct violation of the ordinance. On appeal to the Division of Alcoholic Beverage Control, the Division affirmed. The objectors then appealed, and while the matter was pending in the Appellate Division, Commuters Bar, Inc. obligated itself on a lease for store 9-B at a rental of $1500 a month and expended thousands of dollars for new fixtures and other costs in setting up new quarters. When the Appellate Division, on March 12, 1952, reversed the transfer (18 N. J. Super. 351), Commuters Bar, Inc. returned to 35 Enos Place. It took no appeal from that decision. Nor did it surrender, abandon nor sublet the store at 9-B, but continued to pay rent.

On April 4, 1952 application was made to the Superior Court, Chancery Division, for an adjudication of insolvency against Commuters and for the appointment of a receiver. A. A. Pruzick & Co., Inc. v. Commuters Bar, Inc., Docket C-1360-51. While this matter was pending, Commuters applied for a renewal of its plenary retail consumption license for the 1952-53 license period for the premises at 35 Enos Place. On June 27, 1952 the Chancery Division adjudicated Commuters Bar, Inc. insolvent and appointed a receiver. Although Commuters was in the hands of the receiver on July 1, 1952, the local board renewed the license in its name. Cf. N.J.S.A. 33:1-26. The order appointing receiver contained no specific authorization that he continue operating the business. Nonetheless, he continued to conduct the licensed premises at 35 Enos Place. The license was not extended to the receiver until August 27, 1952.

On August 29, 1952 an order was entered in the Pruzick case requiring those interested to show cause on September 26 why certain assets of Commuters should not be sold, including the fixtures in both stores and the license. As a result of objections voiced on the return date a new order was made, returnable October 10, 1952, directing that all creditors and other interested persons show cause why the receiver should not at that time and place expose for sale to the highest bidder, in open court, the fixtures, equipment and other tangible assets owned by Commuters in the two stores, as well as his written consent to transfer to the purchaser thereof, and to transfer to the same or other premises, the license in question then effective at 35 Enos Place. When this second order was signed on September 26, the receiver represented to the court that, without paying the rent for 35 Enos Place, he was only "breaking even," and he requested

permission to close the business. Such permission was verbally granted. The receiver immediately closed the place.

At the time of the receiver's sale on October 10 it was publicly announced in open court that the prior transfer of the same license from 35 Enos Place to store 9-B had been set aside by the Appellate Division in the Tube Bar case, above. The court then announced that the receiver's consent to the transfer of the license was being sold "subject to law" and also "subject to any rights that flow from it" [the Appellate Division opinion]. The sale then proceeded and one Andrew Rothrock acquired the tangible assets at store 9-B, together with the consent of the receiver to the transfer of the license, on a bid of $26,000. The sale was confirmed by the Chancery Division on October 15, 1952. Thereafter, on October 27, 1952, Andrew Rothrock made written assignment of his bid to Dal Roth, Inc. which had been incorporated only two days before.

After receiving the $26,000 payment the receiver, on October 28, wrote the landlord of 35 Enos Place "disaffirming" Commuters' lease there, effective October 29, 1952. On October 29 Dal Roth, Inc. filed application for a person-to-person and place-to-place transfer with the Board of Alcoholic Beverage Control of the City of Jersey City. The board conducted a hearing at which respondents appeared and objected. It granted the transfer by a two-to-one vote on November 19, 1952. Thereafter, on November 26, 1952 the receiver "disaffirmed" the lease of Commuters Bar, Inc. at the 9-B premises.

The respondent-objectors took an appeal to the Director of the Division of Alcoholic Beverage Control which resulted in a reversal of the local board's action. At the hearing before the Director it was stipulated that the lease for the premises occupied by Commuters at 35 Enos Place would by its terms expire on August 31, 1953 and, further, that neither Dal Roth, Inc. nor Andrew Rothrock ever became tenants or entered into possession of the licensed premises at 35 Enos Place. Dal Roth, Inc. appeals the order of the Director reversing the person-to-person and place-to-place transfer granted by the Jersey City board and directing that all activity under the license for the 9-B premises cease forthwith.

Appellant contends that section 4 of the Jersey City ordinance, properly interpreted, contains no provision that application for a place-to-place transfer of a license must be made by an existing licensee, and that if section 4 is construed to include such a requirement, then the provision in that regard is unreasonable and unenforceable.

The Alcoholic Beverage Act expressly authorizes the governing board of a municipality to limit, by ordinance, the number of licenses to sell alcoholic beverages at retail in the community. R. S. 33:1-40. Pursuant to such legislative authority the governing body of Jersey City adopted the ordinance from which we have quoted section 4, requiring a minimum separating distance of 750 feet between licensed premises. Such a regulation must result in a limitation in the number of licenses, for the greater the intervening distance that must separate licensed premises, the fewer the number that may exist within the municipal boundaries.

The general welfare considerations prompting the enactment did not, however, dim the governing board's perception that a flat distance restriction, without more, might lead to harsh consequences in some cases. For example, the difficulty of obtaining suitable locations beyond the proscribed distance would leave licensees at the mercy of unscrupulous landlords demanding exorbitant rent increases at the expiration of an existing lease. In an attempt to

alleviate such situations, with fairness to licensees on the one hand and consistent with public welfare considerations on the other, the governing board in its discretion provided that, irrespective of the 750-foot restriction, a licensee "compelled to vacate the licensed premises for any reason *** not caused by any action on the part of the licensee" may be permitted to transfer his license to other premises within 500 feet of the vacated premises.

The clear and unequivocal language of the proviso in section 4 of the ordinance permits of no other construction than that the benefit of the exception is limited to those licensees who, through no fault of their own, find themselves in the predicament of being deprived of their licenses if the 750-foot provision were mandatorily to be controlling in all place-to-place transfers. The proviso speaks of "licensee" throughout. Dal Roth, Inc. was not a licensee which had been compelled to vacate premises. It was a mere applicant for a license, hoping to take advantage of the fact that the former licensee had gone out of business, and it had no premises to vacate, it being stipulated that it had never become a tenant or entered into possession of the premises at 35 Enos Place.

The judicial goal in the construction of ordinances is the discovery and effectuation of the local legislative intent, and in general this inquiry is governed by the same rules as apply to the interpretation of statutes. Wright v. Vogt, 7 N. J. 1, 5 (1951). The ordinance was correctly interpreted by the Director of the Division of Alcoholic Beverage Control. The Jersey City board misapplied the provisions of section 4 of the ordinance in granting the transfer in question. As was said in Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351, 354 (App. Div. 1952):

> "When a commission, board, body or person is authorized by ordinance, passed under a delegation of legislative authority, to grant or deny a license or permit, the grant or denial thereof must be in conformity with the terms of the ordinance authorizing such grant or denial. 9 McQuillin, Municipal Corporations (3d ed. 1950), § 26.73; Bohan v. Weehawken, 65 N.J.L. 490, 493 (Sup. Ct. 1900). Nor can such commission, board, body or person set aside, disregard or suspend the terms of the ordinance, except in some manner prescribed by law. Public Service Ry. Co. v. Hackensack Imp. Com., 6 N. J. Misc. 15 (Sup. Ct. 1927); 62 C.J.S. Mun. Corp., § 439. ***"

The only other question we need decide is whether the ordinance is arbitrary and invalid because it limited relief to licensees actually having premises which they were forced to vacate. The presumption is that an ordinance is reasonable, and the burden of clearly establishing that it is not falls upon the one attacking the ordinance. State v. Mundet Cork Corp., 8 N. J. 359, 370 (1952); Kirsch Holding Co. v. Borough of Manasquan, 24 N. J. Super. 91, 97 (App. Div. 1952).

The public policy behind R.S. 33:1-40, which permits a governing body by ordinance to limit the number of retail liquor outlets in a community, supports an ordinance which would allow only one license within a certain area. The Jersey City ordinance, as has already been pointed out, includes an escape clause available in hardship cases where a licensee is compelled to vacate his premises. The municipality was under no legal compulsion to include any such alleviating proviso in its ordinance. It might properly, in the exercise of a sound discretion, have refrained from making any exception to the general distance restriction. Fairness to licensees dictated the inclusion of the proviso.

There seems to be no reason why, on the basis of public policy, we should say that the escape clause should not be limited to those licensees who themselves are forced to vacate. There is no compelling consideration for giving licensees so circumstanced the right to transfer the license to someone else who could then locate within the 500-foot radius area of the vacated licensed premises. It seems entirely reasonable to keep the door of the escape clause as nearly shut as possible. If the licensee is forced to vacate, the policy behind the ordinance and the law pursuant to which it was adopted will be relaxed to take care of his hardship, but if he is forced not only to vacate but also to sell, no aid can be extended to him. This is not so arbitrary a matter as to require us to hold the ordinance unreasonable and therefore void; the law does not have to undertake to provide for his license. Restrictive liquor regulations may, and ofttimes do, result in individual hardships. However, where larger social interests justify a restrictive policy, private individual interests must give way.

When appellant took over Rothrock's bid it could have pursued other alternatives than to seek a person-to-person and place-to-place transfer of the license to store 9-B. It could have sought a transfer to some place in Jersey City more than 750 feet distant from any existing license, as permitted by the ordinance. It could also have elected to open for business at 35 Enos Place; the receiver had "disaffirmed" the Commuters Bar, Inc. lease for those premises on October 29, 1952, and appellant could have established itself in a location which for more than 14 years had supported a profitable enterprise. Instead, it sought to open for business in a location already serviced by a dozen retail liquor outlets within a radius of 750 feet.

In view of our determination that the Director correctly interpreted section 4 of the ordinance, and that the ordinance is reasonable and valid, we need not decide whether the issues raised on the present appeal are res judicata by virtue of the decision in Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (App. Div. 1952), or whether the municipality had proper notice under R.S. 4:37-2 (formerly Rule 3:24-2), or whether the ordinance is void in that it limits the escape clause to those who held a license at the time of its passage in 1937 or at least at the time of its amendment in 1941.

Affirmed.

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3. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - PRIOR RECORD NOT CONSIDERED BECAUSE OF LAPSE OF TIME - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against NEW CAMDEN AERIE #065 FRATERNAL ORDER OF EAGLES 588-92 Carman Street Camden, N. J., Holder of Club License CB-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.	CONCLUSIONS AND ORDER

New Camden Aerie #065 Fraternal Order of Eagles, Defendant-licensee, by John M. Sweet, Worthy President.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded guilty to a charge alleging that it sold, served and delivered alcoholic beverages upon its licensed premises on Sunday; in violation of a local regulation.

The file herein discloses that two ABC agents arrived in the vicinity of defendant's licensed premises at approximately 2:40 p.m., Sunday, September 20, 1953. After observing three men enter the premises through the front door which they opened with a key, the agents proceeded to that door and rang a bell. When the door was opened from the inside the agents disclosed their identity and went to the barroom where they found eighteen men seated or standing at the bar. A man behind the bar was serving beer. Defendant's president, who was standing at the bar, identified himself to the agents who, in turn, identified themselves as agents and questioned the president and two of defendant's trustees. The president readily admitted that defendant had been engaging in alcoholic beverage activities on Sunday in violation of the local ordinance which prohibits such activity on Sunday.

Defendant has a prior record. Its license (for premises 415 Broadway), was suspended by the then State Commissioner for five days, effective July 27, 1942, for possession of slot machines on its licensed premises. Re Fraternal Order of Eagles, Bulletin 521, Item 10. However, since the violation is dissimilar in nature and occurred more than five years ago, it will not be considered in fixing the penalty herein. Re Pioneer Tavern, Inc., Bulletin 988, Item 11. I shall suspend defendant's license for fifteen days. Five days will be remitted for the plea entered herein, leaving a net suspension of ten days. Re Feola, Bulletin 988, Item 3.

Accordingly, it is, on this 6th day of November, 1953,

ORDERED that Club License CB-3, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to New Camden Aerie #065 Fraternal Order of Eagles, for premises at 588-92 Carman Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. November 13, 1953, and terminating at 2:00 a.m. November 23, 1953.

DOMINIC A. CAVICCHIA
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES AT LESS THAN PRICE LISTED IN MINIMUM CONSUMER RESALE PRICE LIST - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against MICHAEL SAYKANICS T/a VET'S LIQUOR STORE 70 - 4th Street Passaic, N. J., Holder of Plenary Retail Distribution License D-22, issued by the Board of Commissioners of the City of Passaic.	CONCLUSIONS AND ORDER

Michael Saykanics, Defendant-licensee, Pro Se.
David S. Piltzer, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he sold an alcoholic beverage at less than its price listed in the Minimum Consumer Resale Price List then in effect, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that on September 29, 1953, an ABC agent entered defendant's licensed premises while another ABC agent remained outside. The agent who entered told George Saykanics, a brother of defendant and who was then acting as a clerk in defendant's premises, that he had been advised "to come to this store where he could get a break on some stuff." George Saykanics told the agent that he would take care of him. After the agent said that he would like a bottle of Schenley's or Seagram's 7 Crown, defendant's brother told him that "I can give you a quart bottle of either for $5.00." The agent, after observing that both items were tagged $5.55 per quart on the shelves, asked for a quart of Seagram's 7 Crown. George Saykanics handed the agent a brown paper bag containing a quart bottle of Seagram's 7 Crown Whiskey and accepted a $10.00 bill from the agent. After George Saykanics rang up something on the cash register and placed the $10.00 bill in the till, he gave the agent five $1.00 bills in change. This agent left the premises and contacted the other agent. Both agents immediately returned to the store and identified themselves to George Saykanics who insisted he had sold the item for $5.55. However, a subsequent check of the tape in the cash register showed that the last sale thereon was registered as "00." When defendant was called to the premises by his brother he told the agents that he had instructed his brother not to sell below the minimun resale price. Effective July 1, 1953, the minimum consumer resale price of the item in question was $5.55.

The fact that the violation did not occur in the licensee's presence or that his agent acted contrary to his instructions does not constitute a defense to the charges herein. Rule 31 of State Regulations No. 20.

Defendant has no prior adjudicated record. I shall suspend the license for the minimum period of ten days. Five days will be remitted for the plea entered herein, leaving a net suspension of five days. Re Zotto, Bulletin 968, Item 9.

Accordingly, it is, on this 30th day of October, 1953,

ORDERED that Plenary Retail Distribution License D-22, issued by the Board of Commissioners of the City of Passaic to Michael Saykanics, t/a Vet's Liquor Store, for premises 70 - 4th Street, Passaic, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. November 9, 1953, and terminating at 9:00 a.m. November 14, 1953.

DOMINIC A. CAVICCHIA

5. DISCIPLINARY PROCEEDINGS - CHARGES ALLEGING THAT LICENSEE PERMITTED A FEMALE IMPERSONATOR ON ITS LICENSED PREMISES AND THAT IT PERMITTED LEWDNESS, IMMORAL ACTIVITIES AND OBSCENE LANGUAGE DISMISSED FOR LACK OF PROOF.

In the Matter of Disciplinary Proceedings against FIRESIDE TAVERN, INC. 22 Hamilton Street Paterson 1, N. J., Holder of Plenary Retail Consumption License C-190 for the 1952-53 licensing year, issued by the Board of Alcoholic Beverage Control for the City of Paterson.	CONCLUSIONS AND ORDER

Irving I. Rubin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. On March 25 and 27, 1953, and on divers days prior thereto, you allowed, permitted and suffered one 'Pete' --- (also known as 'Pat', 'Patsy' and 'Patricia'), a female impersonator, in and upon your licensed premises; in violation of Rule 4 of State Regulations No. 20.

"2. On March 25, 1953, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that you permitted a male patron to mingle with other male patrons and by conversation and conduct to make overtures, suggestions and offers to engage in acts of perverted sexual relations with such other male patrons; in violation of Rule 5 of State Regulations No. 20.

"3. On March 25, 1953, you allowed, permitted and suffered foul, filthy and obscene language and conduct in and upon your licensed premises; in violation of Rule 5 of State Regulations No. 20."

At the hearing herein, several ABC agents testified in support of the charges. On behalf of defendant, the two principal stockholders of defendant corporation, who were tending bar at its licensed premises on the dates set forth in the charges, the male patron named in said charges and a female patron, appeared and testified.

The evidence adduced at the hearing supports a strong suspicion that the violations charged did, in fact, occur, but suspicion, no matter how strong, is not a substitute for the quantum of proof necessary for a finding of guilt. Re Doyle, Bulletin 469, Item 2; Re The Torch, Bulletin 945, Item 5. After most careful consideration of all of the evidence I conclude that it is insufficient to establish, within the meaning of the Rules enumerated in the charges, that defendant "allowed, permitted or suffered" the prohibited conduct on the licensed premises. Cf. Re The Torch, supra.

Accordingly, it is, on this 4th day of November, 1953,

ORDERED that the charges herein be and the same are hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

6. DISQUALIFICATION - FAILURE TO ESTABLISH THAT PETITIONER HAS BEEN LAW-ABIDING DURING FIVE YEARS LAST PAST - APPLICATION TO LIFT DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.

Case No. 1095.

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

In December 1937, petitioner pleaded guilty in a county court to the crime of robbery, as a result of which he was sentenced to a term in a reformatory. However, the sentence was suspended and he was placed on probation for five years. In April 1938, petitioner pleaded non vult in a county court to the crime of robbery and was sentenced to an indeterminate term in a reformatory. In September 1939, he was paroled, but later violated his parole and, in November 1940, was delivered to the parole officer. In August 1953, he was adjudged a disorderly person (assault and battery) in a Municipal Court and was fined $100.00 and costs.

The crimes of which petitioner was convicted in 1937 and 1938 (robbery) involved moral turpitude, and petitioner was thereby rendered ineligible to hold a liquor license or be employed by or connected in a business capacity with the holder of such a license. Re Case No. 923, Bulletin 918, Item 11.

At the hearing herein, petitioner testified that, since January 1953, he has been employed part time as a bartender by his brother, a New Jersey retail licensee. This employment was not disclosed when petitioner filed his present application.

At the hearing he admitted that he knew of his disqualification resulting from conviction of crime and sought to excuse his aforementioned employment by saying that he was only "pinch-hitting" and that he was not "making a living at it," being otherwise employed.

To afford petitioner the relief requested it is necessary that I find that he has been conducting himself in a law-abiding manner for five years last past and that his association with the alcoholic beverage industry will not be contrary to the public interest. See R. S. 33:1-31.2. Although his above conviction in 1953 as a disorderly person does not constitute conviction of a "crime" (Re Case No. 1009, Bulletin 950, Item 8), it is nevertheless a pertinent circumstance to consider on the question whether he has successfully rehabilitated himself and has been living in a "law-abiding" manner during the above requisite period. Moreover, petitioner has been recently employed as a part-time bartender although he knew of the disqualification resulting from his convictions. I cannot find, under the facts in this case, that petitioner has been law-abiding for five years last past.

The petition will be dismissed.

Accordingly, it is, on this 28th day of October, 1953,

ORDERED that the petition herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

7. DISQUALIFICATION - FALSE STATEMENTS AND SUPPRESSION OF FACTS - FAILURE TO ESTABLISH THAT PETITIONER HAS BEEN LAW-ABIDING DURING FIVE YEARS LAST PAST - APPLICATION TO LIFT DENIED.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R. S. 33:1-31.2.	CONCLUSIONS AND ORDER
Case No. 1092.	

BY THE DIRECTOR:

On June 16, 1927, petitioner pleaded guilty to the crime of larceny and as a result thereof was sentenced to a state reformatory for an indeterminate period. He remained in the penal institution until January 11, 1929, when he was released on parole. On March 7, 1939, petitioner pleaded guilty to violation of the Internal Revenue Laws after he was apprehended for transporting untaxed distilled spirits. He was sentenced by a federal judge to a federal prison for one year and one day. He testified that he was released from the federal penal institution after nine months and eighteen days. On February 9, 1944, petitioner was fined $100.00 and assessed an additional $15.00 costs when he pleaded guilty to possession of lottery tickets. Again, on September 30, 1948, he pleaded guilty to possession of horse race betting paraphernalia and bookmaking and as a result thereof was fined $200.00.

Petitioner testified with reference to the larceny conviction on June 16, 1927 as follows: "We bought an automobile from a fellow. We used to help on a milk truck and I think we went about fifteen or twenty miles from home and it broke down, and we left it there. The guy wanted $20.00 for the car when we started, and he has us locked up for stealing the car, and I got sent away for it." Although petitioner pleaded guilty to the three subsequent charges on March 7, 1939, February 9, 1944, and September 30, 1948, respectively, he maintained he was also innocent of these charges.

The crime of larceny to which petitioner pleaded guilty on June 16, 1927, is a crime involving moral turpitude. Re Case No. 454, Bulletin 679, Item 12. It is, therefore, unnecessary to determine whether or not petitioner's three other convictions of crime involved that element.

In a questionnaire filed with this Division, dated May 25, 1949, when petitioner was employed as a truck driver for a company permitted to transport alcoholic beverages in this State, he admitted that he was sentenced in 1939 to a federal prison as a result of transporting illicit alcohol. However, he failed to include in the questionnaire the prior conviction for larceny and the two subsequent convictions for possession of lottery tickets and possession of horse race betting paraphernalia and bookmaking, respectively.

Despite petitioner's criminal record he has been associated with the alcoholic beverage industry during the past five years. He has been employed as a truck driver for two different companies who were licensed to transport alcoholic beverages in this State and during the past year he has been employed as manager by the holder of a plenary retail consumption license. At the hearing petitioner expressed the opinion that he was ignorant of the fact that because of his criminal record he could not be associated with the alcoholic beverage industry.

I do not believe him. In the first instance, he failed to include three of his four convictions in the questionnaire filed with this Division in 1949. Moreover, on February 4, 1953, during the course of an investigation of the licensed premises where he is presently employed as manager he made a statement, under oath, when asked whether he was ever convicted of crime, "Yes, I was arrested and convicted of transporting illicit alcohol in 1939 in Elizabeth, N. J." He was further asked whether he was ever convicted of any other crime to which he answered, "Yes, I broke windows when I was a kid." He stated further, "... I applied to the ABC Division in about 1947 for a removal of my disqualification and it was granted. I received a job with the Red Star Express, No. Bergen, N. J. and I had to apply for a permit from the ABC Div. to work for Red Star because they transport alcoholic beverages and the permit was granted. I was before the ABC Dept. after this permit was granted when I was employed in the Palm Grove, Lodi, N. J. and I was told if I had a permit to transport alcoholic beverages I could be employed in a tavern as a bartender." The aforesaid statements of petitioner are untrue and were apparently made to deceive and practice a fraud upon this Division.

Petitioner produced as witnesses two attorneys and a manager of a food market who according to their testimony have known him for periods varying from fifteen to thirty years. They testified that in their opinion petitioner has been leading a law-abiding existence during the past five years.

In order for me to grant the relief sought by this petitioner I must find that petitioner has been law-abiding during the last five years. I am satisfied he was aware that he was disqualified by statute from being associated with the alcoholic beverage industry in this State but despite this, he was continuously employed during the past five years by companies authorized to transport liquor and by a retail liquor licensee. Being unable to find that petitioner has conducted himself in a law-abiding manner (in the last five years), R.S. 33:1-31.2, I must dismiss his petition. Petitioner may apply for removal of his present disqualification after five years from the date hereof.

Accordingly, it is, on this 28th day of October, 1953,

ORDERED that the petition herein be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Frank Russo
T/a Frank Russo, Contract Carrier
205-7-9 N. Vermont Avenue, Atlantic City, N. J.
Application filed November 12, 1953 for Transportation License.

Frank, Anthony and John Rinaldi
T/a Rinaldi Bros.
1006 West Elizabeth Ave., Linden, N. J.
Application filed November 12, 1953 for transfer of State Beverage Distributor's License SBD-29 from Linden Bottling Company Inc.

Lawrence Warehouse Company
41 Franklin Turnpike, Mahwah, N. J.
Application filed November 13, 1953 for Public Warehouse License.

Lawrence Warehouse Company
120-124 Sandford Street, New Brunswick, N. J.
Application filed November 13, 1953 for Public Warehouse License.

DOMINIC A. CAVICCHIA

9. DISCIPLINARY PROCEEDINGS - ILLEGAL SITUATION CORRECTED - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED.

In the Matter of Disciplinary Proceedings against

ISRAEL COTTMAN
T/a HARLEM INN
117 Washington Avenue
Douglas Park
Egg Harbor Township
P.O. Rte 1, Pleasantville, N. J.,

Holder of Plenary Retail Consumption License C-18 for the license year 1952-53, issued by the Township Committee of the Township of Egg Harbor; and renewed for the 1953-54 license year in the name of

ISRAEL COTTMAN,

for the same premises.

ON PETITION

O R D E R

Paul M. Salsburg, Esq., Attorney for Petitioner Edna W. Fuller.

BY THE DIRECTOR:

On September 29, 1953, I suspended defendant's license for the balance of its term, effective immediately, after I found him guilty of a charge alleging that he had been convicted of crimes involving moral turpitude, which convictions, if they had previously occurred, would have prevented the issuance of the license referred to in this proceeding. Re Cottman, Bulletin 987, Item 1. In said order it was provided that leave was given to apply for the lifting of said suspension upon the transfer of such license to a duly qualified person.

Edna W. Fuller has filed a verified petition wherein she sets forth that, by a resolution dated November 5, 1953, the Township Committee of the Township of Egg Harbor transferred said license to her subject to the suspension aforesaid. A certified copy of said resolution is attached to the verified petition. The petition further recites that Israel Cottman, the former owner, will no longer have any interest in said license or business, directly or indirectly.

It appearing that the unlawful situation has been corrected,

It is, on this 6th day of November, 1953,

ORDERED that the suspension heretofore imposed be lifted, and that Plenary Retail Consumption License C-18 be restored to full force and operation, effective immediately.

Dominic A. Cavicchia
Director.