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

BULLETIN 2328

September 12, 1979

TABLE OF CONTENTS

ITEM

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

BULLETIN 2328 September 12, 1979

1. APPELLATE DECISIONS - PARRILLO'S, INC. v. BELLEVILLE.

Parrillo's, Inc., t/a Parrillo's, Appellant, v. Board of Commissioners of the Town of Belleville, Respondent.	:	ON APPEAL CONCLUSIONS AND ORDER

. . . . . .

Piltzer & Piltzer, Esqs., by David S. Piltzer, Esq., Attorneys for Appellant.
John R. Scott, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Board of Commissioners of the Town of Belleville (hereafter Board) which, on November 9, 1978, found appellant guilty after hearings of the following:

1. Permitting fights and brawls in or about the premises;

2. Continually permitting patrons to loiter in and about the public sidewalks, street areas and parking lots immediately adjacent to the premises;

3. Failure to maintain adequate crowd control with respect to patrons entering and leaving said premises many of whom have created disturbances throughout the surrounding neighborhood areas;

4. Obstructing the administration of justice and the police investigative powers with respect to an investigation pertaining to a knifing that had occurred on the premises on September

24, 1978;

5. Maintaining a public nuisance in that patrons of the establishment continually and regularly disturbed the peace and quiet and dignity of the neighborhood in the following manner: The patrons park in the street, double parked. The patrons use private parking facilities illegally. The patrons in the establishment loiter for longer periods of time on the sidewalk and street areas at late hours creating noise disturbances. The patrons consume alcoholic beverages in and about the parking lot of the licensed premises and the surrounding street areas discarding debris and trash on the surrounding properties. Patrons continually urinate in and around the area of the subject property and also on adjoining and abutting properties.

6. Continual noise disturbance from the patrons who are not in any way controlled nor encouraged to leave the area by the management.

In consequence of the guilty findings, appellant's Plenary Retail Consumption License, 0701-33-032-001, for premises 104 Harrison Street, Belleville, was suspended for a period of one hundred and twenty days, effective March 9, 1979.

Upon the filing of the within appeal the effective dates of the suspension imposed by the Board was stayed by the Director of this Division by Order of November 13, 1978 pending the determination of this appeal.

In its Petition of Appeal the appellant contends that the Board erred in that the facts adduced before it did not substantiate such finding and was arbitrary and politically motivated. Appellant further urges that the penalty invoked was excessive and unduly harsh. The Board denies both contentions in its Answer.

A de novo hearing was held in this Division pursuant to

N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence, and to cross-examine witnesses. Additionally, transcripts of the proceedings held before the Board were introduced into evidence in accordance with N.J.A.C. 13:2-17.8.

At the opening of the hearing in this Division, appellant moved for a dismissal of all of the charges against it with the exception of the charge relating to an alleged hindering of an investigation by police on Septebmer 24, 1978. To that charge appellant intended to enter a defense: To all other charges it maintained that none were specified as to the time of occurrance, and none recited any ordinance, regulation or statute as having been violated, and were thus defective.

The Board replied that all of the specified offenses were constant and appellant well knew of the continuous nuisance the described conditions created. Additionally, the hearings before the Board related the situations complained of with sufficient specificity so that the charges were answered by appellant.

Appellant declined to offer any evidence to supplement that contained in the subject transcripts relative to the charges preferred against it with the exception of that charge concerning the alleged obstruction of police efforts to investigate an incident on September 24, 1978.

Appellant introduced the testimony of Anthony Imperiale, who described himself as a former legislator and operator of a security guard business in Newark. One of his clients is the appellant.

On September 24, 1978, he and his force of seven guards were on duty when, shortly before 2:00 a.m., he was approached by a young man who reported that he had been punched by a man. He was bleeding profusely and was taken to a hospital by his friends. During his conversation with the injured youth, a police radio car was parked near to the entrance of appellant's establishment. He denied telling the boy not to report the incident to the police and he had further assumed that the incident had not occurred within appellant's premises.

Testifying at the hearing before the Board, Belleville Chief of Police, Joseph F. Smith, recounted the contents of the police log from a period beginning, September 13, 1978, a date shortly after the commencement of a "disco" business by the appellant. On that date there were numerous illegal parking complaints and three cars had to be towed away from an area adjacent to the subject premises. The Fire Department

reported to the Police that conditions within the premises were extremely crowded.

On September 15, six cars had to be towed away from driveways and nearby parking lots. One car was completely blocking a traffic lane and ten summonses were issued to improperly parked cars. Fire Department again alerted the Police that the premises were overcrowded. A police car was assigned to the premises until it was closed and the patrons departed.

On September 16, 1978, there were complaints of a car blocking a driveway and the presence of a noisy group of patrons of the premises.

On September 23, 1978, there were further instances of illegal parking and blocked driveway. The radio car assigned was near to the entrance of the parking lot used by appellant's premises. Although the police were unaware, one youth was injured in some altercation either in the parking lot or within appellant's premises, which resulted in his being taken by friends to the local hospital. Later interrogation of the injured youth by police detectives revealed the absence of any report by the security personnel of appellant to the police car, then standing nearby.

On September 27, 1978, police investigated a noisy demonstration in the subject parking lot and disbursed the crowd at 1:50 a.m. There were complaints of illegal parking on September 29 and the police issued two sommonses. Later another car was towed away and, at 3:06 a.m., the police were called to quell a disturbance in the parking lot. Although the participants departed before the arrival of the police, eleven summonses for illegal parking were issued. On the next evening, about 3:22 a.m., a false alarm was sounded from a nearby fire box.

On October 4, the police were called to quell a disturbance in the parking lot, and on October 8, 1978, one youth was severely injured in the parking lot and was taken to the hospital by the police. Traffic in the area of the subject premises was so badly congested on these evenings that the police cars had difficulty arriving at the scene.

On October 13, 1978 after midnight, three police cars containing a sergeant and three policemen responded to a fight and disturbance in the subject parking lot. The participants in the altercation were placed under arrest.

On October 18, 1978, a complaint respecting excessive

noise brought the police to appellant's premises and they alerted appellant's manager of the complaint. At nearly midnight, the police disbursed a noisy group and a half-an-hour later another group was similarly disbursed. Later that morning a patron reported to police he had been assaulted in the premises. This was followed by an assault upon one of the police officers in the appellant's parking lot.

Chief Smith further reported that between the period of September 13, 1978 to October 15, 1978, there were 353 summonses issued for various parking and motor vehicle infractions in the area of appellant's premises. Police Captain Robert Russomano testified that from the period of September 11, 1978 to October 26, 1978 there were a total of 494 improper parking citations issued in and around appellant's premises.

Corroborating the testimony of Police Chief Smith, testimony was received of a Deputy Chief, a Captain, four Sergeants and ten patrolmen.

Deputy Chief George Lister testified that, on September 16, 1978, he investigated appellant's premises and found a crowd loitering in the parking area adjacent; cars parked illegally nearby; and the premises were overcrowded.

On September 22, he spoke to the "owner", Mr. Fierro (Dominic Fierro), and issued a summons charging failure to have a proper permit. On October 6, he visited the premises between 2:30 and 3:00 a.m. and found the area of the premises to be in chaos with horns blowing and other noise of patrons struggling to exit their cars from the parking lot and area.

On October 13, 1978, he found that an exit door was blocked as the premises were so crowded that neither he nor fire officials could enter. He found there were 56 persons in a room limited by Regulations to 20. The "owner" was told that no more persons would be permitted entry. It took forty minutes to clear the area. He is aware of four fights which have taken place in the area, that required police response.

Captain Carmine Zecca testified that, on September 30, 1978, he maintained surveillance of appellant's premises from 9 o'clock in the evening to 3 o"clock in the morning. He directed the issuance of twenty summonses for improper parking and observed noisy patrons departing from the premises at closing time.

On October 6, 1978, he was again in the vicinity of the subject premises from 10:30 p.m. to midnight and attempted to

alleviate a severe traffic problem, which took him and four other officers their full effort to solve. The following evening traffic was not as severe; however, twenty summonses were issued for parking infractions. A youth was assaulted at the premises during that evening.

Sergeant Joseph G. Oese testified that, on October 5, 1978, he was summoned to assist at a disturbance at the area of appellant's establishment which occurred at closing time when three to four hundred patrons emerged. The traffic was so heavy at that time that he was unable to drive his police car to the scene. After attempting to get there unsuccessfully by car for five or ten minutes, he finally arrived on foot. He found other policemen present engaged in attempting to quell fighting as well as in aiding patrons to leave. Altogether, six police officers were required to alleviate the problems. On October 12, 1978, he was called again to quell a disturbance which occurred at 1:24 a.m.

Police Officer Vincent Massy testified concerning an incident which occurred on October 9, 1978. At that time a man threw a refuse can onto a parked car. This resulted in a fight and two men were hospitalized. The cause of the commotion began within appellant's premises.

Police Officer Ronald Beverly testified that, on October 12, 1978, the traffic was so congested in the area surrounding appellant's premises because of improper parking that he was unable to respond to a call for assistance from another police car.

Sergeant Robert Estelle testified that, on September 13, 1978, he was directed to go to appellant's premises where he found that the traffic was congested for 500 feet because of a noisy fighting group. Someone's car windows had been smashed and a fight ensued. Sergeant Estelle was also assaulted during the fracas. On October 18, he again reported to the premises due to a fight which occurred in the parking area. One of the other officers who responded was assaulted. In the fracas, five policemen participated before order was restored.

Sergeant Cornelius Berrigan and Officer Robert A. McDonald each testified concerning an incident which occurred on October 14, 1978 in the parking lot of the subject premises. Both described the disturbance which resulted from the simultaneous exit of between three and four hundred patrons. Officer McDonald described an ingenious means some of the patrons used in order to park illegally without danger of police enforcement. The driver merely removed the summons from a car already "ticketed" and placed the summons on his own windshield. Thus, the

police patrol would assume that that vehicle had already received the violation notice.

Police Officer Vincent L. Cappetta testified that, on October 25, 1978, he and his police partner entered the licensed premises and issued a summons on a charge of operation of a dance establishment without proper municipal permit. While there, he observed a coin machine which he believed to be illegally on the premises. On the exterior, he issued about ten parking summonses.

Police Officer Joseph Sooey testified that, on October 19, 1978, he issued a summons to a driver on a charge of driving while intoxicated. He learned from the driver that he had obtained the alcoholic beverages at appellant's premises.

Police Officer John Martucci testified that, on October 28, 1978, he responded to a call to appellant's premises and found a group of approximately 200 persons in front of the premises. He found a young girl on the street nearby who was covered with blood. His investigation revealed that she was sixteen years of age and had had a fight within appellant's premises.

Detective Sergeant Salvatore Lococo testified that, on October 19, 1978, he investigated an assault and battery complaint that allegedly occurred at appellant's premises.

Eugene Ciampittillo, a patron of appellant's establishment, testified that, on September 24, 1978, he was slashed about the face while no aid was given to him by employees' of appellant to get to the hospital. He was taken there by friends.

Two young girls, aged 16 and 17, testified concerning a fight in which one was involved, as recounted by the testimony of Officer John Martucci. Ann G ----- and Michele M ---- described a fight in which one was involved with two other girls in the appellant's premises. They admitted, however, that they had "snuck in" and, upon being involved in the fight, were ordered out.

Neighbors in the area whose property is adjacent to appellant's premises, Fred Marra, Andrew Pica, Nick Mangieri, Joseph Torluccio and Thomas McGinley, each testified concerning the constant parking problems and the excessive noise in the area since appellant changed the type of operation from that of a restaurant to a disco.

However, a neighbor to the premises, Debbie Acocella,

who resides in an apartment house nearby, testified that she visits appellant's establishment and knows of no problems caused by it. Laurie McNulty, another patron testified that the management of appellant's premises is cooperative to everyone. She indicated that she once parked her car in the subject parking lot, and the employees had to move about fifty cars before she could get out. The next time she visited she parked her car on the street.

One of appellant's employees, Thomas Muschio, testified in connection with the fight in which the sixteen year old girl was involved. He stated that there was no fight within the premises. He added that had there not been a plumbing problem in the ladies room on that evening, there would not have been a waiting line for that room, which caused sufficient confusion so that the under-age girls gained entrance.

Anthony Imperiale, head of the security force at appellant's establishment, testified that, on October 13, 1978, there were 481 persons who had visited the subject premises. The front door was closed to further entrants and there were about seventy-five persons who could not enter.

In giving his opinion as to why the police insisted that there was a traffic problem stemming from the subject prenises, he said:

> Well, if the police sit in their cars and don't come out and move the traffic certainly they'll stay for more than 45 minutes...

One of the principal officers of appellant corporation, Dominick A. Fierro, testified on behalf of appellant. He indicated that the business was changed from a restaurant to a disco on September 13, 1978. He employs between four and seven security guards, depending on the numbers of patrons on particular evenings. He patrols his parking lot six or seven times during an evening and has observed police cars standing by outside.

He would like to lease the bed of the Morris Canal from the town for parking purposes, but has not been able to find out how to arrange such lease. The capacity of the premises is four hundred and twenty persons, and the number of parking spaces is eighty. He knows the representatives of the local Fire Department are at his establishment almost daily and, in consequence of many complaints, he has had a meeting with his neighbors.

- I -

Appellant grounds its defense to the charges upon the contention that as the charges did not specify a particular date and time, they are too vaque to constitute a valid charge. It must be conceded that proper practice relating to the preferment of charges would begin a charge with a specification as to date and time. It is elementary that "(the) minimal requirements of 'due process of law' include reasonable notice of the nature of the proceedings and a fair opportunity to be heard therein". Fantony v. Fantony, 36 N.J. Super. 375 (Ch. Div. 1955).

The complaint containing charges against appellant alleged that the appellant maintained a nuisance, and it averred in detail that which the Board alleges was such a nuisance. The time of commission of the list of items constituting nuisance was not specified. However, at the outset of the hearing before the Board, counsel for appellant did not challenge the sufficiency of the charges as to time and date.

In the testimony of the first witness called, Police Chief Joseph Smith, he clearly indicated that the nuisances began with the change over by appellant from a restaurant business to that of a disco. That change over was said to have occurred about September 11, 1978. Chief Smith emphatically indicated that the offenses were continuing and gave the specific days in which each of the offenses cited occrured.

From Chief Smith's entire testimony which referred to the voluminous police incidents, summones issued, calls and responses to appellant's premises, was the obvious basis upon which the general charges of nuisance were drawn. At the conclusion of his testimony, and, indeed, at its commencement, appellant raised no objection to the absence of a time dimension or lack of specificity in the charges.

From the evidence adduced at the three days of hearings held by the Board, it was glaringly obvious, from the litany of lists of police calls and responses, coupled with the admitted awareness by appellant's manager, that a social nuisance existed as a result of the operations conducted by appellant at its licensed premises.

There were twenty-four witnesses paraded before the Board each of whom gave some testimony in support of the charges. Appellant produced five witnesses who testified in its defense. The lengthly transcripts of the proceedings before the Board fails to reveal that appellant, at any point, considered the treatment accorded to it as violative of any legal requirements,

save for the contention that one of the members of the Board, the Police Commissioner, had prejudged the matter.

It is fundamental that appellant be aware of the accusations against it and to confront its accusers. 1. Davis, Administrative Law, sec. 7.05 (1958). The charges certainly listed all of the elements of a continual nuisance.

A nuisance is a cause or source of annoyance that, although often a single act, is usually a continual or repeated invasion or disturbance of another's rights. Webster's Third International New Dictionary, 1961.

As a general rule, good pleading requires a statement of the time the offense was commited, although under the statutes existing in many jurisdictions the precise date need not be stated unless time is an element of the offense. 42 C.J.S., Indictments sec. 124 (1944). Omissions in the accusation are not a cause for dismissal if such errors or ommissions do not prejudicially mislead the defendant. Errors or omissions may be corrected by particulars developed thereafter. See R.R. 3:7 et seq.

Appellant urges the Director of this Division to reverse the findings of the Board in that no dates were set forth or statement of laws violated in the charges. Such argument is patently spurious as appellant and the Director of this Division have had the benefit of an examination of the extensive testimony of the witnesses, and the argument of counsel, which are more than ample to apprise appellant of the basis of the charges against it.

The appeal of appellant to the Director is de novo in character, pursuant to N.J.A.C. 13:2-17.6, wherein appellant is privileged to produce all of its evidence in rebuttal to that which the Board has had before it and upon which the determination had been based. Instead of the production of any evidence on its behalf, appellant rested complacently upon its argument that the absence of the specific dates within the charges was fatal. Appellant based its belief upon Boller Beverages v. Davis, 38 N.J. 138 (1962) Boller is obviously inapplicable to the instant matter.

- II -

Appellant contends that the charges were not supported by the evidence. The charge that appellant maintained the premises so as to permit a continual nuisance involved testimony relating to fights, loitering, noise and disturbances

of the peace. The log of the police department listed fights which occurred on September 24, October 6, October 8, October 13, October 18, October 19, 1978. Victims in such assaults were taken to the local hospital for treatment on October 6, 8 and 9, 1978, in addition to which the youth who had been hurt on September 24 was removed to a hospital by his friends.

Police responded to loitering and noise complaints on September 15, 16, 22, 27, October 6, 8, 13, 18 and 19, 1978. Testimony of Marra, Pica, Mangieri, Torluccio and McGinley contained a recitation of public disturbance situations which was almost continual from the date that appellant began the disco operation to the date of preferment of charges.

There was a preponderance of evidence in support of the charges; in fact, the evidence was overwhelming. Appellant's contention that such evidence was inadequate is patently frivilous.

- III -

In its petition of appeal, appellant contended that the action of the Board was politically motivated. A motion to dismiss based thereon was made at the commencement of the hearing before the Board. The record is completely devoid of any substance from which a conclusion of political motivation could be drawn. In the memorandum filed by appellant after the hearing in this Division, there is no reference whatever to "political motivation" as an improper basis for the Board's action.

Reference has been made herein to appellant's opening contention at the hearing before the Board that one of its members, Commissioner Saletta, had a bias and prejudice against the appellant. Reference was made to statements made to the press by that Commissioner, who was the Commissioner of Police, and appellant argues that such statements demonstrated an abiding prejudice by the commissioner against appellant. No evidence whatsoever was introduced in support of this contention and the absence of further reference to it leads to the inference that such contention has been abandoned. In any event, it has not been established.

Finally in this vein, appellant contends that the action of the Board should be set aside because the counsel for the Board is the owner of a licensed premises in a neighboring municipality which conducts a similar type business to that of appellant. Hence the charges were initiated as a business reprisal.

This contention is an obvious smoke-screen advance by appellant to hide its sorry record of managing its own premises. Counsel for the Board does, in fact, own a licensed beverage establishment in the adjacent community, but no evidence was advanced whatsoever that would relate that business with the subject premises. Appellant cites Aldom v. Roseland, 42 N.J. Super 495 (App. Div. 1956) as authority for the thesis that as the municipal attorney is an owner of a licensed premises in another municipality, he is disqualified for serving in the capacity as attorney and the Board's action should be set aside. Aldom refers solely to an office holder. Similarly WC III et al v. Washington Twp , 142 N.J. Super. 291 (App. Div. 1976), has relevancy to an attorney being in a position of personal gain by receiving a new license.

In the instant matter, counsel for the Board was acting in his capacity as attorney for the Board only and the decision which affected appellant was not made by him but by the Board itself. It appears that counsel's interest in another licensed premises is merely coincidental and bears no relevance to the primary question as to whether the appellant was or was not guilty of the charges herein.

In short, these peripheral challenges to the Board's action are particularly without foundation.

-IV-

Appellant finally contends that the penalty imposed, i.e., suspension of license for one hundred twenty days was severe and unwarranted. There is little support for this contention. The maintenance of a nuisance can be the basis for revocation. Moon Star, Inc. v. Jersey City, Bulletin 2200, Item 1. Even on a first offense a suspension of one hundred and fifty days was imposed. Aczuy v. Union City, Bulletin 2274, Item 3.

However, the extent of penalty lies within the sound discretion of an issuing authority. The degree of penalty must relate to the circumstances and in the instant matter it would appear that the Board was despaired that the nuisance would ever be abated by efforts of appellant. The probable cause for the Board's anxiety could well have come from one of the owners of appellant's premises, Dominick A. Fierro who, when asked if neighbors had come to him responded as follows:

. . .(the neighbors have) blasted the hell

> out of me. As a matter of fact, they were at a meeting, they even said it. But they never had the courtesy to pay before they walked in, you know. They were trespassers. I'd like to walk into their home the way they walked into mine. That's the way I feel.

There is an admission charge for appellant's premises and, because the irate residents did not pay to enter when their obvious purpose was to complain, Fuerro became indignant. He added further:

> Every day I get a phone call. Is this Tony? I say yes. They say you son-of-a-bitch, and they hang up the phone. Here's the way I feel. I'm a self made son-of-a-bitch . . .

Fierro indicated that one of his principal problems is "people sneaking into the place". There was no admission in all of this testimony that he recognized the manifold problems to the area caused by the management of appellant's premises. Suspension of license are intended to be remedial in nature.

It is abundantly clear that, almost immediately upon the transformation of the business to the disco operation, difficulties began to arise. Despite the growing abundance of problems, there appeared to be no effort advanced by Fierro toward the aleviation of the situation.

The suspension imposed by the Board appears to have been completely reasonable. It is severe enough to require appellant to eliminate the nuisance to which the community has been put and yet not as severe as would have been outright revocation. Re Foulks Village Tavern, Inc., Bulletin 2298, Item 4.

- V -

In reference to the fourth charge, which relates to an occurrance on September 24, 1978, wherein the appellant was charged with obstructing an investigation of a knifing, there was no direct evidence of hindering an investigation in a

formal sense. Imperiale testified at the hearing in this Division, that a young man with blood on his face had approached him in appellant's parking lot and, after brief conversation, was taken by his friends to a hospital. The young man testified before the Board that he had received the cuts within appellant's premises. Imperiale admitted that during his conversation with the youth, a police car was standing by on the street in plain view.

There was no proof, merely inference, that management had evicted the bleeding boy and Imperiale hastened him off in the company of his friends. This inference has no substantiation in the evidence. The Board obviously was concerned that by avoiding summoning the available patrolmen, the problems caused by the knifing were compounded. The injured youth himself shed no light on the sequence of events leading to his hospital visit.

Although there was no specific penalty imposed in connection with the obstructing investigation allegation, it is presumed that the penalty, had it been specifically determined, would have been in balance with the precedent penalty for hindering an investigation (N.J.A.C. 13:2-23.30) which when imposed by the Director of this Division, is fifteen days.

Consequently, finding that this charge was not adaquately proven before the Board, I recommend the penalty imposed by the Board be reduced by fifteen days, leaving a penalty of one hundred and five days suspension of license.

Accordingly, I find that the appellant has not met its burden of establishing that the action of the Board was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6. Thus, with the exception of the extent of the penalty referred to above, I recommend that the action of the Board be affirmed and the appeal be dismissed.

I further recommend that the penalty imposed by the Board and stayed by Order of the Director as hereinabove mentioned, be reimposed with the exception that the same be reduced by fifteen days.

It is urged further that the recommended penalty be reimposed forthwith in view of the continuing nature of the nuisance complained of in view of the constant threat to the peace and quiet of the community.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the Appellant pursuant to N.J.A.C. 13:2-17.14.

In the first Exception, the appellant renews the objection to the denial of its motion to dismiss the charges predicated upon the Board's failure to specify any violation of law or dates of violations therein.

Better practice would have a charge specify a date of alleged violation and recite a specific regulation or statute involved. However, the charges did indicate that they were issued pursuant to N.J.S.A. 33:1-31. They specified terms, such as, "fights and brawls" and "public nuisance", which are readily understood regulatory violations. In specific instances a date and offense were mentioned.

In addition to the reasons set forth in the Hearer's Report in recommending the denial of appellant's motion to dismiss, which I adopt herein, I also note the holding and ratio decidendi concerning due process hearing requirements in Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). Whatever alleged deficiences may have predated the appeal in this Division, I find that they fall within the doctrine of harmless error. Appellant was adequately advised of the nature of the charges, in general, at the hearing before the Board, and was specifically aware of same at the de novo hearing in this Division. Appellant had ample opportunity to contest factual proofs offered in this Division. The situation sub judice is no more serious than the failure of the local issuing authority in Nordco, Inc., supra to permit the licensee to produce witnesses; the acceptance of unsworn hearsay testimony; and providing the licensee with an inadequate description and notice of the charges.

Thus, absent a showing of prejudice in the ultimate ability of appellant to refute the charges, I find this Exception to be without merit.

In its next Exception, the appellant contends that the participation in the disciplinary proceedings below by John R. Scott, Esq., the Town Attorney for respondent, was improper and vitiates the proceedings because he has an interest in a liquor license in another municipality. It maintains that alleged "conflict of interest" should invalidate the proceedings irrespective of the good faith of the official in question.

None of the cases or the bulletin cited by appellant are directly on point, but rather, recite general principles applied to specific facts. In fact, as stated in Paitakis v. City

Coun., New Brunswick, 126 N.J. Super. 233, 237 (App. Div. 1974):

> The determination of whether such an interest is sufficient to disqualify the official is factual in nature and requires an inquiry as to "whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty." Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958).

I find that the activities of the municipal attorney were within normally recognized standard legal duties and functions of his profession. I perceive nothing in the record to indicate that he had the "capacity to temp the official to depart from his sworn public duty". I also incorporate the findings of the Hearer as to this Exception and reject this Exception as without basis in law or fact.

Appellant's next Exceptions set forth various inaccuracies attributed to the Hearer in his report as to factual findings or the absence thereof, and the definition of a "nuisance".

Most of the findings sought to be impeached by appellant, are, in fact, supported by the record, or the reasonable inferences to be drawn therefrom. For example, there was testimony that the appellant's premises were "crowded" on September 13, 1978 (Hearer said "extremely" crowded); that there were noisy groups at Harrison and Brighton Streets on September 16, 1978 (Hearer said "noisy group of patrons of the premises"); and that on September 27 there was a verbal argument in the appellant's parking lot (Hearer said "noisy demonstration in the subject parking lot used by appellant's premises").

It would serve no useful purpose to further identify and analyze, as above, predicated on semantic differences, reasonable inferences or conclusions drawn by the Hearer, or moderate degree variations of the testimony. I have reviewed all the factual proofs offered in this matter, including those of approximately 25 witnesses in support of the charges and 5 in defense, and am satisfied that the Division has established by a preponderance of evidence that the appellant has failed to control activities within and without the licensed premises of its patrons and which substantially support the finding of guilt to Charge 1 (permitting fights and brawls) and Charges 2, 3 and 5 (in essence, a nuisance in violation of N.J.A.C. 13:2-23.6).

The proofs sub judice establish a nuisance within the

intendment and policy of the Division to prevent those activities which constitute a breach of the public peace, require substantial official police and other municipal intervention and/or amount to continuous or regular infractions of other specific Division violations, eg., fights and brawls. See A.H.S., Inc. v. Wall Township, Bulletin 2308, Item 1, affirmed in unreported decision of the Superior Court, Appellate Division (App. Div. Docket No. A-496-78).

Therefore, I find these Exceptions to be without merit.

Whatever hearsay evidence was admitted herein, was corroborated by competent proof and afforded added probative value to the competent testimony. There was a "residium of legal and competent evidence in the record" to support the brawl and nuisance charges. Weston v. State, 60 N.J. 36, 51 (1972). I, therefore, dismiss the "hearsay" Exception proffered by appellant. I concur with the Hearer in his recommendation to dismiss the hindering charge reluctantly. While the inference of hindering is readily available, there was an absence of any direct competent testimony to that charge to warrant the conclusion of "guilt".

In its final Exception, the appellant argues that the penalty recommended by the Hearer with modification to 105 days is excessive. The incidents of abuse of license privileges, sub judice is the only thing that is excessive. The prior absence of adjudicated record is not dispositive. It was the clearly inappropriate type of operation commenced recently by appellant that precipitated the charges. Such change of operational policy by appellant cannot be immunized by a prior absence of violations.

The finding of guilt to the brawl and fight charges and the three nuisance charges, in the quantity and quality exhibited in the record herein, is fully justified, and does not indicate in any way an abuse of the exercise of discretion vested in the local issuing authority to fix an appropriate penalty. I reject this Exception as without basis in law or fact.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the written summations and briefs of the parties, the Hearer's Report and the written Exceptions filed thereto by the appellant, I concur in the findings and recommendations of the Hearer and adopt them, as supplemented hereinabove, as my conclusions herein. I affirm the action of the Board, except as to Charge No. 4 which results in a modification of penalty, and shall reimpose the suspension herein, as modified, for a period of 105 days.

Accordingly, it is, on this 14th day of March, 1979,

ORDERED that the action of the Board of Commissioners of the Town of Belleville be and the same is hereby affirmed, except as hereinbelow noted, and the appeal be and the same is hereby dismissed; and it is further

ORDERED that as to Charge No. 4 the action of the Board be and the same is hereby reversed and the charge be and is hereby dismissed; and it is further

ORDERED that in consequence of the dismissal of Charge No. 4, the penalty to be imposed be and the same is hereby reimposed as modified to one hundred and five (105) days; and it is further

ORDERED that my Order of November 13, 1978 staying the suspension pending determination of the appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption Lic. 0701-33-032-001, issued by the Board of Commissioners of the Town of Belleville to Parrillo's, Inc., t/a Parrillo's, for premises 104 Harrison Street, Belleville be and the same is hereby suspended for the balance of its term, viz.; midnite, June 30, 1979, commencing 2:00 A.M. Monday, March 26, 1979; and it is further

ORDERED that any renewal of the said license which may be granted be and the same is hereby suspended until 2:00 A.M. Monday, July 9, 1979.

JOSEPH H. LERNER
DIRECTOR