

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 2390

BULLETIN 2409

August 21 , 1981

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1. APPELLATE DECISIONS - JOSEPH V. MARTIN, JR. v. UNION ET AL.

APPELLATE DECISIONS - VILLAGE STOP, INC. v. UNION ET AL.

JOSEPH V. MARTIN, JR.,

APPELLANT,

VS.

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF UNION AND VILLAGE STOP, INC.,

RESPONDENTS,

AND

VILLAGE STOP, INC.,

APPELLANT,

VS.

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF UNION AND JOSEPH V. MARTIN, JR.,

RESPONDENTS.

CONSOLIDATED

APPEALS NOS. 4409 & 4410

CONCLUSIONS

AND

ORDER

OAL DKT. NO. ABC 5575-79

Morrow and Benbrook, Esqs., by Donald W. Morrow, Esq., Attorneys
for Village Stop, Inc.

Wesley L. Lance, Esq., Attorney for Joseph V. Martin, Jr.

Richard G. Jefferson, Esq., Attorney for Township of Union.

INITIAL DECISION BELOW

Hon. Richard L. Voliva, Jr., Administrative Law Judge

Dated: May 7, 1980

Received: May 8, 1980

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were
filed by the appellant, Village Stop, Inc., pursuant to N.J.-
A.C. 13:2-17.14.

In its first Exception, Village Stop reiterates
its argument that the "appearance of impropriety", if not
actually an improper influence, attendant Martin's status and
actions in this matter, while he held the official position as

councilman of the Township of Union, fatally taints Martin's application for licensure, and should vitiate any recommended award of the license to Martin.

Initially, I find no basis to warrant the conclusion that the adoption of the ordinance to authorize the issuance of a new retail distribution license was the result of favoritism to Martin, rather than in the public interest. See Blanck v. Mayor and Borough Council, Magnolia, supra. This was the first such license issued in the Township and is authorized by N.J.S.A. 33:1-12.15. In the within appeal, the Committee's sole position was " . . . that it desires a plenary retail distribution license within the municipality. It is hoped that the Director will see fit to exercise 'original' jurisdiction in this matter, conduct whatever hearings may be appropriate and issue the license in accordance with his determination", Township Attorney's letter of October 19, 1979.

The fact that a councilman, Martin, is an applicant for licensure, does not disqualify him, per se. Statutorily, such an acquisition is permitted, N.J.S.A. 33:1-20; however, close scrutiny is warranted to prevent any doubt as to the integrity of the determination predicated upon a potential conflict of interest and benefit to the issuing authority member. W. Orange Licensed Beverage Asso. v. Bd. of Alc. Bev. Control, West Orange, 135 N.J. Super. 387, 392 (App. Div. 1975).

The Committee herein did not recommend the issuance of this license to Martin for further action by the Director, Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-20. The vote for Martin was one in favor, one opposed. The normal "conflict of interest" case which results in the setting aside of the action of the issuing authority occurs when action is taken consistent with the interests of the governing body member. Three, Inc. v. Tp. Comm. of Washington Tp., 142 N.J. Super. 291 (App. Div. 1976); West Orange Licensed Bev. Asso. v. Bd. of Alc. Bev. Congrol, West Orange, supra; Paitakis v. City Coun., New Brunswick, supra; Tp. Committee of Freehold Tp. v. Gelber, 26 N.J. Super. 338 (App. Div. 1953). This factor is absent herein.

Inasmuch as I shall be making the determination as to whom the license shall be issued in furtherance of the de novo aspects of the appeal, as per N.J.S.A. 33:1-22, and the application of the provisions of N.J.S.A. 33:1-20, any conflict of interest issue is moot herein at this posture. Nor do I conclude that the affirmative vote of Mayor Zabriskie for Martin was based upon favoritism. If anything, the converse

occurred because the negative vote cast by Councilwoman Blatterspiel was based on her objection to Martin running for reelection while contemplating applying for this liquor license. Thus, I find this Exception to be without merit.

Appellant, Village Stop, next argues, in its Exceptions, that the conclusions drawn by the Administrative Law Judge concerning comparisons of the applicants for licensure as to tax ratables, effluent treatment capabilities and suitability for expansion were erroneous. These errors, coupled with Village Stop's experience in retailing and the alleged "appearance of impropriety" imputed to Martin, require the award of the license to Village Stop.

I have carefully reviewed the transcripts of testimony of June 19, 1979, July 17, 1979, September 5, 1979 and March 24, 1980 and all the exhibits offered therein. I concur in the conclusion of the Administrative Law Judge Voliva, Jr., that the Martin proposal is superior to Village Stop, Inc., and I have determined to award said license to Joseph V. Martin, Jr.

The Martin proposal represents new construction. The proposed ancilliary uses to the liquor licensed facility can be developed without variance from the local zoning regulations. Parking, effluent removal and traffic flow factors appear superior. Martin has longer roots in the community, and the fact that he has spent thirty-plus years in his own business represents fiscal responsibility and business acumen.

The principals of Village Stop, Inc. appear to be dedicated residents of the community and prudent business persons. Their roots in the community are not as lengthy but their activities there are extensive. The situs and plans for development they have selected is not, in my judgment, as meritorious as Martin's. The renovation of an existing premises represents a lesser developmental project than new construction in both size and potential ratables. The ability to expand is less certain due to zoning requirements and effluent disposal capabilities. Thus, I reject these Exceptions of Village Stop, Inc.

I do not adopt that portion of the Initial Decision which attributes a reduced fitness for licensure to Martin or indicates that the enabling ordinance creating this license would be set aside, if attacked, due to Martin's actions as councilman. As previously indicated, I find no basis to question the propriety of the adoption of the enabling ordinance and, if anything, Martin's position on the Council hurt, rather than favorably influenced, his application.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the letter memorandum of Village Stop, Inc., the Initial Decision and the written Exceptions filed thereto by appellant, Village Stop, Inc., I concur in the findings and recommendations of the Administrative Law Judge and, except as heretofore modified and supplemented, adopt them as my conclusions herein.

Accordingly, it is, on this 19th day of June, 1980,

ORDERED that the action of the Township Committee in failing to award a new license to Village Stop, Inc. be and the same is hereby affirmed, and the appeal therefrom be and is hereby dismissed; and it is further

ORDERED that pursuant to N.J.S.A. 33:1-20, the application of Joseph V. Martin, Jr. for the issuance to him of a new plenary retail distribution license for premises to be constructed in Block 12, Lot 8D in the Township of Union be and the same is hereby approved, subject to receipt of a satisfactory background investigation and compliance with all other statutory and regulatory provisions.

JOSEPH H. LERNER
DIRECTOR

VILLAGE STOP, INC.)	<u>INITIAL DECISION</u>
v.)	
TOWNSHIP OF UNION,)	
AND)	
JOSEPH V. MARTIN, JR.)	
v.)	
TOWNSHIP COMMITTEE OF)	
TOWNSHIP OF UNION OF THE)	
COUNTY OF HUNTERDON)	
AND VILLAGE STOP, INC.)	

APPEARANCES:

Morrow and Benbrook, Esqs, Esqs., by Donald W. Morrow, Esq.,
(Jeffrey D. Curzi, Esq., on the brief) on behalf of the
Village Stop, Inc.

Wesley L. Lance, Esq., on behalf of Joseph V. Martin, Jr.

Richard G. Jefferson, Esq., of record, on behalf of the
Township of Union

BEFORE THE HONORABLE RICHARD L. VOLIVA, JR., A.L.J.:

This matter concerns the competing applications of Village Stop, Inc. (hereinafter "Village Stop"), petitioner, and Joseph V. Martin, Jr. (hereinafter "Mr. Martin"), petitioner, for a plenary retail distribution license in Union Township, Hunterdon County. The Township Committee, after a hearing, failed to grant either applicant the license. Both appealed to the Director of the Division of Alcoholic Beverage Control. N.J.S.A. 33:1-22. The appeals were transmitted to the Office of Administrative Law for a determination pursuant to N.J.S.A. 52:14F-1, et seq. The matter was heard de novo on March 24, 1980.

On December 20, 1978, the Township Committee of Union Township adopted on final passage an ordinance providing for the issuance of one (1) plenary retail distribution license. Prior thereto, the Township had no such license. Mr. Martin was a member of the Committee at the time the ordinance was passed and participated in the adoption proceedings. Both petitioners made application for the license prior to May 2, 1979 (M-13 and M-14).^{*} The Township Committee considered the applications in hearings on June 19, July 17 and September 5, 1979. Mr. Martin did not participate in the hearings in his capacity as a member of the Committee. At the conclusion of the presentations, motions were made and seconded in favor of each applicant. Each motion received one affirmative and one negative

^{*}Exhibit references were "V" for Village Stop and "M" for Mr. Martin, continuing use of the same references from the hearing before the Township Committee.

vote (the Committee consisting of three members, with Mr. Martin not participating). Thereafter, both parties appealed to the Director.

The matter was heard de novo pursuant to N.J.S.A. 33:1-20, N.J.A.C. 13:2-2.3 and N.J.A.C. 13:2-4.1. Although it would appear that once Mr. Martin's application had been filed, the matter should have been immediately transferred to the Director, this was not done. The Division accepts jurisdiction only in the event the local issuing authority determines the member of the governing body is the best suited applicant.* In any event, the subject appeals served to activate the Director's original jurisdiction.

The parties agreed to the admission of the transcripts of the hearings and all exhibits in evidence before the Township Committee into evidence in the matter sub judice.** It was their intent to rely upon the prior record, supplementing as deemed necessary and in accordance with the Prehearing Order.

The first issue concerns whether the application of Village Stop should be dismissed for its failure to comply with the

* See the following letters attached to the Prehearing Order:

(1) April 17, 1979, Richard G. Jefferson, Esq., to John J. Sinsimer, Deputy Director.

(2) May 1, 1979, John J. Sinsimer, Deputy Director, to Richard G. Jefferson, Esq.

(3) December 12, 1978, Anthony N. Frattini, Assistant Deputy Director, to Wesley L. Lance, Esq.

(4) January 18, 1979, John J. Sinsimer, Deputy Director to J. Peter Jost, Esq.

** Transcript references are as follows:

"TA" - June 19, 1979 (J-1).

"TB" - July 17, 1979 (J-2).

"TC" - September 5, 1979 (J-3).

publication requirements of N.J.A.C. 13:2-1.3 prior to the June 19, 1979 hearing before the Township Committee. N.J.S.A. 33:1-25.

Both the statute and the rule set forth the requirement that notice of application be published. Village Stop did not publish the notice before the June 9, 1979 hearing. Mr. Martin argued this failure deprived the Township Committee of jurisdiction over Village Stop's application.

The Committee granted an adjournment in order to permit Village Stop to accomplish publication, which it did prior to the July 17, 1979 hearing and prior to the presentation of its case (V-1). Neither the statute nor the rule specify that the notice contain the date of hearing or set a time sequence for publication prior to the hearing. The purpose of the notice is to inform the public of the application and provide an opportunity to make objections thereto. Although not specified, it would appear logical for publication to occur prior to the hearing. In any event, the public must be given the opportunity to make objections prior to a final decision. The Committee's adjournment of Village Stop's presentation to July 17, 1979 cured the error. There was no harm or prejudice as a result of the Committee's adjournment. In fact, the only member of the public to voice an opinion concerning the applications spoke on July 17, 1979, concerning Village Stop's proposed site (TB62-12 to 63-6). Village Stop's timely publication prior to the July 17, 1979 hearing, especially in conjunction with the adjournment of the presentation of its case, clearly satisfies the requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-1.3.

Village Stop raised issue with Mr. Martin having been a member of the Township Committee at the time of adoption of the ordinance creating the license, as well as when the applications were considered. It is acknowledged that Mr. Martin did not participate as a member of the Committee concerning issuance of the license in the hearing process. It is vital to note that Village Stop specifically did not challenge the adoption of the ordinance and does not seek any ruling regarding the validity thereof. Village Stop solely argues that Mr. Martin, as a voting member of the Committee that adopted the ordinance, is barred from being licensed as a matter of law. Village Stop relies primarily upon Blanck v. Mayor and Borough of Magnolia, 73 N.J. Super. 306 (App. Div. 1962), rev'd and remanded 38 N.J. 484 (1962), but D'Amico v. Blanck, 85 N.J. Super. 297 (App. Div. 1964), certif. den. sub nom. 43 N.J. 448 (1964).

In Blanck, the applicant for a plenary retail distribution license was a former member and President of the Borough Council. The Council had considered an amendment to its liquor ordinance to allow for a plenary retail distribution license during 1959, but no action was taken. Interest was reactivated in 1960. At this time the Mayor became aware that if an amending ordinance was passed, Councilmember D'Amico would apply. At a meeting on August 24, 1960, the Council passed an ordinance on first reading to create the license. D'Amico was not present, although he did attend a Council meeting on September 7, 1960, and moved at that time for the approval of the minutes of the prior meeting. He submitted his resignation as Councilman to the Borough Clerk, his brother, on October 1, 1960. D'Amico was not present at the Council meeting on October 5, 1960, at which time the ordinance was

adopted on final reading. At the same meeting, shortly after passage of the ordinance, Council accepted D'Amico's resignation. D'Amico filed an application for the license on October 7, 1960. The appellants appealed to the Director challenging issuance of the license. They argued that the ordinance was invalid due to the self-interest of D'Amico. The Director rejected the appeal because the evidence did not warrant a finding that the ordinance was adopted as a result of D'Amico's self-interest. The Appellate Division affirmed, holding that the Director lacked the power to declare the amendatory ordinance void. The Supreme Court reversed and remanded, holding that the Director had the authority to determine whether D'Amico's self-interest or the public good was the basis for the adoption of the ordinance. If D'Amico's interest was the reason, the Director should have refused to issue a license to any applicant. From the hearing on remand, the Director held that the enactment of the ordinance was founded upon D'Amico's self-interest and refused to issue a license. The Appellate Division affirmed and certification was denied. id.

Neither the statutory scheme nor the case law preclude Mr. Martin from being granted a license. Clearly Blanck does not so hold. id. Further, N.J.S.A. 33:1-20 specifically allows for a member of an issuing authority to hold a license, providing it is issued under the Director's original jurisdiction. Hence, the purpose of the Director's original jurisdiction. The absence of an express prohibition against licensure is significant in light of the complex and extensive powers of the State to regulate the field of intoxicating liquors. id. at 490. There is no prohibition to the Director's licensure of Mr. Martin.

The principal propounded by Village Stop was applied in Blanck and a series of cases involving amendments to zoning ordinances. The basic thrust of the standard is to declare void ordinances adopted by local governing bodies where members thereof had interests in the outcome, even if the interest was remote. Aldom v. Borough of Roseland, 42 N.J. Super. 495,502 (App. Div. 1956). In order to nullify an ordinance, it is not necessary to establish "...fraud, dishonesty, loss to a municipality or whether he was in fact influenced by his personal interest...", but whether the interest in the adoption of the ordinance results in a "... suspicion of the pureness and integrity of his action." id., at 502-503. An amendatory ordinance is invalid if a voting councilman's employer stands to benefit thereby. id.; (even if his vote was not necessary for passage); Griggs v. Princeton Borough, 33 N.J. 207 (1960). In another case, a councilman introduced for consideration, but did not vote on, an amendment which would have allowed the keeping of horses. The fact that the councilman owned horses was found to be sufficient interest to invalidate the ordinance. Netluch v. Mayor, Council West Paterson, 130 N.J. Super. 104 (Law Div. 1974). The courts have also invalidated municipal actions regarding liquor licenses because of a disqualifying interest of a voting member. W. Orange Licensed Bev. v. Bd. of Alc. Bev. Cont., 135 N.J. Super. 387 (App. Div. 1975), certif. den. 69 N.J. 395 (1976) (Councilman was member of club which was granted liquor license transfer); Paitakis v. City Coun., New Brunswick, 126 N.J. Super 233 (App. Div. 1974) (Councilman maintained law office next to and had telephone answering service provided by tavern which was sole objector to application by luncheonette for license transfer, which application

the City Council rejected). Therefore, it must be emphasized that Village Stop did not, in any respect, challenge the Committee's adoption of the ordinance. Had they done so, there is no question that Mr. Martin's actions, which are substantially similar to, if not more offensive than D'Amico's in Blanck, supra, created the "appearance of an impropriety" contrary to the public interest, and would have resulted in a decision not to grant any license under the ordinance. But, again, there was no challenge to the adoption of the ordinance. Rather, Village Stop attacks Mr. Martin's fitness for licensure upon the mere "appearance of an impropriety".

As will be discussed infra, one of the criteria for evaluating the applications was the applicants' moral character or fitness.

N.J.S.A. 33:1-24. Village Stop seeks to impose the standard of the "appearance of an impropriety", used in the previously discussed line of cases, against Mr. Martin, arguing that the mere appearance on his part renders him unfit for licensure. Although the argument is appealing, it has no merit. In the instant case the respective applications are being considered under the Director's original jurisdiction pursuant to N.J.S.A. 33:1-20. The Supreme Court specifically addressed this issue in Blanck, 38 N.J. at 494, when it stated:

"The obvious underlying purpose of this section is to eliminate not only actual favoritism by fellow members of the local body but also any aura of it which might diminish the public feeling that there is strict impartial supervision and control of the liquor industry." (emphasis added).

Had the Township Committee favored Mr. Martin's application, it could not have granted him the license. It would have merely

rendered a recommendation to the Director. On the other hand, the Committee could have granted Village Stop the license. Therefore, the existence of an "appearance of an impropriety" against Mr. Martin is not relevant to a determination made by the Director. However, that is not to say that this court is barred from going beyond the mere "appearance of an impropriety" and considering the significance of Mr. Martin's actions, his actual conduct, when evaluating his moral character and fitness. see also, Gauli v. Trustees Police and Firemen's Ret. Syst., 143 N.J. Super. 480 (App. Div. 1976). His actions as a member of a governing body, as well as otherwise, are undeniably relevant to the issue of his fitness. As such they will be considered in the determination of the relative merits of his application.

The Township Committee established eight areas of concern in evaluating the applications. They are:

1. suitability of location,
2. moral character of the applicant (fitness for licensure),
3. requirements of the neighborhood,
4. related activities which may be conducted on the same premises,
5. proximity of the site to churches and schools,
6. benefit to the community, increase in ratables,
7. experience or ability of the applicant, and
8. the public good and general welfare.

Village Stop is a New Jersey corporation. It has two stockholders, Michael DeTommaso and Peter Pryslak. Its proposed site is located at the corner of Jutland Road and Interstate Route 78 Access Road. The property consists of 1 $\frac{1}{2}$ acres, and is 155

feet wide and 283 feet deep (along the access road). The premises is centrally located in the Township. It is approximately 1000± feet from the Union Township Elementary School, which has students from kindergarten through the eighth grade. The proposed site is across the street from an existing tavern, which is closer to the school. There is a six year old concrete block and brick building upon the property. This building was previously used as a gas station, although it is presently unoccupied. It has adequate parking facilities. Sewage disposal is by means of a holding tank, which must be emptied periodically. Village Stop has leased the premises for a period of five years, with an option to renew for an additional five year period (V-3). Although executed by all parties, the lease was not dated. Messrs. DeTommaso and Pryslak are part-owners of the property, along with their spouses and two other couples. The parties paid \$61,000 when they purchased the property in 1978 (M-7). The premises is subject to a \$50,000 mortgage.

Village Stop proposes to remodel the structure in order to make it suitable for a retail package store. The floor area of approximately 1350± square feet would be used for the sales area. The attic would be modified for storage purposes. It is anticipated the remodeling will increase the Township's ratables on the property, however, no opinion of value was presented. The applicant also proposes, at some undetermined time in the future, to construct an additional building on the property, for use as a delicatessen/ convenience type store or another appropriate use.

Mr. DeTommaso, a resident of the Township, is presently employed by AT&T as a Switching System Product Manager. He has a B.S. degree in Electrical Engineering. He was the owner of a fast-food franchise operation for three years, which was sold in 1973. Mr. Pryslak, a resident of the Township, is presently the owner of Country Lumber, Inc., dealing in the retail lumber and building materials business. Both are active in community organizations.

Mr. Martin is the owner of 1.273 \pm acres of vacant land along Frontage Road near its intersection with Perryville-Norton Road (County Route No. 635) (M-1,M-8). The premises is centrally located in the Township. It is located on the northerly side of Route 78, virtually across from Village Stop's site. It is further from the school. Martin paid \$65,000 for the lot and has a \$46,600 mortgage. Martin proposes to construct a one story building, consisting of 2700 \pm square feet of sales space, the rest being used as a delicatessen/food service type operation (M-3, M-4 and M-14). Mr. Martin estimated the cost of the structure at \$110,000, with total cost and an additional ratable of \$175,000.

Mr. Martin, a resident of the Township, has been a self-employed mason, operating his own construction business for the past 32 years, and employing four employees for the past ten years. He is active in the community.

Both Village Stop and Martin satisfy the criteria set by the Township for licensure. In fact, both applicants virtually concede the other is qualified for licensure. Consequently, the only issue to be resolved is a determination of which application is, in the

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public interest, the most desirable and should be granted the plenary retail distribution license. There is no doubt that both applicants and the Township desire to have the license issued. Although the Committee was unable to favor one of the applicants, it was unanimous in its resolve that the license was in the public interest and should be granted.

Both of the proposed sites are entirely suitable for use as a retail package store and are virtually equivalent. They are located in the geographic center of the Township, are readily accessible to the same roadways and are located in a commercial zone. Village Stop's site is closer to the elementary school, but the distance is adequate. There is no detectable distinction between the location of the sites.

Likewise, the respective proposals would equally serve the needs of the community.

The moral character or fitness of a corporation can only be judged by that of its owners or managers, those who give it direction. Trap Rock Industries, Inc. v. Kohl, 59 N.J. 471, 482 (1971). Both Mr. DeTommaso and Mr. Pryslak, individually, are fit for licensure, no objection thereto having been raised.

Aside from the issue of his involvement in the adoption of the ordinance, Mr. Martin is as fit as Messrs. DeTommaso and Pryslak for licensure. Although Mr. Martin's conduct creates the "appearance of an impropriety", mere suspicion alone is not sufficient to draw a negative inference against his actual character. There is no doubt that during his re-election efforts in 1978 and participation in the process to enact the subject ordinance, Mr. Martin intended to be an applicant for the license. He candidly admitted this, which

was also evidenced by his efforts to purchase the proposed site at about the same time as the ordinance was pending. However, he did not advise his fellow Committee members of his intentions to secure their support and assistance. It is clear, and Village Stop does not argue, that Mr. Martin's actions, although imprudent and indicating an error of judgment, were not purposeful and do not evidence corrupt motives or a lack of moral character. Mr. Martin is fit for licensure. However, I consider the fitness of Village Stop to be slightly more favorable than Mr. Martin's as a result of the specified conduct.

Mr. Martin's proposal is superior to that of Village Stop in terms of its benefit to the community concerning ratables. It was estimated that Mr. Martin's proposal would have a fair market value of \$175,000. Village Stop's site was purchased for \$61,000, including the building. Assuming an increase in value due to inflation and remodeling, although there was no evidence thereof, it is unlikely that the fair market value of Village Stop's premises would approach that of Mr. Martin's. I base this determination upon the age of Village Stop's structure, the smaller size of the building and the fact that it would be a remodeled gas station as opposed to new construction. It is further evident that Mr. Martin's property is more suitable for expansion. Although I am convinced from the testimony of Mr. DeTommaso and Mr. Shuman, Mr. Martin's real estate expert, that additional commercial space could be constructed on Village Stop's site, there is less available open space than on Martin's property. Also, the Village Stop site requires use of a holding tank.

Martin's proposal is also superior because it would have a delicatessen/food service operation combined with the retail package store. Both applicants viewed such a use as desirable and as an amenity. Although Mr. DeTommaso proposed to develop a structure for just such a use, on cross-examination his plans emerged as mere speculation. There were insufficient definitive future plans upon which to rely. On the other hand, Mr. Martin's plans were much more substantial and viable.

There is no question that Mr. Martin's proposal is more desirable in the public interest, even though Village Stop's would be suitable. Martin's proposal is superior in terms of its increase in ratables, larger sales space, inclusion of a delicatessen/food service operation, absence of a holding tank and potential for future development. Although I considered Mr. Martin's fitness to be less than that of Village Stop, it was so by a matter of mere degrees. No negative inferences have been drawn against Mr. Martin. The issue of fitness is insufficient to offset the superior quality of Mr. Martin's proposal.

After consideration of the entire record in this matter,

I FIND that:

1. Both Village Stop and Mr. Martin, by their respective applications, proposals and proofs, are qualified to be granted a plenary retail distribution license in Union Township.
2. The proposed sites for each of the applicants are equally suitable.
3. Both applicants are of sufficient moral character and fit for licensure, although Village Stop's fitness is slightly

better than Mr. Martin's.

4. Both proposals are sufficient to meet the requirements of the neighborhood.
5. Martin's proposal to combine the retail package store operations with a delicatessen/food service operation was definitive, readily feasible and superior to the speculative proposal of Village Stop.
6. The locations of the proposed sites with regard to churches and schools are indistinguishable.
7. Martin's proposal would have a fair market value of approximately \$175,000, which is substantially higher than Village Stop's proposal, and as such would provide a greater increase in ratables to the community.
8. The relative experience and abilities of the individual applicants are equivalent.
9. All factors considered, Mr. Martin's proposal is superior to that of the Village Stop.

I make the following CONCLUSIONS OF LAW:

1. Village Stop's publication of notice of its application for the subject plenary retail distribution license satisfied the requirements of N.J.S.A. 33:1-25 and N.J.A.C. 13:2-1.3.
2. Mr. Martin is not barred from being issued a plenary retail distribution license as a matter of law, because he was a member of the Township Committee and participated in the proceedings during which the Committee enacted the subject ordinance.

3. Where the conduct of an applicant for a plenary retail distribution license, in his role as a member of a local governing body, constitutes an "appearance of an impropriety", this mere suspicion is not sufficient to create a negative inference concerning his actual fitness. It is necessary to look behind the mere appearance and at the applicant's actual conduct in order to make a determination concerning his fitness for licensure.
4. The mere "appearance of an impropriety" is insufficient to establish a lack of fitness for licensure when the original jurisdiction of the Director of the Division of Alcoholic Beverage Control has been invoked pursuant to N.J.S.A. 33:1-20.

I CONCLUDE that the merits of the application of Mr. Martin for the plenary retail distribution license are superior to those of Village Stop and that it would be in the public interest to grant Mr. Martin the license.

Therefore, I ORDER that Joseph V. Martin, Jr. be granted a plenary retail distribution license for his proposed retail package store in Union Township, Hunterdon County. The grant of this license is subject to completion of the premises, as proposed.

This recommended decision may be affirmed, modified or rejected by Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the Director does not so act in forty-five (45) days from receipt hereof and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, my Initial Decision in this matter and the record in these proceedings.

2. STATE LICENSES - NEW APPLICATIONS FILED.

Vincove Ltd. Inc.

704 Meadow Street

Elizabeth, New Jersey

Application filed for person-to-person and place-to-place transfer of a plenary wholesale license from William Touhey, Trustee for Vincove Winery, 675 River Street, Paterson, New Jersey.

Jason Brooke Imports Inc.

156 Main Street

Hackensack, New Jersey

Application filed August 7, 1981
for wine wholesale license.

Iroquois Grocery Products Inc.

160 Hewitt Avenue

Trenton, New Jersey

Application filed August 11, 1981
for place-to-place transfer of
its licensed warehouse, under a
plenary wholesale license, from
121 Moonachie Avenue, Moonachie, New Jersey.

Wide World of Wine Inc.

95 Cedar Lane

Englewood, New Jersey

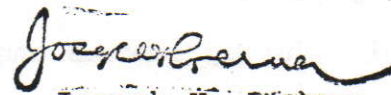
Application filed August 20, 1981
for plenary wholesale license.

Alltime Imports, Inc.

1135 Clifton Avenue

Clifton, New Jersey

Application filed August 20, 1981
for plenary wholesale license.


Joseph H. Lerner
Director