STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2196 August 28, 1975

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ITEM

STATE OF NEW JERSEY
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August 28, 1975

1. NOTICE TO ALL LICENSEES - FIXED PRICE DINNER AND DRINKS PERMITTED.

NOTICE TO ALL LICENSEES:

On January 14, 1974, former Director Robert E. Bower, ruled, in pertinent part, that retail consumption licensees were no longer prohibited, by Rule 20 of State Regulation No. 20, from including an "after-dinner drink" with a dinner at an overall price. Bulletin 2127, Item 3. The ruling was based upon the conclusion that, by reason of recent social and economic changes, such pricing plans no longer constituted a "practice unduly designed to increase the consumption of alcoholic beverages" within the intendment of Rule 20 of State Regulation No. 20. Licensees were also advised that they may advertise such practices, provided they did not refer to the size or price of alcoholic beverage drinks involved therein.

I have now been requested by licensees to expand this ruling to include drinks with a dinner, as well as "after-dinner drinks." After careful review, including consideration of the fact that the Division has not experienced any adverse results from the January 14, 1974 ruling, I have decided to expand the ruling as requested, and hereby do so, with one proviso, namely, that either the "after-dinner drink" or the drink with a dinner which may be part of a package dinner price may not be restricted to an alcoholic beverage drink, but may be a soft, non-alcoholic drink, at the option of the customer. Licensees may also advertise these practices on dinner menus, newspapers and other media, provided there is no reference to the size or price of alcoholic beverage drinks.

It is to be understood that my ruling in this matter will be reviewed from time to time in the light of experience gained in observing the practice of licensees. Should such experience show abuses resulting in control or enforcement problems, I shall have no hesitancy in taking appropriate remedial action.

Leonard D. Ronco
Director

Dated: July 17, 1975

2. APPELLATE DECISIONS - LE CHATEAU CLUB OF FAIRLEIGH DICKINSON UNIVERSITY v. RUTHERFORD.

Le Chateau Club of Fairleigh Dickinson University, Appellant, v. Borough Council of the Borough of Rutherford, Respondent.	On Appeal CONCLUSIONS and ORDER

Kipp, Somerville & Kipp, Esqs., by Walter A. Kipp, III, Esq., Attorneys for Appellant
Francis J. O'Dea, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Borough Council of the Borough of Rutherford (hereinafter Council) which, on April 15, 1975, denied appellant's application for a club license, for premises situated on the Rutherford campus of Fairleigh Dickinson University.

In its petition of appeal, appellant contends that the action of the Council was arbitrary and unreasonable. The Council denied this contention.

A de novo appeal was heard in this Division, pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the parties to present evidence and cross-examine witnesses.

At the outset of the hearing, inquiry was made of appellant respecting its identity as an applicant for a "club license", and for proffer of proof of such factual background as would establish its statutory right to maintain the action.

By declaration of counsel for appellant, an application for a club license (N.J.S.A. 33:1-12) was made to the Council following the passage of Chapter 19 of the Laws of 1975, which authorized the Council to issue an additional club license. Appellant is a non-profit fraternal and social organization having more than sixty members (Rule 1, State Regulation No. 7), and is to be located on the campus of Fairleigh Dickinson University. It has not been organized and in existence for three years, nor has it received a waiver of that requirement from the Director of this Division (Rule 5, State Regulation No. 7).

Appellant further admitted it was not a unit of "national organization", as mandated by the statute (C. 19, P.L. 1975). However, it contends that, it was "sponsored" by a national organization, i.e., The Student Union, and thus qualifies as a "national organization". This contention is patently without merit; the statute is specific in its use of the term "units of national organizations", and this specific limitation cannot be enlarged to include "sponsored" organizations.

Such statute must be strictly construed:

> "A legislative grant is to be strictly construed and its general terms should not be extended to include specific rights not included within its language." Attorney General Opinion No. 15, July 2, 1951; State v. Link, 14 N.J. 446 (1954); State v. Gratale Bros. 26 N.J. Super. 581 (App. Div. 1953); Hasbrouck Heights Hospital Ass'n v. Hasbrouck Heights, 15 N.J. 447 (1954).

The Council denied appellant's application; nor could it have approved the same. Appellant has failed to qualify as a unit of a national organization, as required by the clear language statute (C. 19, P.L. 1975). Additionally, appellant further failed to qualify in that it had not obtained a waiver of the requirements of Rule 1 of State Regulation No. 7 (three-year continual existence) pursuant to Rule 5 of State Regulation No. 7.

It is, accordingly, recommended that the action of the Council be affirmed, and the appeal be dismissed.

Conclusions and Order

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

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

Accordingly, it is, on this 25th day of June 1975,

ORDERED that the action of the respondent, Borough Council of the Borough of Rutherford, be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - UOLA CAPTAIN, PRESIDENT SOUTH 11TH STREET BLOCK ASSOCIATION ET AL v. NEWARK ET AL.

Uola Captain, Pres. South 11th Street Block Association, South 11th Street Block Association, and Mr. & Mrs. T. H. Paterson,	:	
Appellants.	:	On Appeal
v.	:	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, Will & Jeff Bar (a corp.), and New Scene Corporation,	:	
Respondents.	:	

Bernard K. Freamon, Esq., Attorney for Appellants
Milton A. Buck, Esq., by Donald F. Miceli, Esq., Attorney for Respondent Board
Leon Sachs, Esq., Attorney for Respondents Will & Jeff Bar and New Scene Corporation

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (Board) which, on December 23, 1974, granted a person-to-person and place-to-place transfer of the plenary retail consumption license held by Will & Jeff Bar Corporation to New Scene Corporation, and from premises 210 Belmont Avenue to 703 South 11th Street, at the corner of Woodland Avenue, Newark.

Appellants, in their petition of appeal, contend that the action of the Board was erroneous for the following stated reasons:

> "(a) Many children play up and down the street and will have to pass in front of the tavern in play or on their way to and from school, if this transfer is allowed.
>
> (b) Woodland Avenue School is across the street and the tavern may have a bad effect upon the behavior of students there since Woodland Avenue School is specifically for disciplinary problems.

(c) There is a tavern within one block on either side of this proposed location. The residential character of this section of 11th Street will be destroyed if another tavern is placed in the area.

(d) There is no stop sign or traffic light at the corner and 11th Street is used extensively by the Fire Department on emergency calls. There is approximately one accident per month at the corner. The corner will create a hazardous and congested traffic condition.

(e) The record of the prior hearing will show that the owner of this tavern has not demonstrated a sufficient familiarity with the Rules and Regulations of the ABC Board.

(f) It appears that the Newark ABC Board has not sufficiently investigated this situation so that an adequate determination of the issues herein can be made."

In its answer, the Board denies the substantive matters presented in the petition of appeal; assert that the transfer was based upon its sound discretion; and that its action was not arbitrary, capricious or unreasonable.

Although the transferor is neither a necessary nor proper party herein, it was improperly joined in this proceeding as a party respondent with the transferee corporate licensee. In their joint answer filed herein, they contended that the Board's action was proper and legal. Therefore, it is recommended that the transferor Will & Jeff Corporation be dismissed as a party respondent herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. Additionally, a transcript of the proceedings held by the Board was received in evidence, in accordance with Rule 8 of State Regulation No. 15.

At the hearing before the Board, five area residents articulated their objections to the proposed transfer which may be condensed as follows: proximity to both a school for delinquent boys and to a church; exacerbation of traffic hazards and parking; downgrading of the neighborhood; it would serve to increase the liquor outlets in the area; it would increase crime in the area; and it would induce teenagers to drink.

In support of the application for transfer, Mary Ann Middleton, president of the proposed corporate transferee, testified that the proposed location would be completely renovated, and that food would be served in addition to the usual bar facilities. Although she was not presently employed

in the liquor industry, she had heretofore tended bar for three years, and intended to hire a bartender with at least five years experience. She asserted that she was familiar with the Division Rules and Regulations.

At the commencement of the de novo hearing, the attorney for the appellants asserted that their primary objections to the transfer were based upon the proximity of a school to the proposed location; that a church was located within two hundred feet of the proposed location, and the transfer would therefore be violative of N.J.S.A. 33:1-76; that the transfer would intensify an already hazardous traffic condition in the area; and because neighbors feared of harm the transfer would cause to the youth residing in the area.

Lewis Lamotta, a lieutenant in the Traffic Division of the Newark Police Department testified on behalf of appellants that, relative to the subject intersection, the records of that office revealed that in 1970 there was one accident, in 1971 there were no accidents, in 1972 there was one accident, in 1973 there were eight accidents and in 1974 there were four accidents reported.

The records further disclosed that, due to the above-normal rate of accidents at the intersection, a recommendation was made that two stop signs be installed thereat. This matter lies within the jurisdiction of the City of Newark. The witness expressed an opinion that the installation of such signs would abate traffic accidents at that location.

Edward Jackowski, testified that he is the principal of the Woodland Avenue School for the Socially Maladjusted Boys, the entrance of which fronts on South Tenth Street, and which is one block distant from the proposed location. The playground is located diagonally across the street from the proposed location. There are sixty-six males registered in the school, ranging in age from fourteen to eighteen years.

Jackowski assumed that the entrance to the school is in excess of two hundred feet and less than three hundred feet from the entrance to the proposed liquor establishment.

It was the witness' opinion that the proximity of the liquor outlet to the school would have a deleterious effect upon the students. Also, it might serve as a temptation for them to stop in for a drink.

Uola Captain, one of the appellants herein, who resides in the vicinity of the proposed location and who is president of the South 11th Street Block Association, testified that, upon receiving a notice of a hearing to be held by the Board to consider the proposed transfer, she called a meeting of the said Association. The Association objected to the proposed

transfer. Captain expressed the objections of the Association at the Board meeting. Additionally, she expressed her personal objections and presented petitions signed by area residents objecting to the transfer.

At the de novo hearing Captain explained that she was particularly concerned with the hazardous traffic conditions at the subject intersection and the deleterious effect the liquor establishment would have upon the youngsters in the area. She conceded that she was accorded full opportunity to express her objections at the meeting held by the Board.

Dorothy S. Paterson, a co-appellant who resides nearby, and who also expressed her objections to the proposed transfer at the hearing held by the Board, asserted that the area would become noisy and would be downgraded by the transfer.

Lucille Brown who resides in the area articulated her reasons for objecting to the proposed transfer, as follows: two pedestrians were injured at that corner by motor vehicles; speeding motor vehicles; lack of parking facilities in the area.

Erna Macmable explained that she objected to the proposed transfer because she feared that the neighborhood would become noisy if this tavern were permitted to operate.

Carolyn Williams, who resides in the neighborhood and who is the mother of six children was opposed to the proposed transfer because of the effect which she believed it would have upon the numerous children who reside and play in the area.

It was stipulated that the testimony of an additional five area resident, who were present at this de novo hearing, would be similar to the testimony offered by the other objectors.

In adjudicating this matter, I find upon my examination of the proofs herein, that the entrance way of the proposed location of the liquor establishment is in excess of two hundred feet from the nearest entrance way of both the church and the school.

I further find that the reasons expressed by the objectors at the meeting held by the Board to consider the transfer were, in the main, similar to the objections articulated by the objectors at this de novo hearing and which were considered by the Board in arriving at its determination.

The well-settled principle governing the subject controversy is expressed in Paul v. Brass Rail Liquors, 31 N.J. Super. 211, 214, (App. Div. 1954), wherein it was held:

"The issuance, renewal and transfer of liquor licenses rest in the sound discretion of the issuing authority and its action will not be judicially disturbed in the absence of a clear abuse of discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949)."

In Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgement for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

The following expressions from the recent case of Margate Civic Ass'n. v. Board of Com'rs of City of Margate, 132 N.J. Super. 58, 63 (App. Div. 1975) are pertinent:

"The responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or to cover enlarged premises is primarily committed to municipal authorities. N.J.S.A. 33:1-19, 24; Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Newark, Supra. Local boards considering applications for such transfers are invested by our Legislature with wide discretion, and their principal guide in making a determination is the public interest. Id., 303; Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). See Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Once the local board has made its determination, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control who conducts a de novo hearing of the appeal, making the necessary factual and legal determinations on the record before him. Fanwood v. Rocco, 33 N.J. 404,414 (1960).

> However, the rule is well established that the Director will not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record. On judicial review the court will generally accept the Director's factual findings as well as his ultimate determination unless unreasonable or illegally grounded. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark; supra, 55 N.J. 303; Fanwood v. Rocco, supra. 33 N.J. 414-415."

It is apparent that the Board, considered the fears expressed by the objectors that the proposed transfer would, in effect, downgrade the area. In this connection, it must be noted that, if the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), residents of the area have nothing to fear. If, on the other hand, the licensed premises are operated in violation of the Alcoholic Beverage Law or the Rules and Regulations of this Division the licensee will subject his license to disciplinary action which may result in suspension or revocation of the license privilege. Jesswell Inc. v. Newark, Bulletin 1847, Item 5, and cases cited therein.

In evaluating the record herein, I find insufficient factual and legal foundation to support the various contentions advanced by the appellants.

Therefore, upon consideration of all of the evidence herein, including the transcripts of the testimony and the argument of counsel, I conclude that appellants have failed to sustain their burden of establishing that the action of the Board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

Hence, I recommend that an order be entered affirming the action of the Board, and dismissing the appeal.

Conclusions and Order

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

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

Accordingly, it is, on this 25th day of June 1975,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Newark be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

LEONARD D. RONCO
DIRECTOR

4. SEIZURE - FORFEITURE PROCEEDINGS - UNTAXED ALCOHOLIC BEVERAGES IN MOTOR VEHICLE - CLAIM FOR RETURN OF MOTOR VEHICLE DENIED - ABSENT GOOD FAITH - AUTOMOBILE AND ALCOHOLIC BEVERAGES ORDERED FORFEITED.

In the Matter of the Seizure on December 23, 1974 of a quantity of alcoholic beverages, a 1973 Chrysler 4-door sedan at Highway 295, Mile Post 11, Logan Township, Mantua, County of Gloucester and State of New Jersey.	Case No. 13,170 On Hearing CONCLUSIONS and ORDER

Granite and Granite, Esqs., by Alvin L. Granite, Esq., Attorneys for claimant, Sidney Weiner.
Carl L. Wyopen, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages and one 1973 Chrysler, 4-door sedan, bearing registration plates of the State of Maryland, as set forth in Schedule "A", attached hereto and made part hereof, seized on December 23, 1974, at Mile Post 11, Interstate Highway 295, Mantua, Logan Township, New Jersey constitutes unlawful property and should be forfeited.

The seizure was made by ABC agents in cooperation with officers of the New Jersey State Police.

At the hearing, reports of the ABC agents and the Division file were admitted into evidence. The Division file contained an analysis of the alcoholic contents of the seized beverages, and a certification by the Director that they contained a requisite amount of alcohol to come within the purview of the Statute (N.J.S.A. 33:1-1(b)). The file also contained a certification by the Director that no license or permit for the transportation of alcoholic beverages had ever been issued to the claimant or for the vehicle.

The claimant, Sidney Weiner, owner and driver of the seized vehicle, readily admitted the illegal transportation of ninety-four containers of alcoholic beverages, and waived right of cross-examination of New Jersey State Trooper Kendall K. Harkins who had arrested claimant and held the vehicle for seizure by the ABC

agents. Invoices for some of the alcoholic beverages seized, discovered in claimant's vehicle by the state trooper were admitted into evidence together with copies of letters to claimant from residents of the State of New York.

ABC Agent D testified that on December 23, 1974, he and a fellow agent examined claimant's vehicle at the New Jersey State Police Barracks and there discovered suitcases and a box containing the ninety-four containers of alcoholic beverages. He noted that forty-eight of the bottles were of "imperial quarts", not sold in this country; and these failed to have Federal Tax Stamps affixed. The remaining bottles were similar to those readily available for purchase in retail liquor stores in this State.

The claimant, Sidney Weiner, testified that he is a resident of Silver Springs, Maryland, and is employed as a mathematics statistician for the Federal Highway Administration. Additionally, he is a part time professor at the University of Maryland. He is a native of New York City and has many friends and relatives there.

On the day of the seizure, he was en route from Maryland to New York and was bringing a supply of liquor to be used by his relatives for parties during the holiday season.

He neither knew that it was illegal to transport the quantity of alcoholic beverages he was carrying through New Jersey nor that it was illegal to possess untaxed whiskey. He described the untaxed imperial quarts of whiskey in his possession as having been purchased from one of the staff members of an embassy in Washington. He had paid for it and was anticipating reimbursement upon its delivery in New York City. He produced invoices from a liquor distribution store in Washington for the taxed whiskey in his possession.

On cross-examination, he admitted that certain letters in his possession containing requests for certain quantities and brands of alcoholic beverages contained orders which he was endeavoring to fill. He denied that any of these transactions represented a profit to him; he insisted that he was undertaking this merely as a convenience for his friends, who were desirous of obtaining liquor at cheaper prices.

Detailing the method of acquiring the imperial quarts of untaxed whiskey, he admitted knowing one of the members of the staff of the Nicaraguaian Embassy, Dr. Rizo Castellon, whom he had met some eight years ago in the pursuance of a plan he then had to obtain tobacco from that country for resale here. That association led to the present purchase which had been made at Dr. Castellon's home in Maryland. He presumed that the liquor had been initially obtained by the Embassy through some source in Baltimore. He had no reason to believe that Dr. Castellon's possession of the untaxed liquor was illegal.

The claimant grounded his claim upon N.J.S.A. 33:1-66(e) which provides:

> "The director upon being satisfied that a person whose property has been seized or forfeited pursuant to the provisions of this section has acted in good faith and has unknowingly violated the provisions thereof, may order that such property be returned upon payment of the reasonable costs incurred in connection with the seizure, such costs to be determined by the director."

The claimant contends that as he is a federal employee, of good reputation, who was merely accommodating his friends and relatives, and was not engaged in a profit-making enterprise, also, since he allegedly did not know of any prospective law violation, he should be considered a beneficiary of that section of the law above upon which the Director could order restitution. Cf. Rule 3(b), State Regulation No. 28.

The seized alcoholic beverages constitute illicit alcoholic beverages because of the quantity intended for transport, and they were so transported in this State without permit. Therefore, it constituted a clear violation of the relevant Statute, N.J.S.A. 33:1-2, 66.

In a similar case involving the transportation of alcoholic beverages from Maryland to New York via New Jersey, where a permit from the Director was sought to validate such transportation, the Director held: "However, since it is apparent that the said alcoholic beverages were to be transported to states where the importation thereof would be illegal, no such permit would be issued." Seizure Case No. 12,939, decided October 4, 1973.

Additionally, the applicability of N.J.S.A. 33:1-66 (e) and Rule 3(b) of State Regulation No. 28 revolves around the bona fideness of the claimant. The claimant's contention that he is the innocent victim of his own ignorance of the law is frivolous and must be rejected.

One of the letters discovered in the claimant's possession carried, in part, the following message:

> "Dear Mr. Weiner- My long-time friend Mal Newbold- who of course is also a neighbor- was good enough to give me your name. At any time that suits your convenience I would be glad to receive a shipment from you. Say, two or three cases each of Scotch, and Canadian whiskey--also a case of gin. A case of vodka would also be in order, come to think of it. Mal tells me that 40- oz. jugs are available and at very favorable prices....."

Another letter to claimant from a person named Sal begins: "Since I saw you last, I've received additional orders. See what you can do. They want them for Xmas....."(A list followed for more than ten cases of varied liquors).

Such "orders" contradict claimant's purported exculpatory account of having carried liquor for a party or parties. The shipment was earmarked for sale to waiting customers, and was obviously part of a purely business transaction.

Beyond the cold business aspect of the transportation, the claimant was a party to the introduction into commerce of alcoholic beverages privileged for untaxed use by and under diplomatic immunity. For this claimant, a governmental employee with a Ph.D. degree, and a position as assistant professor in University of Maryland, to engage in the distribution of contraband liquor, i.e. "bootlegging" and then plead ignorance of the law is incredible, and rather ludicrous. I find that he has not acted in good faith.

I, therefore, conclude that the claimant's claim is without merit, and recommend that an order be entered forfeiting the seized alcoholic beverages and motor vehicle.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 4 of State Regulation No. 28.

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

Accordingly, it is, on this 1st day of July, 1975

DETERMINED and ORDERED that the alcoholic beverages, as set forth in Schedule "A" aforesaid, constitutes unlawful property, and the same be and are hereby forfeited, in accordance with the provisions of N.J.S.A. 33:1-66, and the same shall be retained for the use of hospitals, State, county of municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control; and it is further

DETERMINED and ORDERED that the seized 1973 Chrysler four-door sedan, bearing serial and registration numbers as set forth in Schedule "A", aforesaid, constitutes unlawful property, and the same be and hereby is forfeited in accordance with the provisions of N.J.S.A. 33:1-66, and that it be offered for sale at public sale pursuant to State Regulation No. 29, and sold by the Director of the Division of Alcoholic Beverage Control if a bid satisfactory to him is obtained; and the proceeds of such sale shall be accounted for in accordance with law.

Leonard D. Ronco,
Director

SCHEDULE "A"

94 - containers of alcoholic beverages
1 - 1973 - Chrysler, 4 - door sedan,
Serial No. CS43T3C1006673, Maryland
Registration MF-8405.

5. STATE BEVERAGE DISTRIBUTORS LICENSE - OBJECTIONS TO TRANSFER HELD TO BE MERITORIOUS - APPLICATION FOR TRANSFER DENIED.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-53 from :

Gerard Calabrese :
t/a Haledon Distributing Co.
29 Mangold Street, Rear :
Haledon, N.J.,

to :

Flanders Beer Distributors, Inc. :
Gold Mine Road :
Mt. Olive Township
P.O. Flanders, N.J. :

CONCLUSIONS and ORDER

Brandley and Kleppe, Esqs., by Andrew w. Kleppe, Esq., Attorneys for Applicant

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On April 11, 1975, Flanders Beer Distributors, Inc. filed an application for a person-to-person and place-to-place transfer of State Beverage Distribution License No. 52 from Gerard Calabrese, t/a Haledon Distributing Company, 29 Mangold Street, Rear, Haledon, to the applicant Flanders Beer Distributors, Inc., and to premises Gold Mine Road, Mt. Olive Township, P.O. Flanders.

Written objections to the granting of the application for the said transfer were filed, and the hearing was duly held thereon. These objections may be summarized as follows:

(1) There are nine beer distributors at present in the area in which the applicant seeks to operate.

(2) No beer supplier is without a wholesale outlet for this region. At present there are no lines available to the applicant.

(3) The present licensees in this small area have maintained an orderly market in the face of adverse conditions, because they are well-experienced and of long standing.

(4) That the grant of the transfer would be contrary to the public interest.

At the hearing held herein, Edward R. Collioud, the Secretary, Treasurer and Director of the corporate applicant testified that he has been engaged in the building construction and trucking business, and now desires to enter the beer distribution field. The applicant is presently negotiating with W. H. Cauley in Sommerville for the purchase of the distribution rights to four major brands of beer. At the time of the hearing, these negotiations were not finalized.

He explained that the applicant is not bringing in new licenses into the area, but intends to purchase the distribution franchises presently held by the Cauley Company. The transferor, in fact, does not distribute beer, so that this applicant would not be purchasing any accounts from the transferor.

Testimony to the same effect was given by Walter Geffchen who is a principal stock holder and director of the corporate applicant.

Alan Chernotsky, the owner of American Corporation, a State Beverage Distribution licensee, operating in Sussex, Warren and Morris Counties, set forth essentially, the objections summarized hereinabove. He stated that if the applicant were able to obtain franchises, he would have no objection to the transfer; "If they had the lines I wouldn't be here objecting."

Miles R. Goldsmith, the president of Lake Beer and Soda Distributors, Inc., an SBD licensee objected on the ground that the area was adequately covered. However, if this applicant did not intend to sell beer at retail, this witness would have no objection to the transfer.

Subsequent to the date of the hearing, the attorney for the applicant, by letter dated June 4, 1975, informed this Division that the brewers with whom the applicant indicated that it was negotiating, have informed the applicant that they will not appoint the applicant as their distributor in the area. In a supplemental letter dated June 18, 1975, the applicant's attorney added that, in view of the fact that the applicant has now been denied any distribution rights by the brewers, "the negotiations with the Cauley Company have been terminated".

The transfer of a liquor license whether state or municipal from person-to-person or place-to-place, is not a privilege inherent in a license. Re Maccia, Bulletin 1401, Item 5. The test in the transfer of licenses is whether there is a need and necessity for such transfer and whether such transfer would serve the public interest. Lakewood v. Brandt, 38 N.J. Super. 462 (App. Div. 1956); Lubliner v. Bd. of Alcoholic Bev. Cont., Paterson, 23 N.J. 428, 446 (1960); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

The transfer sought herein would be of no demonstrable value to the applicant, nor would it serve the public interest, because the applicant admittedly has not obtained any distribution franchises with which to engage in operations.

Therefore, the grant of this application would be a disservice both to the applicant and to the public interest.

Under these circumstances, it is recommended that the application for transfer be denied. Cf. Re Saxon Distributing Co. Bulletin 1237, Item 7; Re Jiannantino, Bulletin 1246, Item 9.

Conclusions and Order

No exceptions to the Hearer's report were filed with me.

After carefully considering the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 16th day of July, 1975

ORDERED that the application for the transfer of the license herein be and the same is hereby denied.

Leonard D. Ronco
Director