STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 808 JUNE 23, 1948.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 808 JUNE 23, 1948.

1. APPELLATE DECISIONS - TUBE BAR, INC. ET AL. v. JERSEY CITY ET AL.

Case #2
TUBE BAR, INC.,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR (a New Jersey corporation),
Respondents.

Case #2
BEN'S GRILL, INC., trading as TERMINAL CAFE,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR (a New Jersey corporation),
Respondents

ON APPEAL

CONCLUSIONS AND ORDER

Maurice C. Brigadier, Esq. and Michael Halpern, Esq., Attorneys for Appellant Tube Bar, Inc.
Samuel Moskowitz, Esq., Attorney for Appellant Ben's Grill, Inc., trading as Terminal Cafe.
Charles A. Rooney, Esq., Attorney for Respondent Board of Commissioners of the City of Jersey City.
James F. McGovern, Jr., Esq., Attorney for Respondent Finbar.

BY THE COMMISSIONER:

These appeals are from the action of the respondent Board of Commissioners in granting a transfer of a plenary retail consumption license from Mary C. Howard, Administratrix of the Estate of John Howard, to respondent Finbar, and from premises at 33 Bevans Street to premises on the intermediate level, known as the Concourse Floor, in the Journal Square Station of the Hudson & Manhattan Railroad Company.

A prior transfer involving the same license, parties and premises was appealed to the State Commissioner and, by consent, the transfer was set aside on November 10, 1947, by reason of the fact that the advertisement of notice of application was fatally defective. See Bulletin 782, Item 12.

Thereafter, on November 21, 1947, the present application was filed with respondent Board and notice of application in connection therewith was advertised on November 22 and 29, 1947. The present appellants, as well as others, filed objections to this new application and on December 8, 1947 a hearing was held before the Director of Public Safety, one of the members of respondent Board. Such hearing was taken down stenographically and on December 16, 1947 the Director transmitted his report to respondent Board recommending that the application be granted. Cf. Ricker et al. v. West New York, Bulletin 229, Item 1. On that same date the Board granted the application, whereupon the present appeals were taken. The appellants are plenary retail consumption licensees located in the general neighborhood of the railroad station.

Before considering the meritorious issues raised in these appeals, it may be noted that the present application was apparently not in proper form. The notice of application describes the proposed premises merely as "located at Journal Square Terminal, Jersey City". The application itself is more specific but erroneously describes the premises as "Southeast corner, Concourse Floor, Journal Square Terminal, Hudson & Manhattan Railroad". From a survey submitted in evidence it appears that the proposed premises are actually located in a corner on the west side of the Terminal Building.

It further appears that, when this application was filed, the proposed location in the station was merely an open and bare corner where a fruit or vegetable stand had previously been located. No plans or specifications accompanied the application to precisely define the proposed premises or to show what construction would be made at this open corner. Even at time of hearing in the present appeals, it appears that no such plans or specifications had been filed with respondent Board. Under these circumstances it is difficult to perceive how the application in question may be viewed as formally sufficient when it was passed upon by respondent Board. Cf. Re Salter, Bulletin 184, Item 8; Re Murphy, Bulletin 389, Item 11.

Moreover, the application in question nowhere appears to bear or be accompanied by the express written consent of the transferring licensee, Mary C. Howard, Administratrix, as required by R.S. 33:1-26 and Rule 3 of State Regulations No. 6. Such written consent is a jurisdictional requirement. Norton v. Union, Bulletin 709, Item 5; Bates v. Monroe et al., Bulletin 750, Item 10. Also see Grace v. Egg Harbor et al., Bulletin 403, Item 9; Delaware Tavern, Inc. et al. v. Atlantic City et al., Bulletin 758, Item 1.

It may perhaps be that the original application for transfer bore or was accompanied by the requisite consent and that it was assumed that this consent automatically carried over to the present application. However, a consent is necessarily addressed to a particular application and, when that application is spent, there is serious doubt as to whether the consent has any further efficacy left. Proper procedure would appear to require that a fresh consent, or a written reaffirmation of the original consent, be obtained for any subsequent application so that neither the local issuing authority nor the State Commissioner on appeal need conjecture as to whether such consent has actually been given for the subsequent application.

Hence, I might perhaps well reverse on the basis of the foregoing defects. However, I prefer to dispose of the matter on the merits.

As already indicated, the proposed premises are located on the intermediate floor of the Journal Square Station between the street and train levels. It is clear that the station bears very heavy passenger traffic. According to the testimony of the station's renting agent, given below on behalf of Finbar, the proposed premises are to be used as a "quickie" bar for serving drinks to passengers on this intermediate level while going to and from the trains. The renting agent's testimony further states that this will help to make passengers more mindful of the other mercantile establishments on the intermediate level.

The validity of the transfer in question is directly challenged by Section 4 of an ordinance adopted by respondent Board on October 5, 1937, amended on April 1, 1941, which provides:

> "From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises the entrance of which is within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point the entrance of an

existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this Ordinance shall be compelled to vacate the licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, or if the landlord of said licensed premises shall consent to a vacation thereof, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated. The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Academy if it contains four or more pairs of bowling alleys."

Briefly summarized, this regulation provides that, in general, there shall be no issuance or transfer of a plenary retail consumption license for premises within the above 750-foot radial distance of any existing plenary retail consumption licensed place. When the present transfer was granted, at least nine other plenary retail consumption licenses were (and apparently still are) in existence within the above radial distance of 750 feet of the premises in question. In fact, the proposed premises are between 75 feet and 590 feet in radial distance from these other establishments. There is neither claim nor evidence that the proposed premises take the benefit of any of the exceptions in the ordinance.

This local regulation is of a familiar type throughout the state, which is designed to prevent undue concentration of licenses within any area in the municipality. One of the effects of such an ordinance is to limit the number of licenses which may exist in any area or in the municipality at large. Hence, authority for such an ordinance is expressly found in R. S. 33:1-40. Elizabeth Beverage Dealers Ass'n v. Elizabeth et al., Bulletin 514, Item 3; New Jersey Licensed Beverage Ass'n et al. v. Elizabeth et al., Bulletin 665, Item 9. Also see the broad provisions of R. S. 33:1-94.

This very regulation in question has heretofore been recognized by the State Commissioner, in respect to its general 750-foot ban, as being reasonable and valid. Zahorbenski v. Jersey City et al., Bulletin 702, Item 7. I see no reason here to alter that conclusion. Nor do I find that the ordinance applies unreasonably in the present instance in prohibiting this transfer. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

Respondents argue, however, that the ordinance is merely directory or advisory. With this contention I cannot agree. The express wording of the ordinance, "....no plenary retail consumption license shall be granted for or transferred to,...," is unambiguous and plainly denotes that the ordinance is mandatory. It has heretofore been so considered by the State Commissioner. Zahorbenski v. Jersey City et al., supra. Cf. Musico v. Jersey City, Bulletin 387, Item 3; Cielukowski v. Jersey City, supra. Respondent Board apparently followed this same view when denying a transfer application in another matter some months before granting the transfer in question. See Venos v. Jersey City, decided contemporaneously herewith, and affirming the Board's application of the ordinance.

There is indication that, on occasions in the past, respondent Board may have granted various transfers contrary to the above ordinance. Had timely appeal been taken in those cases, the transfers there involved, if actually contravening the ordinance, would have been reversed. See Zahorbenski v. Jersey City et al., supra. However, those alleged instances of past error can scarcely serve as warrant for continued by-passing of the regulation in question. An ordinance, formally enacted and advertised and published to the community as the formal act of the governing body, does not dissipate or disappear merely because of misconstruction or disregard by the municipal authorities. See 37 Am. Juris. 835, 838, sections 198 and 200; 119 A.L.R. (ann.) 1509, 1517. Cf. Re Martin, Bulletin 411, Item 3; Larry's Shamrock Tavern v. Fort Lee, Bulletin 467, Item 6. For analogous doctrine as to statutes, see 59 C.J. 928, sec. 532; 50 Am. Jur. 524, sec. 513. An ordinance can be repealed or modified only by an act of equal dignity and solemnity, i.e., another ordinance. Not even a resolution will suffice. American Malleables Co. v. Bloomfield (E.& A. 1912), 83 N.J.L. 728, 734; 37 Am. Jur. 855, sec. 198; Re Swensen, Bulletin 235, Item 16.

The ordinance in question, until and unless appropriately modified or repealed by further ordinance, remains binding upon the municipality and respondent Board may not grant any license or transfer contrary to the terms thereof. Smith v. Mansfield, Bulletin 254, Item 4; Elizabeth Beverage Dealers Ass'n v. Elizabeth et al., supra; New Jersey Licensed Beverage Ass'n et al. v. Elizabeth et al., supra; Garbutt v. Galloway et al., Bulletin 610, Item 12; Zahorbenski v. Jersey City et al., supra.

Respondent Finbar cannot complain of having been "lulled into security" by reason of any of the past instances of alleged error since the ordinance involved is clear on its face and since, at the hearing below while Finbar's application was pending, the objectors squarely pointed out and raised the full issue of the ordinance.

In view of the foregoing it is unnecessary here to consider the additional grounds for reversal urged by appellants.

Accordingly, it is, on this 10th day of June, 1948,

ORDERED that the action of respondent Board of Commissioners of the City of Jersey City is hereby reversed, effective at 2:00 a.m. June 15, 1948; and it is further

ORDERED that said transfer be and hereby is set aside and declared null and void, and respondent Finbar (a New Jersey corporation) is ordered to cease all activities at the premises to which the license was transferred, effective at 2:00 a.m. June 15, 1948.

ERWIN B. HOCK,
Commissioner.

2. APPELLATE DECISIONS - VENOS v. JERSEY CITY.

MARGARET VENOS,)
Appellant,)
-vs-) ON APPEAL
BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY,) CONCLUSIONS AND ORDER
Respondent)

Ezra L. Nolan, Esq., Attorney for Appellant.
Charles A. Rooney, Esq., by Edward M. Malone, Esq., Attorney for Respondent.
Thomas F. Meehan, Esq., Attorney for Objector.

BY THE COMMISSIONER:

This is an appeal from the action of respondent Board of Commissmissioners in refusing to grant a person-to-person and place-to-place transfer of a plenary retail consumption license last term from Hygrade Pie Baking Company, Inc. for premises at 87 Sip Avenue, Jersey City, to appellant Margaret Venos for premises at 115 Bowers Street, Jersey City.

Appellant operates a restaurant at the proposed premises, and lives on the second floor of the two-story building involved. The site from which she seeks the transfer of license in question is described by her as being about three-quarters of a mile away.

At her restaurant appellant, if succeeding in obtaining the license in question, plans to operate merely a service bar. She claims that there are no restaurants with only a service bar in this general part of the city and that there is, therefore, room for such an establishment to accommodate the residents thereof. However, it may be noted that there apparently are several combination taverns and restaurants in this general part of the city where, although a barroom is being maintained, there is also a separate although adjoining dining room on the licensed premises.

Respondent denied the transfer on the basis of Section 4 of a city ordinance adopted on October 5, 1937 and amended April 1, 1941. That section, as above amended, specifically provides:

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

> The provisions of this section relating to distances between licensed premises shall not apply to the issuance or transfer of any license to premises which will be operated by the licensee as a Bowling Academy. A premises shall be deemed to be operated as a Bowling Academy if it contains four or more pairs of bowling alleys."

Appellant's premises at 115 Bowers Street are well within the forbidden radial distance of 750 feet of an existing plenary retail consumption licensed place at 105 Bowers Street where Francis Moynihan, an objector herein, operates a tavern. In fact, there is evidence that the proposed premises are not more than 170 feet from that tavern. There is also indication that appellant's premises may be within the 750-foot distance of two other plenary retail consumption licensed establishments. There is neither claim nor evidence on appellant's behalf that her premises take the benefit of any exception specified in the ordinance.

This ordinance has been found to be reasonable and valid with respect to its general 750-foot ban. See Zahorbenski v. Jersey City et al., Bulletin 702, Item 7; Tube Bar, Inc. v. Jersey City et al., decided contemporaneously herewith. I see no competent evidence in the record to show that the ordinance operates unreasonably in the present instance. Cf. Cielukowski v. Jersey City, Bulletin 716, Item 6.

However, there is evidence that, on occasions in the past, the ordinance in question has not been uniformly applied. Respondent, while not denying these instances, calls them "exceptions" not contemplated by the ordinance. Had timely appeals been taken in those cases, such so-called exceptions, if violative of the ordinance, might have been reversed. However, the fact of these past instances of alleged error by respondent does not invalidate the ordinance, nor does it afford warrant for continued by-passing of such ordinance. For a complete discussion at this point, see Tube Bar, Inc. v. Jersey City et al, supra.

Appellant claims that respondent failed to give her any formal notification of the denial of her application. However, there is no evidence that appellant has in any wise been prejudiced thereby.

I see no reason for reversal in the present case. I may also note that, consistent with the foregoing, any application which appellant has had on file for alleged "renewal" at the proposed location for the current term must necessarily fail.

Accordingly, it is, on this 10th day of June, 1948,

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

ERWIN B. HOCK
Commissioner.

3. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. JERSEY CITY ET AL. - ORDER OF DISMISSAL.

Case No. 2

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY, and FINBAR,

Respondents

ORDER

Samuel Moskowitz, Esq., Attorney for Appellant.
Charles A. Rooney, Esq., by Edward M. Malone, Esq., Attorney for Respondent Board of Commissioners.
James F. McGovern, Jr., Esq., Attorney for Respondent Finbar.

BY THE COMMISSIONER:

At the time scheduled for hearing herein, appellant, by its attorney, moved that it be permitted to withdraw its appeal and that said appeal be dismissed. The attorneys for respondents consenting thereto and no reason appearing why said motion should be denied,

It is, on this 10th day of June, 1948,

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

ERWIN B. HOCK
Commissioner.

4. APPELLATE DECISIONS - OTT'S, INC. v. EDGEWATER PARK TOWNSHIP.

OTT'S, INC.,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EDGEWATER PARK,

Respondent

ON APPEAL
CONCLUSIONS AND ORDER

William T. Cahill, Esq. and Daniel Lichtenthal, Esq., Attorneys for Appellant.
Alex Denbo, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the denial of a transfer of a plenary retail consumption license from George W. Mount to appellant, Ott's, Inc. The premises in question are located at 716-718 South Cooper Street, Edgewater Park Township.

Respondent denied the transfer for the following reasons:

"That there is a public playground near said licensed premises, and that property owners in the immediate vicinity objected to such transfer."

No question has been raised as to the qualifications of appellant to hold a liquor license. The evidence shows that the premises in

question have been licensed for the sale of alcoholic beverages continuously since Repeal. Adjoining the licensed premises is a large tract of land which was purchased six or seven years ago by the township for a baseball field and recreation field. The land apparently remained undeveloped for many years until baseball diamonds were recently laid out and stands erected upon the land. It has been testified that minors of both sexes, between the ages of nine and seventeen, used the recreation field.

It would be unfair to deny a transfer or renewal of the license for the premises in question solely upon the ground that a field in close proximity to the licensed premises was opened for playground purposes long after the licensed premises were established. Compare the provisions of R. S. 33:1-76, which exempt licensed premises from the effect of the two-hundred-feet rule where it appears that the church, or school, was constructed or established during the time the premises were operated under a license.

At the hearing before the Township Committee a petition was presented containing one hundred signatures of citizens who protested to the transfer because of the proximity of the recreation field and because the license "is detrimental to the real estate value in the vicinity". On the other hand, there was presented to the Township Committee a petition containing names of ninety-five citizens requesting the Township Committee to grant the transfer. The sole evidence that there was ever any improper conduct upon the licensed premises was given by an individual who is a member of the Park Commission, but who testified individually and not on behalf of the Park Commission. This witness has resided in close proximity to the licensed premises since 1941. He testified that he had occasionally observed intoxicated persons leaving the licensed premises, but admitted that he had never made any complaints to the licensee or to the township officials. On the other hand, two witnesses, who also reside nearby, testified that the premises have always been properly conducted. It has been stipulated that there have been no violations of the Alcoholic Beverage Law, municipal ordinances, or any State or Federal law by George W. Mount during the period he has operated the licensed premises.

After carefully reviewing the evidence I conclude that there is not sufficient evidence of misconduct upon the licensed premises to warrant denial of the transfer of the license. Kupay v. Passaic, Bulletin 803, Item 9, and cases therein cited.

Under all the circumstances I find that respondent's grounds for refusing the transfer are insufficient. Consequently, I conclude that the denial of the transfer was unreasonable, and the action of respondent must, therefore, be reversed.

Accordingly, it is, on this 16th day of June, 1948,

ORDERED that the action of respondent in refusing the transfer of the license from George W. Mount to appellant, Ott's, Inc., be and the same is hereby reversed, and respondent is directed to transfer the license in accordance with the application made by appellant.

ERWIN B. HOCK
Commissioner.

5. LICENSE - RENEWAL - ORDER PERMITTING APPLICANT TO APPLY FOR RENEWAL FOR PURPOSE OF TRANSFER.

MARGARET VENOS,
Appellant,
-vs-
BOARD OF COMMISSIONERS OF THE CITY OF JERSEY CITY,
Respondent

ON APPEAL
O R D E R

James F. McGovern, Jr., Esq., Attorney for Petitioner, Higrade Baking Company Inc.

BY THE COMMISSIONER:

On June 10, 1948, Conclusions and Order were entered herein whereby the action of respondent, in refusing to transfer a plenary retail consumption license from Higrade Baking Company Inc. to Margaret Venos, and from 87 Sip Avenue to 115 Bowers Street, Jersey City, was affirmed. See Bulletin 808, Item 2.

As a result of said order, Higrade Baking Company Inc. must be considered as holding, on June 30, 1947, a plenary retail consumption license for premises at 87 Sip Avenue. Under these circumstances, said company would ordinarily have been entitled, upon petition duly filed, to an order permitting it to file application for renewal of said license for the 1947-48 fiscal year for premises at 87 Sip Avenue. Wardach v. Camden, Bulletin 487, Item 4.

It appears from the duly verified petition filed herein that the building formerly occupied by petitioner at 87 Sip Avenue has been demolished, and a new building occupied by other tenants has been erected upon the same land. It further appears that petitioner has filed with the respondent herein an application to renew its License C-462 for the premises known as 87 Sip Avenue solely for the purpose of renewing and transferring the license to other premises, and that the full amount of the required license fee for the present fiscal year has been paid to the City of Jersey City.

Petitioner requests that an order be entered herein granting it the right and privilege to apply for renewal of the license for the present fiscal year, and ordering the Board of Commissioners of the City of Jersey City to consider the application for renewal and the application for transfer upon the merits of said applications. Under the circumstances I conclude that the petitioner is entitled to relief. Zahorbenski v. Jersey City et al., Bulletin 706, Item 5.

Accordingly, it is, on this 17th day of June, 1948,

ORDERED that, solely for the purpose of permitting a transfer, the Board of Commissioners of the City of Jersey City may, in its discretion, grant to petitioner, Higrade Baking Company Inc., a renewal of its license for the present fiscal year and may also consider upon its merits an application to transfer said license to other premises, provided that the applications for renewal and transfer comply with all statutory requirements and provided, further, that said Board is satisfied that the transfer from premises to premises is permissible under the ordinance of the City of Jersey City relating to the minimum distance between licensed premises.

ERWIN B. HOCK
Commissioner.

6. COURT DECISIONS - NEW JERSEY SUPREME COURT - KRAVIS v. HOCK - APPLICATION FOR WRIT OF CERTIORARI DENIED.

NEW JERSEY SUPREME COURT
No. 301, May Term, 1948

REBECCA KRAVIS, t/a THE PADDOCK INTERNATIONAL,
Petitioner,
-vs-
ERWIN B. HOCK, COMMISSIONER OF THE DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL,
Respondent

Argued May Term, 1948, decided

On Application for Writ of Certiorari.

Before Donges, Colie and Eastwood, JJ.

For Petitioner, Emerson Richards,

For Respondent, Walter D. Van Riper, Attorney-General, by Samuel B. Helfand, Deputy Attorney-General.

The opinion of the Court was delivered by

EASTWOOD, J.

Disciplinary proceedings were instituted by respondent, Commissioner of the Department of Alcoholic Beverage Control, against the petitioner, holder of Plenary Retail Consumption License C-106, issued to her by the Board of Commissioners of the City of Atlantic City, for premises 1643 Atlantic Avenue, Atlantic City, New Jersey. As the result of a hearing of the charges, the Commissioner made an order on April 20, 1948, revoking the license in question, effective immediately. Upon application to this Court an order to show cause why certiorari should not issue was granted, and it was provided therein that the order of April 20, 1948 be stayed and suspended pending the further order of this Court.

As the bases of the order of revocation the Commissioner assigned three violations of the Alcoholic Beverage Control Law on the part of the petitioner licensee, viz.: (1) Petitioner unlawfully allowed, permitted and suffered females employed on her premises to accept beverages at the expense of and as gifts from customers and patrons in violation of Rule 22 of State Regulations No. 20; (2) Petitioner knowingly employed and had connected with her in a business capacity one Edward Kravis, a person who would fail to qualify as a licensee under the provisions of R. S. 33:1-1 et seq., and (3) Petitioner knowingly employed and had connected with her in a business capacity said Edward Kravis, who had been convicted of a crime involving moral turpitude, in violation of Rule 1 of State Regulations No. 13.

The petitioner pleaded not guilty to the foregoing charges and as a result of said hearing thereon, she was found guilty as charged, with consequent revocation of the plenary retail consumption license in question.

We have carefully reviewed the testimony taken before the Hearer Edward F. Hodges, on behalf of the Commissioner of the Department of Alcoholic Beverage Control, as well as the conclusions of said

Commissioner and his findings of facts set forth therein. The Commissioner determined that it had been established by the evidence that certain females who had been secured by the petitioner through the services of a New York theatrical agency and who had appeared in a show running on the petitioner's premises during the month of November, 1947, had on the several dates mentioned in the charges accepted alcoholic drinks in the petitioner's barroom at the expense of and as gifts from various customers and patrons; that Edward Kravis, a son of the petitioner, had been knowingly employed and connected with the licensed business in violation of R. S. 33:1-1 et seq. having been previously convicted on December 10, 1945, of the crime of aiding and abetting in lewd entertainment, a crime involving moral turpitude at the licensed premises. We conclude that there was ample evidence to justify said conviction by the Commissioner. Under the disciplinary proceedings instituted against petitioner, to justify her conviction, respondent was only required to establish the truth of said charges by a preponderance of the believable evidence and not to prove her guilt beyond a reasonable doubt. Such proceedings are civil in nature and not criminal. Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, affirmed 130 N.J.L. 554, certiorari denied 320 U.S. 801; The Panda v. Driscoll, 135 N.J.L. 164 (Errors and Appeals); Commonwealth v. Lyons, 142 Pa.Super. 54, 15 A. 2d 851.

Petitioner contends that her conviction should be reversed on the ground that the female entertainers, allegedly treated to drinks, were not employees of the licensee; that they were "independent contractors", having been furnished through a theatrical agency in New York. We think this argument is beside the point and specious. Rule 22 of State Regulations No. 20 provides:

> "No plenary or seasonal retail consumption licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise, at the expense of or as a gift from any customer or patron."

It will be observed that said regulation only makes it necessary to prove that the females are "employed on the licensed premises". To sustain a conviction for a violation of that regulation it is immaterial whether said females were in the employ of the licensee or were independent contractors. The only issue is: were they employed on the licensed premises and, while so employed, did they accept any drinks as gifts from any customer or patron of the licensee? Webster defines the word "employ": "To use; to have in service; to cause to be engaged in doing something; to make use of as an instrument, a means, a material, etc., for a specific purpose". The Commissioner, since the adoption of this regulation in November, 1940, has consistently construed the word "employed" as used in said regulation to embrace "all persons whose services are utilized in furtherance of the licensed business notwithstanding the absence of a technical employer-employee relationship". Such a construction seems to be a logical one. Our Courts have held that administrative interpretations of long standing given a statute by the official charged with its enforcement will not be lightly disturbed by the Courts. Mr. Justice Perskie has emphasized this judicial determination in Cino v. Driscoll, 130 N.J.L. 535, 540 (Supreme Court 1943), where he said:

> "Moreover, the legislature charged with the knowledge of the construction placed upon the Alcoholic Beverage Law, as evidenced by these rules, has done nothing to indicate its disapproval thereof. Cf. Young v. Civil Service Commissioner, 127 N.J.L. 329; 22 Atl. Rep. (2d) 523. The contemporaneous construction thus given to a

> law of the state for over a decade is necessarily respected by us. State v. Kelsey, 44 N.J.L. 1; Graves v. State, 45 Id. 203; affirmed, Id. 347; Central Railroad Co. v. Martin, 114 Id. 69, 80; 175 Atl. Rep. 637; Burlington County v. Martin, 128 N.J.L. 203; 28 Atl. Rep. (2d) 116; Martini v. Civil Service Commission, 129 N.J.L. 599, 603; 30 Atl. Rep. (2d) 569."

We cannot agree with petitioner's argument that said female entertainers were not within the intendment of the regulation alleged to have been violated by her. The facts here support the Commissioner's finding on this point and we concur therein.

With respect to the conviction of petitioner on the charge of unlawful employment of Edward Kravis, previously convicted of a criminal offense involving moral turpitude, we hold that there was sufficient evidence to support that charge.

The record of the licensed premises is not an admirable one. Edward Kravis was the original licensee. While he was the licensee his license was suspended by the local issuing authority on three occasions. In December, 1939, he received a ten-day suspension for permitting a lewd performance on his licensed premises. In August, 1943, he received a ninety-day suspension on a similar charge. In November, 1943, he received a thirty-day suspension for permitting disturbances and unnecessary noises on his premises. On June 8, 1944, Edward Kravis transferred the license to his mother, Rebecca Kravis. After petitioner became the licensee, her license was suspended for five days in March, 1945, for selling alcoholic beverages to minors and suspended by the Commissioner for ninety days on June 25, 1946, after she had pleaded non vult to a charge alleging that she possessed three bottles containing alcoholic beverages not genuine as labeled. After the latter violation the Commissioner, although he stated the license might well be revoked outright, felt constrained to give the defendant, who had then held the license for only two years, one further opportunity to demonstrate her fitness to operate a licensed business, and concluded with the appropriate warning that any further violation would result in a complete deprivation of her license privileges. Our review of the case leads us to conclude that petitioner flaunted the Commissioner's warning and merits the fate that has befallen her.

The order to show cause will be discharged and the stay therein dissolved. The application for a writ of certiorari will be denied with costs.

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7. COURT DECISIONS - NEW JERSEY SUPREME COURT - BRUSH ET AL. v. HOCK ET ALS. - APPLICATIONS FOR WRITS OF CERTIORARI DENIED.

NEW JERSEY SUPREME COURT

Nos. 266/267, May Term, 1948

EDWARD R. BRUSH,

Petitioner,

-vs-

ERWIN B. HOCK, Commissioner of the State Department of Alcoholic Beverage Control et als.,

Defendants.

- - - - - - - - - - - - - - - - - - - -

FRANCIS R. ORMOND,

Petitioner,

-vs-

ERWIN B. HOCK, Commissioner of the State Department of Alcoholic Beverage Control et als.,

Defendants.

- - - - - - - - - - - - - - - - - - - -

Argued May Term, 1948, decided

On Applications for Writ of Certiorari.

Before Donges, Colie and Eastwood, JJ.

For Petitioners, Harold Simandl.

For Defendant, Erwin B. Hock, Commissioner of the State Department of Alcoholic Beverage Control, Walter D. Van Riper, Attorney-General, by Samuel B. Helfand, Deputy Attorney-General.

For Defendant, Bayshore Tavern Association, William C. Egan, by A. Nathan Cowen.

For Defendant, Mayor and Council of the Borough of Highlands, John M. Pillsbury.

The opinion of the Court was delivered by

EASTWOOD, J.

By similar orders made on September 25, 1947, the Commissioner of the State Department of Alcoholic Beverage Control revoked the plenary retail consumption licenses issued to the petitioners by the defendant Borough Council on May 12, 1947, for the 1946-47 Term and cancelled renewals thereof for the 1947-48 term, issued on June 17, 1947. His action in so doing forms the basis of the present applications for review.

On May 12, 1947, the Borough Council issued four plenary retail consumption licenses, two of which were issued to the petitioners Edward R. Brush and Francis R. Ormond. Renewals of the licenses were issued effective on July 1, 1947. As the basis of his revocatory action the Commissioner assigned the fact that:

"A consideration of the record clearly indicated, as this defendant found, that when issuing the licenses to these petitioners, 'the Borough Council did not give any consideration to the question of public need for additional plenary retail consumption licenses in the community' ***, and that the Borough Council had 'abused its discretion.'***."

At the time the licenses in question were issued by the municipal authority it appears that the population of the Borough of Highlands, according to the last Federal census, was 2076, and that at that time, there had already been issued 28 such licenses, or one license to every 74 persons. If nothing further had been pleaded in extenuation of the action of the issuing authority we would conclude that the needs of the municipality, insofar as the availability and adequacy of drinking facilities were concerned, were more than amply provided for, and that the Commissioner had properly exercised his authority in making the revocations complained of. However, petitioners argue that the Borough of Highlands is a summer resort and in that season the population is so greatly increased that the issuance of their licenses was justified. It is said on their behalf that during the summer season the population could be conservatively estimated at 15,000 persons. Be that as it may, our review of the facts leads us to concur with the finding of the Commissioner that: "Even if due allowance is made for the increase in the summer population, the issuance of any plenary retail consumption licenses in excess of twenty-eight would appear to be excessive and an abuse of the discretionary power conferred upon the local issuing authority by R.S. 33:1-19, R.S. 33:1-24." It was testified that the petitioners were veterans of the last war, and in the words of Borough Councilman Rast, at the public hearing concerning the issuance of the licenses, "*** there were a hundred people around the room, all of them wanted to give a license to these veterans, feeling how they fought in this war. *** the only objection was the Reverend and one of the tavern owners, and there was I'd say a hundred to two for the licenses, ***. I believe that is what made them grant these licenses to these people." It seems to us, and we so hold, that the licenses were granted more on the basis of expediency rather than on the question of a public need for additional licenses in the community. It appears that there were three other licensed premises in the immediate neighborhood of the Brush premises, and that there were at least four other licensed premises within a few blocks of the Ormond premises. It is not conceivable to us, even assuming an increased summer population, that the needs of the community were inadequately provided for by the licensed premises then in existence and serving the public.

There is nothing in the case that causes us to depart from the decision of the Court of Errors and Appeals in the similar case of Hudson Bergen County Retail Liquor Stores Ass'n et al. v. Board of Com'rs of Hoboken et al., 135 N.J.L. 502, 52 A. 2d. 668, opinion by Mr. Chief Justice Case. The cited case is the final authority in this State for the proposition that the Commissioner has authority to cancel licenses issued by local issuing authorities when not warranted by public need and necessity. It seems to us that the facts as revealed by the record here show a total lack of any public need or necessity for the issuance of additional licenses. In speaking for the Court of Errors and Appeals in Hudson Bergen County, etc., Ass'n et al. v. Hoboken et al., supra, Mr. Chief Justice Case summarized the authority of the Commissioner in the following succinct language:

> "The commissioner is himself, with respect to numerous grades of licenses, the issuing authority (R.S. 33:1-18, N.J.S.A.). As to other licenses, the appropriate municipal body, referred to in the statute as the 'other issuing authority' (R. S. 33:1-19, N.J.S.A.), initially passes on the application, and from the determination of that body,

whether to grant or to refuse, there is an appeal to the commissioner. Not only has the commissioner authority in the issuing of licenses, original as to some, appellate as to others; he is burdened with the duty of administering and enforcing the statute and of taking all 'acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive administration' of the statute (R. S. 33:1-23, N.J.S.A.); he is given authority to make both general and special rules and regulations for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages generally and with specific reference to many enumerated subjects, inter alia 'unfair competition' and 'instructions for municipalities and municipal boards' (R.S. 33:1-39, N.J.S.A.); he is directed to 'supervise the manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance and eliminate the racketeer and bootlegger' (R.S. 33:1-3, N.J.S.A.); he is authorized, after the hearing on an appeal, 'to make all findings, rulings, decisions and orders as may be right and proper and consonant with the spirit of this chapter' (R.S. 33:1-38, N.J.S.A.). Finally, we have the legislative mandate that 'This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed' (R.S. 33:1-73, N.J.S.A.)."

We hold that the facts in the matter before us are clearly such as fall within the regulatory and supervisory powers of the Commissioner.

Objection is made that the Commissioner was not consistent in that, while revoking petitioners' licenses, he nevertheless permitted the license issued to one Jean Ciroalo, t/a Seaside Hotel, to remain in effect, and that thereby the petitioners were denied equal privileges. The Commissioner found that the Borough Council were in favor of issuing licenses for hotels and that they were satisfied that Ciroalo operated a bona fide hotel, and that the nearest licensed hotel was located approximately one-half mile distant. A review of the evidence below reveals that the petitioners here did not conduct bona fide hotels, and, therefore, the Ciroalo determination is not applicable.

We are urged to allow the writ on the grounds that the cancellation of the renewal licenses, commencing July 1, 1947, denied the petitioners due process and equal protection of law. We think not. The revocation of the licenses originally issued on May 12, 1947, operated so as to constitute the so-called renewal licenses of June 17, 1947 actually new licenses. As such it was not within the powers of the issuing authority, since such action falls within the condemnatory provisions of P.L. 1947, c. 94, R.S. 33:1-12.13 et seq., effective on May 15, 1947, three days after the issuance of the so-called renewal licenses to the petitioners. R.S. 33:1-12, 14, which is applicable to the facts before us, reads:

"***no new plenary retail consumption --- license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census;***"

It requires no labored consideration to determine that since the ratio of licenses to population was at that time one plenary retail consumption license for each 74 persons, the attempted issuance of new licenses, under the guise of so-called renewal licenses was clearly prohibited by the statute.

We have considered all of the other arguments advanced by the petitioners in support of their contentions and find them to be without merit.

Writs of certiorari applied for are denied, with costs.

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8. STATE LICENSES - NEW APPLICATION FILED.

Alexander Verbesky
Foot Commercial St.
Newark, N. J.
Steamer "Victory II"

Application filed June 22, 1948 for 1948-49 Plenary Retail Transit License.

Lucius D. Heck
Commissioner.