

Gossweiler

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1521

JULY 15, 1963

TABLE OF CONTENTS

ITEM

1. DISCIPLINARY PROCEEDINGS (Parsippany-Troy Hills) - NUISANCE (APPARENT HOMOSEXUALS) - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 55 DAYS.
2. APPELLATE DECISIONS - WORLD LIQUORS, INC. v. HOWELL.
3. APPELLATE DECISIONS - BRANDWEIN AND CARDINALE v. ORANGE.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
5. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 1521

JULY 15, 1963

1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR
55 DAYS.

In the Matter of Disciplinary)
Proceedings against)

CLARENCE HOOVER)
t/a HOOVER'S TAVERN)
West side of Tabor Road)
about 500 feet south of Maple Ave.)
Parsippany-Troy Hills)
PO Morris Plains RFD, N. J.,)

ON REMAND
CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-12, issued by the Township)
Committee of the Township of Parsippany-)
Troy Hills.)

McGovern and Roseman, Esqs., by William J. McGovern, Esq.,
Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This matter comes before me pursuant to an Order of
Remand dated April 18, 1963, from the Superior Court of New
Jersey, Appellate Division, which said order directs that a full
and complete new hearing and findings of facts and conclusions
of law shall be made herein.

"Accordingly, the matter was set down and hearings (four
days) commenced on the date set forth in said order and were
concluded on April 30.

"The licensee pleaded not guilty to the following
charges:

- '1. On December 8, 9, 16, 29 and 30, 1961, you
allowed, permitted and suffered your licensed
place of business to be conducted in such manner
as to become a nuisance in that you allowed,
permitted and suffered persons who appeared to
be homosexuals, e.g. males impersonating females,
in and upon your licensed premises; allowed,
permitted and suffered such persons to frequent
and congregate in and upon your licensed premises;
and otherwise conducted your licensed place of
business in a manner offensive to common decency
and public morals; in violation of Rule 5 of State
Regulation No. 20.
- '2. On Saturday, December 16, 1961, between 3:00 a.m.
and 3:15 a.m., you permitted the consumption of
alcoholic beverages on your licensed premises; in
violation of Article 3.11 of Revised Ordinances of

the Township of Parsippany-Troy Hills
New Jersey, 1953, adopted November 10, 1953.'

"At the hearing held herein the Division called as its witnesses two ABC agents, hereinafter referred to as Agent S and Agent G.

"The testimony of Agent S may be summarized as follows: In the company of Agent G he visited the licensed premises on the dates set forth in the first charge. On February 8, at about 10:05 p.m., they arrived at the premises and seated themselves at the bar. At that time there were five males and two couples. The patronage continued to increase, and by 12 p.m. of that date there were about thirty-three persons, of whom twenty-one were males. All the males were seated in the same general area and apparently were part of the same group. Of the twenty-one males, fourteen attracted his attention for the reason that, while they were attired in normal male attire, their conduct and mannerisms manifested an appearance of males impersonating females. The mannerisms and conduct were more particularly described as follows: They spoke in lispy and high-pitched tones; used limp-wrist motions; most of them flicked their cigarettes with the index finger in a feminine manner; sipped their drinks 'very femininely', 'very slowly and daintily'; rolled their eyes at one another; when they moved about the premises they walked on the balls of their feet and swished and swayed their hips in a feminine manner. He also observed that a number of these apparent homosexuals traveled in pairs and, when two apparent homosexuals entered together, one would assist in seating his companion, then purchase the drink for the other in the manner of a man taking the active part, while the other would be the passive recipient in the manner of a female. The 'man' would order the drink and pay for the drink such as an ordinary male and female couple might act normally. He also noticed that two of the apparent homosexuals placed their arms about each other's waist while they were talking, rolled their eyes at each other and made endearing motions.

"During this time James Renna (hereinafter Jim) was entertaining at the counter on a platform behind the bar, and Clarence Hoover (hereinafter licensee) was in and about the said premises. Jim sang a few songs and made references to female breasts, simulating the nipples during his rendition of a song called 'Cup Cakes.' These songs were directed to this group of apparent homosexuals, and the agent observed that they reacted by rolling their eyes at each other and 'one fellow would place an arm around the other's neck.' At some time during the evening, Jim passed Joseph Passalacqua (hereinafter Joe) who was tending bar and placed his hands on Joe's hips from behind, rubbed his pants against Joe's buttocks, rotated a little bit and said 'I may never get a chance like this again' to the appreciative laughter of this group of apparent homosexuals. The agents left the premises at 12:50 a.m.

"At 12:01 on Saturday, December 16, the agent, in the company of Agent G, entered the premises and seated himself at the bar. At this time he noted that the licensee was tending bar and Jim was entertaining as he had on the previous occasion. This time it was noted that there were twenty-one males and three couples; the males were congregated on the right side of the bar and the female couples were on the other side of the bar. The males attracted his attention because their mannerisms, actions and conduct appeared to be the same as described on

the previous occasion, with the following additional description: They would move their hips from side to side; in talking, they would use the limp-wrist movements; some of them would protrude their tongues as they conversed; they were very close, endearing and affectionate to each other. He noted that a number of these apparent homosexuals entered the premises in pairs and several departed in pairs, and that they joined the group upon entering. The actions, mannerisms and conduct of this group of males made it clear to this agent that they were males impersonating females, more commonly known as 'fairies, fags, queers.'

"On Friday evening, December 29, at 10:15 p.m., this agent, in the company of Agent G, re-entered the premises, this agent entering first and Agent G following him shortly thereafter. At that time there were eighteen males in one section of the bar and two couples on the other side of the bar and two females in the company of the licensee. Of the eighteen males who were at the premises at the height of the activity, seventeen attracted his attention because they appeared to have the mannerisms, characteristics, actions and conduct hereinabove described on the previous occasions, with the additional characteristic that some of them used a lispy tone of voice when conversing with each other. This agent got into a conversation with Jim during the break in his performance, and Jim was asked whether he ever takes out any of these 'fags.' He replied, 'I go for a change, a litte variety.' Agent G inquired 'Do you think he could make out? Can I get one of the fags?' and Jim replied 'Take your pick. There are plenty of them in here.' Jim further volunteered that these apparent homosexuals frequent the premises on Friday nights and that they are good for business whenever patrons aren't around. They then engaged Joe, the bartender, in conversation and he admitted that all of the eighteen males congregated on the other side of the bar were 'girls.'

"The agent then approached the licensee who was seated at the bar purchasing drinks for two females in his company and kissing one of them. He identified himself by exhibiting his credentials and they retired to a stockroom in the rear of the premises. The agent then asked the licensee why all these homosexuals are on the premises and the licensee replied 'You call them fags and I call them fags. You know what they are, and I know what they are. Did they solicit you? Did they solicit anyone? They don't bother anyone. I don't let them bother anyone.' He further stated that he keeps a close watch on them; that he caught two of them fooling around in a car on his lot and chased them. While he was discussing this with the licensee, two more males entered the premises and they appeared to be homosexuals. The agent pointed them out to the licensee who smiled and didn't answer. The bartender Joe was thereupon summoned to the room and was questioned by the agents as to the period of time within which these apparent homosexuals had been frequenting the premises. As he was about to answer, he was enjoined by the licensee. Jim thereupon entered the room and he too was ordered by the licensee to remain silent and refuse to answer any questions.

"This agent's testimony remained substantially unshaken under a vigorous and protracted cross examination. It was developed on cross examination that the premises were well lighted and he was able to note that half of the apparent homosexuals were making 'goo-goo' eyes at the others on December 29. He also reiterated his testimony with respect to the simulated sodomy performed by Jim on Joe on December 8.

It was further developed that on December 29 he observed two apparent homosexuals dancing with each other and, while they did not dance during the entire period, were on the floor for some time before they were told to leave the floor by Joe.

"Agent G substantially corroborated the testimony of Agent S and added the following: On one of these visits he noticed that one of the apparent homosexuals put his hand around the waist of another and let it rest there. Also he observed that most of these apparent homosexuals entered the premises in couples or pairs. One would fix the chair for the other, take his coat to the cloak room, order drinks and pay for such drinks in the manner of a male treating his female companion. On all of these visits the agent observed that the apparent homosexuals were grouped together at one section of the bar. He described their conduct and mannerisms in the same manner as described by Agent S. He noted that they walked on the balls of their feet, that they swished and swayed their hips, they held the glass daintily, took small sips and placed the glass gently on the bar; they flicked their ashes with the index finger. He also noted that the normal male and female couples seated at the other side of the bar appeared to enjoy the conduct of these apparent homosexuals; would whisper and giggle. He also heard these apparent homosexuals frequently use the terms 'honey' and 'Sweetie.' The agent also testified to these double entendre or double-meaning songs which were rendered by Jim on December 8. They included 'Cup Cakes' and 'Rose of Washington Square' and he corroborated the testimony of Agent S with respect to the simulated sodomy performed by Jim on Joe the bartender.

"This agent also testified with respect to the second charge that on December 16 he remained at the bar after Agent S left the premises, and at 2:59 a.m. (by his wristwatch) was served a beer. He finally consumed this drink at 3:15 a.m. checked his wristwatch again for the exact time (at 3:15 a.m.) and left the premises. There were patrons at the bar after 3 a.m., and at his departure one couple still remained on the premises. At about 3:17 a.m. he observed this couple leave. He also noted that during the period between 3 and 3:15 a.m. the patrons on the premises were served and were permitted to consume their drinks. When he left the premises he was joined by Agent S and they departed the area, and immediately thereafter made a written notation of the time.

"His testimony on cross examination remained unshaken but he admitted that he saw no lewd or immoral acts on the part of the patrons on his visits, other than that hereinabove described. He admitted that he did not point out any individual as a homosexual and merely referred to the entire group as being apparent homosexuals.

"The licensee testified in his own behalf and, in addition, produced Jim and Joe. Jim testified as follows: He is an entertainer on weekends at the licensed premises and has been an entertainer for the past twenty years. He insisted that there is no difference in the manner of holding a glass between a male and a female; that the walk of a female is the same as that of a male, regardless of whether the female wears high heels or low heels. He noted that many people who walk in the manner described by the agents included fighters, tennis players, etc.

He said it was characteristic of these athletes that they walked with a springy motion. He denied being aware of any of the characteristics of a homosexual. He also stated that he discerned no difference in the movement of the hips of a female and that of a male while walking and, in any event, the male patrons at the premises walked in a normal manner on the dates in question. He denied hearing any of the males talking in a lispy tone nor did he see any of the males protrude their tongues in the manner described by the agents. He felt it was common practice to buy each other drinks and this was no marked action of an apparent homosexual; he did see certain males affectionately tap others on the back or the shoulder but denied that there was any embracing or any rolling of eyes or 'goo-goo' eyes, and he insisted that the patrons were normal in every respect.

"He further testified that, on the December 16 visit of the agents, Agent G mentioned that he goes for 'fags' and this witness responded 'I get no message.' With respect to the December 29 occasion he stated that he did sing several stanzas of 'The Baker's Daughter' but denied that it had any double meaning. He also sang the song 'Cup Cakes', the first two lines of which are as follows:

✓ 'I love to nibble on those cupcakes. I go nut about their taste. They seem to melt right in my mouth. She never had complaint. They are smooth as silk and rich with milk.'

"On cross examination he was asked specifically what his conception or definition was of a homosexual. He replied that a homosexual is one 'with a lot of lipstick, wears a lot of lipstick, eyebrow pencil, smells and stinks of perfume.' He stated that the only place he saw homosexuals dressed occasionally in female attire was on a main thoroughfare in Newark. He was asked the following question:

'Q. ...If you were to go into an establishment or in a room, whether it is a liquor license or not, and if you saw a group of men who spoke in high pitched voices, who used limp wrist action, who walked high on the balls of their feet and as they walked they swished their hips and also their shoulders and if they were to move their hands in a dainty way, would that mean anything to you?

'A. No, sir.'

"Joseph Passalacqua, herein referred to as Joe, was a bartender on the occasions referred to, and he too denied that there was any essential difference between the gait of males and females regardless of whether a female wore a high or low shoe; that there was no difference in the movement of the hips or in the way men and women held drinks or cigarettes. He also denied that he saw any limp-wrist motions on the part of the males in the premises on the dates in question; heard no one speak in a high-pitched voice; saw no tongues protruding from the mouths of the males; stated that walking in the manner described by the agent is a characteristic of athletes; indeed, he walked that way because he was a former athlete. With respect to the interrogation which took place at the time of confrontation by the agents, Joe stated that, when questioned, he merely said 'I won't answer at this time.'

"He additionally denied hearing the agents discuss any of the apparent homosexuals on the date hereinbefore referred to, and stated that they might have said something to him but he did not hear them because he was 'concentrating on drinks.' He admitted on cross examination that the only time he recognized apparent homosexuals was in August of 1962 when several of these persons came into the premises, were holding hands and, as they seated, one wrapped his arm around the other. At that point he insisted that he evicted them.

"Clarence Hoover (the licensee), testifying in defense to the second charge, stated that the last person who was permitted to imbibe alcoholic beverages on December 16 left the said premises at 3 a.m. His explanation of the fact that the clock on the wall indicated that it was 3:15 was that he purposely set the clock fifteen minutes fast.

"With respect to the first charge, he denied that Jim entertained in any but the most usual way by singing standard songs. He could not conceive any double entendre or double meaning in such songs as 'The Baker's Daughter' and certainly he felt there was nothing immoral or improper.

"He did not observe any impropriety on the parts of Jim and Joe on the evening of December 8, nor did he witness at any time any congregation of males on one side of the bar as described by the agents. His only experience with homosexuals or apparent homosexuals occurred a long time ago in Los Angeles when he saw two males with heavy make-up on. His testimony was similar to that of Jim with respect to his opinion as to any alleged differences in habits and conduct of males and females. He too saw no difference in drinking methods of smoking habits, nor did he find any difference in their gait, in the movement of their hips or in the way they held their glasses. He too did not observe any males holding hands or calling each other with endearing terms, sticking out their tongues or rolling their eyes in the manner described hereinabove.

"At the time of confrontation on December 29, the agents questioned the licensee as follows: 'How long these homosexuals been hanging out here? So I says, I don't know who you mean. Who do you mean?... You point out the people who are supposed to be homosexuals and I'll tell you how long they been hanging out here.' At that point Joe entered the room and the agent asked him the same question, and the licensee continued: 'So I said to Joe ... Don't try to answer that question because you don't--only be guessing. You don't know how to answer that question.' And further, 'You are asking this man questions. I said I'll answer the questions for you but I'd like to have my attorney present.... I don't think my people working for me should answer for me.'

"On cross examination the licensee reiterated the fact that he saw no such persons as described by the agents at any time. Nor does he see any difference in the mannerisms or conduct or characteristics and walk and drinking or smoking habits between males and females and, indeed, he did not observe any of the mannerisms as ascribed to these apparent homosexuals on the dates in question. He was asked the following question:

congregated in one section together on the dates in question, it would appear that the charges have been proved. It is true that these persons did not wear female garb, but female garb is not necessary for such a finding. Re Kaczka and Trobiano, Bulletin 1063, Item 1; Re Rutgers Cocktail Bar, A Corp., Bulletin 1133, Item 2.

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge. To permit such persons to gather and congregate in large numbers on licensed premises is itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices. In addition, innocent members of the public frequenting such premises, by being exposed to these conditions, may well be adversely affected. Re Kaczka and Trobiano, supra. And it is no excuse that the licensee did not recognize these persons as apparent homosexuals. The situation here was so obvious in my judgment as to completely discredit the licensee's testimony in that respect. It requires only ordinary frankness to state that his professed inability to recognize these apparent homosexuals was insincere and ingenuine. It is clear as crystal that, if the agents' version is to be believed, as I do believe it, then they should have been recognized even in the darkness. As was observed by the Director in Re Simmons, Bulletin 1406, Item 2:

'I believe that, with exceptions infinitesimal and remote, it takes only common sense, with a reasonable amount of judgment based upon observation as to garb and conduct (abnormal for a woman), to distinguish a so-called lesbian from a normal woman.'

'The licensee cannot avoid his responsibility by merely closing his eyes and ears. On the contrary, licensees must use their eyes and ears, and use them effectively, to prevent improper use of the premises.' Re Ehrlich, Bulletin 1441, Item 5; Bilowith v. Passaic, Bulletin 527, Item 3.

"Finally, it would be appropriate to quote from the Commentaries of the Prophet Jeremiah:

'There is none so blind as he who will not see.'
(Jeremiah: 20)

"A liquor license is a mere privilege. Paul v. Gloucester, 50 N.J.L. 585; Mazza v. Cavicchia, 15 N.J. 498. As the court said in Benedetti v. Trenton, 35 N.J. Super. 30, at p. 35:

'In the public interest, the right to prescribe the conditions under which intoxicants may be sold is practically limitless.'

"Judge Jayne, speaking for the court In re 17 Club, Inc., 26 N.J. Super. 43, at p. 52, said:

'The governmental power extensively to supervise the conduct of the liquor business and to confine the

conduct of that business to reputable licensees who will manage it in a reputable manner has uniformly been accorded broad and liberal judicial support.'

And, as was pointed out in Re Polka Club Inc., Bulletin 1045, Item 6:

'Rigid enforcement of the regulations ... is essential to the preservation of decency and the protection of the public morals....'

"Considering all the facts adduced herein and the legal principles applicable thereto, I conclude that the licensee is guilty of this charge.

"With respect to the second charge, I believe the testimony of the agents and particularly the testimony of Agent S that he was permitted to consume alcoholic beverages after the closing hour as enjoined by the applicable ordinance. He testified that there were other patrons who were consuming and permitted to consume such beverages after 3 a.m. and, when he left the premises, he was met at 3:15 a.m., immediately outside the premises, by Agent G.

"The defense of the licensee is not convincing since he made no written memorandum of his activity on that morning as the agents did. I have observed the licensee on the stand and was not persuaded that credence should be given to his testimony in this regard. The local ordinance referred to in the second charge prohibits the sale, service or consumption of alcoholic beverages on licensed premises between 3 a.m. and 7 a.m., and provides that the licensed premises must be closed between said hours. When the ordinance set the time of closing at 3 a.m., it meant exactly what it said. Licensees are required to adhere strictly to the provisions of the local ordinance and to clear out the patrons and close the place on time. Patronage that is worthwhile will understand and will hold no grudge if told to leave at the closing hours. As the then Commissioner Burnett suggested in Re Four Hundred Social Club, Inc., Bulletin 242, Item 8: 'The rest of the customers will have to be herded out willy nilly.' The licensee should teach its customers the first lesson in parliamentary law - that a motion to adjourn is not debatable.

"After reviewing the evidence, the exhibits and the written arguments of counsel, I conclude that the Division has established the truth of both charges by a fair preponderance of the believable evidence, and I recommend that the licensee be found guilty of said charges.

"The licensee has a prior adjudicated record. Effective January 2, 1955, his license was suspended for five days by the local issuing authority. Since that charge is dissimilar to the charges herein and occurred more than five years ago, it should not be considered in fixing the penalty to be imposed herein.

"Although in recent comparable cases more severe penalties have been imposed, and similar penalty might well be warranted herein, in view of the penalty heretofore imposed by the then Director in the previous Conclusions and Order herein (Re Hoover, Bulletin 1474, Item 2), I further recommend that

an order be entered suspending the license for a period of forty days on Charge 1 and for an additional fifteen days on Charge 2, making a total suspension of fifty-five days."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 6 of State Regulation No. 16.

Having carefully considered the transcript of the proceedings, the exhibits introduced into evidence at ~~the~~ ^{this} hearing ~~of this appeal~~, the written briefs submitted by counsel for the licensee and the Division at the conclusion of said hearing, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence, I shall enter an order as recommended.

No effective dates for the suspension may now be fixed in view of the order of the Appellate Division of the Superior Court dated July 31, 1962, staying the effect of the prior order entered herein pending the appeal herein (Hoover v. Division of Alcoholic Beverage Control, Docket No. A-1027-61) and in further view of the fact that jurisdiction herein has been retained by the Appellate Division of the Superior Court by order dated April 18, 1963.

Accordingly, it is, on this 18th day of June, 1963,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of the Township of Parsippany-Troy Hills to Clarence Hoover, t/a Hoover's Tavern, for premises West Side of Tabor Road about 500 feet south of Maple Avenue, Parsippany-Troy Hills, be and the same is hereby suspended for fifty-five (55) days, the effective dates of which will not be fixed until the determination by the Appellate Division of the pending appeal, and remand to this Division.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. APPELLATE DECISIONS - WORLD LIQUORS, INC. v. HOWELL.

WORLD LIQUORS, INC.)	
Appellant,)	
v.)	ON APPEAL
)	CONCLUSIONS
)	AND ORDER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HOWELL,)	
Respondent.)	

Edward M. Rothstein, Esq., Attorney for Appellant
Elliot L. Katz, Esq., Attorney for Respondent
Edwin J. Fox, Esq., Attorney for Objector Freehold Suburban
Tavern Owners' Association
Samuel Moskowitz, Esq., Attorney for Objector Monmouth County
Retail Liquor Stores Association

BY THE ACTING DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the unanimous action of respondent in denying an application for person-to-person and place-to-place transfer of plenary retail consumption license C-14 from

Aldo and Emilia Galli, t/a Cottage Inn, to World Liquors, Inc., and from premises E/S State Highway 34 to premises to be constructed on the west side of State Highway 9 (approximately 140 feet south of Shady Lane), Township of Howell.

"Appellant alleges in its petition of appeal that the action of respondent in denying the transfer in question was erroneous for the following reasons:

- '(a) The action of the Township Committee in denying the application was unreasonable, arbitrary, and capricious.
- (b) That the Township of Howell in the County of Monmouth failed to conduct a hearing on said application in accordance with the rules and regulations.
- (c) That the best interests of the Township will be served if a transfer is permitted as requested by the applicant.'

"Respondent's answer denies the allegations in the petition of appeal.

"John R. Miller, Township Clerk, called as a witness by appellant, testified that the distance between the present and proposed premises, measured in a straight line, is approximately ten miles; that the proposed location is in a business zone but that there are various extensive residential developments in the area; that State Highway 9 extends in a northerly and southerly direction through Howell Township for an estimated distance of eight miles, and there are presently five plenary retail consumption licenses on said highway, the nearest to the north of the appellant's proposed premises being 'about a mile and a half, maybe a mile, a bit better', and to the south approximately two miles away; that across the street and north of the proposed location a rectory is in the process of construction and there are plans to erect a church, school and church hall.

"William M. Chase, who described himself as 'a city planner', testified that he made a study of the areas of the existing licensed premises and that of the proposed licensed premises respectively and that, in his opinion, a license at the location sought by appellant would serve a public need. Chase stated that he arrived at his opinion because of the distance of the proposed premises from other liquor outlets and because of the present residential developments surrounding the particular location. He further stated that any type of business or development would increase traffic and, in so doing, 'you add certainly to the hazard.'

"Walter Laukshtein testified that he resides 'about a mile' from appellant's proposed premises and that, in his opinion, a license, if issued at the proposed site, would serve the convenience of the people residing in the area.

"Mayor Marvin R. Clayton testified that he voted to deny appellant's application for transfer of the license to the proposed premises because there are presently five plenary retail consumption licenses on State Highway 9 and, in his

opinion, appellant's proposed premises is too close to the premises of the other licensees. He further testified that he resides in the vicinity and, as other reasons for his negative vote, stated that the transfer of the license to the place sought would 'increase the traffic hazard', and that in the area he considered the fact that there was to be a church, rectory and school erected on the highway not too distant from appellant's proposed site.

"Frank W. Vogel, Jr., a member of respondent Committee, disclosed that he voted to deny the transfer in question on grounds similar to those expressed by Mayor Clayton.

"Aaron Hyman testified that he is the holder of a plenary retail distribution license for premises located on State Highway 9 which is 'from a mile and a half to three-quarters' north of appellant's proposed premises and that he delivers, without charge for delivery, alcoholic beverages to those who may desire same.

"Although appellant's proposed premises on State Highway 9 would be between one and one-half and two miles distant from the nearest plenary retail consumption license, it would not in itself compel the respondent to grant the transfer in question. In Fanwood v. Rocco and Division of Alcoholic Beverage Control, 59 N.J. Super. 306 (App.Div. 1960), wherein the court sustained the denial by the local issuing authority of a place-to-place transfer of a liquor license, Judge Gaulkin stated:

'The transfer of a license into an area in which there are no taverns or package stores is in the same category as the issuance of an original license. No person is entitled to either as a matter of law. R.S. 33:1-26; Zicherman v. Driscoll, supra, 133 N.J.L. at 588; Bumball v. Burnett, supra, 115 N.J.L. 254.

'As we have indicated, when a municipality decides in good faith that a substantial area within its boundaries in which there are no taverns or package stores shall remain that way, the Director may not interfere. That there are no licenses in the area is no reason that there should be one. Cf. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup.Ct. 1947). Nor does the municipality need to have any articulated reasons for keeping the area inviolate. It is sufficient if in good faith and not with the intention of oppressing the individual applicant the governing body wants it that way. If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial....'

"On appeal, the New Jersey Supreme Court affirmed the Superior Court's decision in the denial of said transfer. Fanwood v. Rocco and Division of Alcoholic Beverage Control, 33 N.J. 404 (1960).

"Nothing appears in the instant matter which indicates or even suggests that respondent's refusal to grant appellant's application was inspired by improper motives. After an examination of the entire record, I find that the appellant has failed to sustain the burden of establishing that the action of the respondent in denying the transfer of the license in

question was unreasonable, arbitrary, capricious or constituted an abuse of its discretionary powers. Rule 6 of State Regulation No. 15. There has been no proof presented by appellant to substantiate the fact that the respondent failed to conduct a proper and legal hearing on appellant's application. Furthermore, appellant failed to establish, as alleged in its petition of appeal, that the transfer of the license to the proposed premises would inure to the best interests of the Township.

"Under the circumstances in this case, I recommend that an order be entered affirming the action of respondent and the dismissal of the appeal."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the testimony taken, the exhibits introduced in evidence at the hearing of the appeal, the Hearer's Report and the recommendations included therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 17th day of June 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. APPELLATE DECISIONS - BRANDWEIN AND CARDINALE v. ORANGE.

JOSEPH BRANDWEIN AND MICHAEL)
P. CARDINALE, t/a GREEN'S)
TAVERN & PACKAGE STORE,)

Appellants,)

v.)

ON APPEAL
ORDER

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ORANGE,)

Respondent.)

James A. Palmieri, Esq., Attorney for Appellants
John R. Murray, Esq., Attorney for Respondent
William E. Bardusch, Jr., Esq., Attorney for Young Men's
Christian Association

BY THE ACTING DIRECTOR:

The above appeal was taken from the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Orange whereby it denied an application for a transfer of License C-38 from Morris Green and Joseph Brandwein to Joseph Brandwein and Michael P. Cardinale, and from premises 261 Dodd Street, Orange, to premises 141-143-145 Main Street, Orange.

Subsequent to the hearing on appeal, but prior to the submission of a Hearer's Report, appellants' attorney, by letter dated June 11, 1963, sent at the specific instance of the appellants, requested that the appeal herein be dismissed.

No reason appearing to the contrary, it is, on this 17th day of June 1963,

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

EMERSON A. TSCHUPP
ACTING DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - GAMBLING (WAGERING) - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

MICHAEL MONIELLO
42 Sherman Ave. & 84-86 Franklin St.
Jersey City 7, N. J.

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption
License C-65, issued by the Municipal
Board of Alcoholic Beverage Control of
the City of Jersey City.

Santo Calarco, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to charges alleging that on April 19, 1963, he (1) sold drinks of beer to four minors, two age 18 and two age 19, in violation of Rule 1 of State Regulation No. 20, (2) between 10:20 and 11:10 p.m., sold several 6-packs of beer and a pint of whiskey for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (3) permitted the playing of a pool game for money stakes, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for twenty days (Re Tonti's, Inc., Bulletin 1469, Item 3), on the second charge for fifteen days (Re Ruth & Middaugh, Bulletin 1504, Item 6) and on the third charge for fifteen days (Re Garcia, Bulletin 1443, Item 4), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Accordingly, it is, on this 17th day of June, 1963,

ORDERED that Plenary Retail Consumption License C-65, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Michael Moniello for premises 42 Sherman Avenue and 84-86 Franklin Street, Jersey City, be and the same is hereby suspended for the balance of its term,

viz., until midnight, June 30, 1963, commencing at 2:00 a.m. Monday, June 24, 1963; and it is further


ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, August 8, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

Arthur C. Masker and Eleanor T. Masker
t/a Irvington Beverage Company
1153 Stuyvesant Avenue
Irvington, N. J.

Application filed July 3, 1963 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-6 from Spring-Bruen Associates, Inc., t/a Irvington Beverage Company, 27 Wilson Place, Irvington, New Jersey.


Emerson A. Tschupp
Acting Director