

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1120

JULY 10, 1956.

TABLE OF CONTENTS

ITEM

1. NEW LEGISLATION - (1) RECIPROCAL ACT CONCERNING CLASS B (WHOLESALE'S) LICENSE - CLASS B LICENSEE NOT RESIDENT OR INCORPORATED IN NEW JERSEY PROHIBITED FROM SELLING OR DISTRIBUTING DIRECTLY TO RETAILERS IF LAWS OF SUCH LICENSEE'S STATE OF RESIDENCE OR INCORPORATION DO NOT PERMIT SUCH PRIVILEGE TO NEW JERSEY RESIDENTS AND CORPORATIONS - (2) PUBLICATION AND MAINTENANCE OF MINIMUM PRICES IN SALE OF MALT ALCOHOLIC BEVERAGES TO CONSUMERS.
2. APPELLATE DECISIONS - SPORTSMAN 300 v. NUTLEY.
3. APPELLATE DECISIONS - BRYSON v. BEVERLY.
4. DISCIPLINARY PROCEEDINGS (Egg Harbor Township) - FRAUD IN APPLICATION AS TO UNDISCLOSED PARTNER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF A LICENSE - UNQUALIFIED EMPLOYEE - PRIOR RECORD - NO "LOCUS POENITENTIAE" - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 15 DAYS.
5. DISCIPLINARY PROCEEDINGS (Newark) - FALSE ANSWER IN APPLICATION AS TO BENEFICIAL OWNER OF CORPORATE STOCK - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF A LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO LIFT AFTER EXPIRATION OF 15 DAYS FROM EFFECTIVE DATE.
6. APPELLATE DECISIONS - ENNO ET ALS. v. HOWELL TOWNSHIP AND HYMAN.
7. DISCIPLINARY PROCEEDINGS (Paterson) - CHARGE ALLEGING SALES TO MINORS, DISMISSED.
8. DISCIPLINARY PROCEEDINGS (Mt. Ephraim) - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
9. APPELLATE DECISIONS - ENGELHORN v. BELMAR (ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS).
10. STATE LICENSES - NEW APPLICATION FILED.

New Jersey State Library

2. APPELLATE DECISIONS - SPORTSMAN 300 v. NUTLEY.

SPORTSMAN 300, trading as)
SPORTSMAN 300,)

Appellant,)

-VS-)

BOARD OF COMMISSIONERS OF)
THE TOWN OF NUTLEY,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Sidney E. Noskiewicz, Esq., by G. George Addonizio, Esq.,
Attorney for Appellant.
William F. Gorman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license C-7, for premises 173 Franklin Avenue, Nutley, for a period of ten days, effective March 18, 1956, upon a finding of guilt in disciplinary proceedings on a charge alleging that on January 18 and 19, 1956, it sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal, an order was entered, on March 13, 1956, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

Appellant in its petition of appeal alleges that (1) respondent did not prove that the person alleged to have been served was under the age of 21 years; (2) respondent did not establish the identity of the person alleged to have been served; (3) R. S. 33:1-77 is a criminal statute and is not applicable to a licensee in disciplinary proceedings; and (4) the findings of respondent were contrary to the weight of the evidence and arbitrary.

At the hearing herein which was heard de novo pursuant to Rule 6 of State Regulations No. 15, John --- testified, in substance, that he was born November 3, 1935; that early in December 1955, he, accompanied by his father, visited defendant's licensed premises at which time Daniel Marese, the manager thereof, refused to serve him a glass of beer when informed that he was a minor; that on December 10, 1955, he was employed by Marese as a pin boy on the licensed premises; that some time prior to January 18, 1956, he told Marese that he was 21 years of age; that at about 11:00 p.m., January 18, 1956, he was at the bar in defendant's licensed premises and was served a glass of beer and eight glasses of wine by Marese who required no written proof of his age; and that he left the premises in the early hours of January 19, 1956 in an intoxicated condition and "passed out on the street" and "was picked up by the police". John's birth certificate was introduced in evidence.

Daniel Marese testified that he has been manager of defendant's licensed premises since April 1955; that he hired

John as a pin boy on said premises on December 10, 1955; that John then stated that he was over 21 years of age; and that on the dates alleged he served John beer or wine, being satisfied in his own mind that John was over 21 years of age.

The evidence adduced at the hearing de novo is clearly in disproof of appellant's allegations (1) and (2) hereinabove enumerated. As to allegation (3): In the case of Caruso v. Jersey City, Bulletin 694, Item 1, Commissioner Driscoll said, "I am satisfied that it was the intent of the Legislature that where a licensee has followed the procedure outlined in Section 77, and met the requirements, the defense thus established should be just as effective in disciplinary proceedings as it is in criminal proceedings". See Re Butera, Bulletin 606, Item 4; Roey v. Hock, Bulletin 758, Item 2. As to allegation (4): In appeals to the Director from the action of the local issuing authority, the burden of establishing that the action of such issuing authority was arbitrary and should be reversed rests with appellant. Rule 6 of State Regulations No. 15. Skripko v. Raritan, Bulletin 1081, Item 1.

The Hearer, in his report, recommended that respondent's action be affirmed.

On May 14, 1956, appellant filed exceptions to the Hearer's Report pursuant to Rule 14 of State Regulations No. 15, and on May 22, 1956, counsel for the respective parties appeared before me on oral argument at which time it was stipulated between the parties that the transcript of the proceedings before the local issuing authority (not produced at the hearing on appeal) be made part of the record herein for the sole purpose of determining if appellant's contention is correct that the minor in question executed a writing representing himself to be 21 years of age on which appellant relied. I have examined said transcript and cannot find any testimony to substantiate this contention.

Having considered all the facts and circumstances herein, I conclude that respondent's finding of appellant's guilt has been established by a preponderance of the evidence and that its action was neither arbitrary nor capricious. The action of the respondent will be affirmed, the appeal will be dismissed and the ten-day suspension heretofore imposed will be reinstated.

Accordingly, it is, on this 4th day of June, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension by respondent of appellant's 1955-56 Plenary Retail Consumption License C-7, for premises 173 Franklin Avenue, Nutley, be and the same is hereby restored and reimposed to commence at 2:00 a.m. June 11, 1956, and terminate at 2:00 a.m. June 21, 1956.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - BEVERLY, NEW JERSEY.

FRANCIS BRYSON and MARY BRYSON,)
trading as PALACE CAFE,)

Appellants,)

-vs-)

COMMON COUNCIL OF THE CITY)
OF BEVERLY,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Dimon, Haines & Bunting, Esqs., by Dominick J. Ferrelli, Esq.,
Attorneys for Appellants.

Sidney W. Bookbinder, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on February 14, 1956, whereby it denied appellants' application to transfer their plenary retail consumption license from 209 Broad Street to 301-303 Warren Street, Beverly.

The petition of appeal sets forth and the answer admits that the application was denied for the following stated reasons:

- "(a) it is not in the public interest, in that children congregate in this area. The intersection at which the new license would be operated is a safety patrolled intersection with children as monitors.
- (b) There are three teenage meeting places in the very area of the proposed transfer.
- (c) There is no need for a license at the proposed transfer site, for the reason that the place from which the license is to be transferred is equally convenient to the consumer.
- (d) The proposed change would not be in harmony with the general public interest of a small suburban community, such as Beverly, New Jersey."

The petition of appeal alleges that the reasons advanced for denial are insufficient; that appellants were denied a fair hearing in that several members of respondent Council had previously stated that they would not vote for the proposed transfer and that the decision was the result of prejudice.

The evidence herein establishes that appellants seek to transfer their license a distance of 1,500 feet from a section zoned for business to another section similarly zoned. The premises known as 301-303 Warren Street are located at the corner of Cooper and Warren Streets, the busiest intersection in Beverly. The bus which carries pupils to and from the High School stops at said intersection and said intersection is monitored by school children. One of the members of respondent Council, who is also Chief of Police, testified that between January 1954 and September 1955 at least ten telephone calls to quell fights and disturbances at appellants' present premises were received by the Police Department from appellants or other persons.

It further appears from the evidence that appellants filed a previous application for a similar transfer of their license. A public hearing thereon was scheduled to be held by respondent on November 14, 1955. When the meeting opened, the City Clerk announced that he had received no proper application and the then attorney for appellants stated that he was withdrawing the application. Thereafter it was suggested that, since interested persons were present, they should be given an opportunity to be heard. The City Clerk read correspondence and petitions, and three members of the present Council stated that they were opposed to the transfer and would vote against it when a proper application was received. Thereafter the present application was filed and denied after a public hearing held on February 14, 1956. Luther T. Smith, who was then President of respondent Council, testified that all persons present at said public hearing were allowed to be heard; that at the close of the hearing five members of the Council (including himself and the other two members who stated on November 14, 1955, that they opposed the transfer) voted in favor of the resolutions denying the application and two other members of the Council voted against said resolution. Councilman Smith further testified that he was not opposed to the Brysons, but was opposed to a saloon at Cooper and Warren Streets. Councilman John S. Ruggeri (also Chief of Police) testified that on February 14, 1956, he voted in favor of the resolution denying the application but that he had an "open mind" at said hearing despite the fact that he stated on November 14, 1955, that he was opposed to the transfer. Councilman Harry McCloskey testified that on February 14, 1956, he voted in favor of the resolution denying the application and admitted that he had stated, on November 14, 1955, that he was opposed to the transfer. The President of the Board of Education of Beverly, a member of said Board, and the Pastor of the First Baptist Church testified at the hearing herein that they opposed the transfer. Numerous letters and petitions opposing the transfer had been presented to respondent before and at the hearing below and were introduced into evidence at the hearing held herein.

On behalf of appellants, Francis W. Bryson (one of the licensees) testified that the transfer is sought because "I think it's a better business place up on the corner, on the main street."

There is no inherent right to transfer a license to other premises. The issuing authority, in the exercise of its discretion, may grant or deny such transfer. If denied on reasonable grounds, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Castro & Rodrigues v. Newark, Bulletin 1054, Item 2. In Masar v. Montville, Bulletin 252, Item 6, Commissioner Burnett, in affirming a denial of a transfer in a small community, said:

"Its inhabitants are not unreasonable in objecting to the location of a liquor place at the center of their community and at a corner where their school children congregate for transportation to high school."

There is no evidence in this case that appellants were denied a fair hearing or that any member of respondent Council was improperly motivated. I find that the application was denied on reasonable grounds and, hence, the action of respondent will be affirmed.

Accordingly, it is, on this 4th day of June, 1956,

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

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - FRAUD IN APPLICATION AS TO UNDISCLOSED PARTNER - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF A LICENSE - UNQUALIFIED EMPLOYEE - PRIOR RECORD - NO "LOCUS POENITENTIAE" - ILLEGAL SITUATION CORRECTED - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

JENNIE TURLINSKI
Albany Avenue near Germantown Avenue
West Atlantic City
Egg Harbor Township
PO Box 182, Pleasantville, N.J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-2, issued by the Egg Harbor Township Committee.

Paul M. Salsburg, Esq. and Irving A. Lilienfeld, Esq.,
Attorneys for Defendant-licensee.
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to charges which may be summarized as follows:

1., In application dated June 2, 1955, she denied that any other person had an interest in the license applied for, whereas her husband, Charles P. Turlinski, was a co-owner of the licensed business; said false statement being in violation of R. S. 33:1-25.

2. Since about July 28, 1949, she aided and abetted her husband to exercise the rights and privileges of her licenses; in violation of R. S. 33:1-52.

3. On December 14, 1955, and prior thereto, she knowingly employed her husband, an unqualified person; in violation of Rule 1 of State Regulations No. 13.

At the hearing herein an ABC agent testified that, during the course of an investigation in December 1955, he obtained sworn statements from defendant and her husband. These statements were received as exhibits in the case. From the statement given by defendant and from her testimony at the hearing, it appears that in 1945 she and her husband purchased the "Mizpah Hotel" in Mizpah, N. J., with funds obtained from War Bonds they had saved and from profits of a grocery store previously operated elsewhere by her husband;

that she applied for a liquor license for said premises because a Magistrate of the municipality advised her that her husband could not hold a license but that he "is permitted to help you;" that she obtained the license in her name and renewed it each year thereafter until 1949. It further appears that in 1949 defendant obtained a person-to-person and place-to-place transfer of the license she now holds; that the money used in said transaction was obtained from the sale of the "Mizpah Hotel;" that, prior to said transfer, she received from an attorney (not connected with the present proceeding) advice similar to that which she received in 1945. Defendant admits that she and her husband "conduct the business together." Defendant's husband was, in fact, ineligible to work on licensed premises prior to April 6, 1956, when I entered an order lifting his disqualification pursuant to R. S. 33:1-31.2. On the evidence herein, I find defendant guilty as charged, but shall consider in mitigation the testimony of defendant and her husband that they acted in good faith and in reliance upon the aforesaid advice.

Defendant has a prior record. Effective January 9, 1956, I suspended her license for fifteen days after she pleaded non vult to a charge of selling to a minor (Re Turlinski, Bulletin 1095, Item 7). However, since the violation herein occurred long prior to the effective date of said suspension, no "locus poenitentiae" intervened and I shall not consider this a second offense (Re Penta, Bulletin 1054, Item 5). I am advised by attorney for defendant that Charles P. Turlinski no longer has any financial interest in the business, but is now employed therein on a salary basis. Under the circumstances, I find that the unlawful situation has now been corrected, and I shall suspend defendant's license for fifteen days (Re Melillo, Bulletin 1091, Item 8).

Accordingly, it is, on this 23rd day of May, 1956,

ORDERED that Plenary Retail Distribution License D-2, issued by the Egg Harbor Township Committee to Jennie Turlinski, for premises on Albany Avenue near Germantown Avenue, West Atlantic City, Egg Harbor Township, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. June 4, 1956, and terminating at 9:00 a.m. June 19, 1956.

WILLIAM HOWE DAVIS
Director.

- 5. DISCIPLINARY PROCEEDINGS - FALSE ANSWER IN APPLICATION AS TO BENEFICIAL OWNER OF CORPORATE STOCK - AIDING AND ABETTING NON-LICENSEE TO EXERCISE RIGHTS AND PRIVILEGES OF A LICENSE - LICENSE SUSPENDED FOR BALANCE OF TERM, WITH LEAVE TO LIFT AFTER EXPIRATION OF 15 DAYS FROM EFFECTIVE DATE.

In the Matter of Disciplinary)
 Proceedings against)
 PALMERO'S BAR, INC.)
 118 Bank Street)
 Newark 2, N. J.,)
 Holder of Plenary Retail Consump-)
 tion License C-75, issued by the)
 Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Newark.)

CONCLUSIONS
 AND ORDER

 Sidney Simandl, Esq., Attorney for Defendant-licensee.
 William F. Wood, Esq., appearing for Division of Alcoholic
 Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. In your application dated May 24, 1955, filed with the Municipal Board of Alcoholic Beverage Control of Newark, upon which you obtained your current plenary retail consumption license and wherein you listed your shareholders in answer to Question 22 as Angelina Palmero (8 shares or 80%), Frances Palmero (1 share or 10%) and Gloria Langston (1 share or 10%), you falsely stated 'No' in answer to Question 23, which asks: 'Has any...individual other than the stockholders hereinbefore set forth any beneficial interest, directly or indirectly, in the stock held by said stockholders?', whereas in truth and fact Angelo Palmero (not mentioned in the application as a stockholder or as beneficially interested in any of your stock) had such an interest in that he and Angelina Palmero were the real and beneficial owners of all of your stock; said false statement being in violation of R. S. 33:1-25.

"2. From about May 2, 1955 until the present time, you knowingly aided and abetted Angelo Palmero to exercise, contrary to R. S. 33:1-26, the rights and privileges of your successive plenary retail consumption licenses; thereby yourself violating R. S. 33:1-52."

The file herein discloses that the application dated May 24, 1955, for renewal of defendant's license listed Angelina Palmero as president, treasurer and a director of the defendant corporate licensee and also holder of eight shares or 80% of its stock; Frances Palmero (now Frances Convery) as secretary and director and holder of one share or 10% of its stock, and Gloria Langston as a director and holder of one share or 10% of its stock.

An investigation conducted in this matter revealed that one Angelo Palmero, husband of Angelina Palmero and father of Frances Palmero (now Frances Convery) and Gloria Langston actually owned one-half of the total number of shares which were shown in the application to be issued and outstanding, and that his wife owned the other half thereof. This fact, according to

a sworn statement given by Angelina Palmero, was not disclosed because her husband had been convicted of a crime in 1938. Said falsification resulted in the institution of the aforesaid charges.

In a proceeding decided herewith I have expressed the opinion that the crime of which Angelo Palmero had been convicted involved the element of moral turpitude and, hence, he was ineligible to be associated with the alcoholic beverage industry. I have, however, by an order dated simultaneously herewith, removed said disqualification (Re Palmero, Case No. 1246). Thus, by reason of said order, Angelo Palmero is not presently ineligible to be connected with the liquor industry.

In the proceedings in question Angelo Palmero testified: "Well, I was in the cab business and I sold the cab. It was all her money. She always worked, and in other words, it is mostly her money." Under all of the circumstances appearing in this case, and in view of the fact that defendant has no prior adjudicated record, I would ordinarily suspend its license for a period of fifteen days (Re Melillo, Bulletin 1091, Item 8; Re Turlinski, decided herewith). However, since the illegal situation with Angelo Palmero as the undisclosed owner of 50% of defendant's stock continues to exist, I have no alternative but to suspend the license for the balance of its term. The attorney for defendant has informed me by letter that, if the disqualification of Angelo Palmero is removed, 50% of defendant's stock will immediately be transferred to him. I shall accept proof of said transfer of stock as a correction of the illegal situation. If and when the unlawful situation is actually corrected, I shall entertain a petition to lift the suspension imposed and restore the license. In any event, however, the suspension will not be lifted until at least fifteen days after the effective date of said suspension to be imposed herein have elapsed.

Accordingly, it is, on this 23rd day of May, 1956,

ORDERED that Plenary Retail Consumption License C-75, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Palmero's Bar, Inc., for premises 118 Bank Street, Newark, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 4, 1956; and it is further

ORDERED that, in the event the illegal situation is properly corrected, a petition may be filed to lift the said suspension in accordance with the terms hereinabove expressed, but in no event will the suspension be lifted until the expiration of fifteen (15) days from the effective date hereof.

WILLIAM HOWE DAVIS
Director.

6. APPELLATE DECISIONS - ENNO ET ALS. v. HOWELL TOWNSHIP AND HYMAN.

EDWARD ENNO, CHARLES DEANE,)
CATHERINE WALLEMBERGER and)
THOMAS ROCCO,)

Appellants,)

-vs-

TOWNSHIP COMMITTEE OF THE)
TOWNSHIP OF HOWELL, and AARON)
HYMAN, trading as HYMAN'S)
GENERAL STORE,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellants.
Bernard H. Weiser, Esq., Attorney for Respondent Township
Committee.
Alvin H. Gelb, Esq., Attorney for Respondent Aaron Hyman.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee on December 12, 1955, whereby it granted an application filed by respondent Aaron Hyman to transfer his plenary retail distribution license from Hulse's Corner Road and Fort Plains Road to premises to be constructed on the west side of Highway 9, approximately 250 feet north of Hulse's Corner Road, Township of Howell. Appellants allege that the action of respondent Township Committee was erroneous for the reasons which may be summarized as follows:

- (a) it disregarded the findings of previous denials of said transfer by prior township committees;
- (b) it granted said application without proof of need and convenience to be served to the public of said community;
- (c) the establishment of a "drug store" in conjunction with the license was the controlling and primary reason for granting said application;
- (d) the action of the township committee was arbitrary, unreasonable and against the weight of the evidence;
- (e) applicant did not strictly comply with the rules and regulations of the Director, the laws of New Jersey governing the sale of alcoholic beverages, and the ordinances of the township.

The application considered herein was the fourth application filed by respondent Hyman for transfer of his license from his premises located on a side road to premises about one and one-half miles therefrom and located on Highway 9 at or near Hulse's Corner Road. His first application, filed on October 12, 1953, was denied by a unanimous vote of the members of the Township Committee which was then composed of Committeemen Thomas C. Applegate, Harry Burdge and Martin Nist. No appeal from said action was taken. His second application filed on July 12, 1954, was denied on July 26, 1954, by the same Committeemen upon the ground that "there are sufficient number of places whereby people can be accommodated in purchasing packaged

goods in the vicinity in which this transfer is requested". At that time Committeemen Burdge and Nist voted to deny and, apparently, Committeeman Applegate did not vote. Upon appeal to the Director, the action of the Township Committee was affirmed because appellant therein failed to sustain the burden of establishing that the action of respondent was erroneous (Hyman v. Howell, Bulletin 1039, Item 3). His third application was filed on August 23, 1955, and withdrawn by the applicant on September 26, 1955. His fourth and present application was filed on October 12, 1955; a public hearing was held on November 28, 1955, at the conclusion of which decision was reserved and the application, as indicated above, was granted by the Township Committee (as then composed) on December 12, 1955. Prior to that time the membership of the Township Committee had been increased from three to five. Mr. Nist was no longer a member. Mr. Burdge had become Mayor of the Township and testified that he did not vote upon the application now being considered because the Mayor has a right to vote only in case of a tie. Joseph M. Certa, Edmund Cordts and August Hansen had become members of the Township Committee and they, together with Thomas C. Applegate who had remained a member of the Township Committee, voted unanimously to grant the application at the meeting held on December 12, 1955. It further appears from the evidence that the applicant Hyman had filed plans and specifications for his new building to be erected on Highway 9 at the time he filed his application on October 12, 1953, and that they remained in possession of the Township Clerk until the time of the hearing herein. It also appears that applicant stated in his prior applications that he intended to operate a general store on Highway 9 but that in his last application he stated that he intended to operate a drug store in connection with his new premises.

The fact that the former three-man Committee had denied two prior applications for a similar transfer is not dispositive of the present appeal. In Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5, Commissioner Burnett said:

"While in the interest of uniformity, it might be desirable that a succeeding governing body adhere as closely as possible to the policies theretofore enunciated by a former body, it cannot be said that a deviation from those policies is necessarily arbitrary or unreasonable. On the contrary, the general rule of law is that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Cf. Rafalowski v. Trenton, supra [Bulletin 155, Item 8]; Lewis v. Phillipsburg, Bulletin 232, Item 13."

As to need and necessity: Prior to the transfer considered herein, there were no plenary retail distribution licenses on the section of Highway 9 located in the Township of Howell. A limited distribution license had been issued for other premises and a plenary retail consumption license had been issued for other premises (Deer Head Inn) on said Highway near Hyman's proposed premises. Four other consumption licenses had been issued for premises on the Highway more than a mile from Hyman's proposed premises. At the hearing held herein, appellant Edward Enno testified that there is no need for an additional license on Highway 9. Edward Enno is a stockholder and officer of a corporation which holds a plenary retail consumption license for the premises known as Deer Head Inn, about "two and a half blocks" from Hyman's proposed premises. The license held for said premises does not have the

"broad package privilege" but the witness testified that packaged goods are sold in the public barroom of said premises. Appellant Catherine Wallenberger, who lives near the proposed premises, testified that there is no need for an additional license on Highway 9. She is employed as a waitress on other licensed premises and stated that she believes "our township committee should protect her taxpayers like Enno there who wants to make his living". Appellant Thomas Rocco (a former licensee in the Township), Florence Moulton (who purchases package goods at Deer Head Inn) and former Committeeman Nist also testified as to lack of need. A petition containing over one hundred names of persons opposed to the transfer was presented to the Township Committee. On the other hand, Committeeman Certa testified that "I know the population has grown considerably"; Committeeman Cordts testified that "there has been a tremendous growth in the area" and that he would estimate that three hundred homes have been built since 1954 within a mile of the proposed premises; Committeeman Hansen testified that "I have watched this neighborhood grow for the past twenty-two years". All of these Committeemen testified that, in their opinion, there was need for a distribution license on Highway 9. Their testimony as to the growth of the immediate area was amply supported by the testimony of Katherine T. DeBow (a real estate broker and developer). Three residents of the area in question also testified as to the need of a package-goods store on Highway 9.

Counsel for appellants contended at the oral argument held herein that the members of the Township Committee voted in favor of the application only because they felt that there was need for a drug store on the Highway. Committeeman Applegate admitted that he voted in favor of the transfer for that reason. However, the other three Committeemen testified that, although the need for a drug store had been discussed, they voted in favor of the application because they felt there was need for a distribution license on Highway 9.

There is no evidence that the members of the Township Committee were improperly motivated or that their action was arbitrary.

The plans and specifications filed with the 1953 application remained in the possession of the Township Clerk and were considered in connection with the application which was granted on December 12, 1955. There is no evidence that the applicant did not comply with the law or the rules and regulations of the Director or the ordinances of the Township.

In an appeal to the Director, the burden of proof to establish that the action of respondent issuing authority was erroneous rests with appellant. Rule 6 of State Regulations No. 15. Considering all the circumstances herein, I conclude that appellants have failed to sustain the burden of proof necessary to establish that the action of the Township Committee was arbitrary or constituted an abuse of its discretionary power. Hence, I shall affirm the action of the Township Committee. Northend Tavern, Inc. v. Northvale, supra; Prior v. Clifton et al., Bulletin 1072, Item 2; Cimarosa v. Maywood et al., Bulletin 1075, Item 9; Whalen v. Mount Olive et al., Bulletin 1103, Item 2.

Accordingly, it is, on this 5th day of June, 1956,

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

WILLIAM HOWE DAVIS
Director

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS, DISMISSED.

In the Matter of Disciplinary Proceedings against
 JOHN J. WATTERS
 T/a WATTERS' ISLAND CASINO
 1 Lincoln Bridge
 Paterson 2, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-68, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

 Vincent A. Perneti, Esq., Attorney for Defendant-licensee.
 Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded not guilty to a charge alleging the sale and service of alcoholic beverages to a minor on November 17, 1955, contrary to Rule 1 of State Regulations No. 20.

No useful purpose will be served by detailing the voluminous testimony. It suffices to say that there is a sharp conflict in the evidence, and the widely divergent stories related by the witnesses raise an extremely close question on the persuasive balance of the proof. The minor, who entered the tavern with two other females, denied that she had imbibed any alcoholic beverages on the occasion in question. In this she was corroborated by her two companions and four other male patrons and the bartender. Although the investigating agents had concentrated their observations on the three females, all similarly attired in sweaters and slacks and all of youthful appearance, it eventuated that two of them had recently reached maturity and that the minor lacked but four months of twenty-one years of age. Observation of the minor's activities was made doubly difficult by the fact that the tavern was crowded and that, during most of the evening, the minor and her friends were standing behind patrons seated on stools at the bar. The line of vision of several of the agents was, at least, partially obscured by the milling crowd and, since the distance separating them from the group which included the minor was almost the full length of the bar, they were also beyond hearing range.

After a careful consideration of the entire record, I am left with a lingering doubt of the defendant's guilt and, under all of the attendant circumstances, must resolve that doubt in his favor. The charge will, therefore, be dismissed because not substantiated by the persuasive preponderance of the evidence.

Accordingly, it is, on this 23rd day of May, 1956,

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

WILLIAM HOWE DAVIS
 Director.

8. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

THEODORE T. & NELLIE LEVY
T/a SPREAD EAGLE INN
316 W. Kings Highway
Mt. Ephraim, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Borough of Mt. Ephraim.

William T. Cahill, Esq., Attorney for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to an amended charge alleging that on March 17, 1956, they sold, served and delivered and permitted the sale, service and delivery of alcoholic beverages, directly or indirectly, to a minor and permitted said minor to consume such beverages in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20.

Acting upon information obtained from the Runnemede Police Department, ABC agents obtained a sworn statement from Thomas ---, wherein he says that he was born on March 19, 1936; that on March 17, 1956, he and two other persons entered defendants' licensed premises about 6:45 p.m.; that the bartender served him three glasses of beer which he consumed; that he then purchased from the bartender two quarts of beer which he carried from the premises when they left at about 8:15 p.m. Thomas --- further says that the bartender did not question him as to his age and that he is unable to identify the bartender who made the sale.

Defendants have no prior record. Until recently the usual penalty for sale to a minor nineteen years of age was a suspension for ten days (Re Lane, Bulletin 1085, Item 10). However, on January 16, 1956, I announced that the penalty in such cases would be increased by five days. Since the violation herein was committed after said date, I shall suspend defendants' license for fifteen days. Five days will be remitted for the plea herein, leaving a net suspension of ten days.

Accordingly, it is, on this 23rd day of May, 1956,

ORDERED that Plenary Retail Consumption License C-4, issued by the Board of Commissioners of the Borough of Mt. Ephraim to Theodore T. & Nellie Levy, t/a Spread Eagle Inn, for premises 316 W. Kings Highway, Mt. Ephraim, be and the same is hereby suspended for ten (10) days, commencing at 3:00 a.m. June 4, 1956, and terminating at 3:00 a.m. June 14, 1956.

WILLIAM HOWE DAVIS
Director.

9. APPELLATE DECISIONS - ENGELHORN v. BELMAR (ORDER FIXING EFFECTIVE DATES OF SUSPENSION AFTER LICENSEE RESUMED BUSINESS)

FRED ENGELHORN, trading as)
 CAMPBELL-EVANS HOTEL,)
 Appellant,)
 -vs-)
 BOARD OF COMMISSIONERS OF THE)
 BOROUGH OF BELMAR,)
 Respondent.)

ON APPEAL
ORDER

 Harry Silverstein, Esq., Attorney for Demott Hotel Corporation,
 t/a Campbell-Evans Hotel, present holder of the license.

BY THE DIRECTOR:

It appearing that by an order dated September 26, 1955, the license then held by appellant Fred Engelhorn was suspended for fifteen days and that the effective dates of said suspension were to be fixed by subsequent order (Bulletin 1083, Item 1); and

It appearing that said license has been transferred to Demott Hotel Corporation, t/a Campbell-Evans Hotel; and

It further appearing to my satisfaction that the present holder of the license has reopened said premises for the 1956 season;

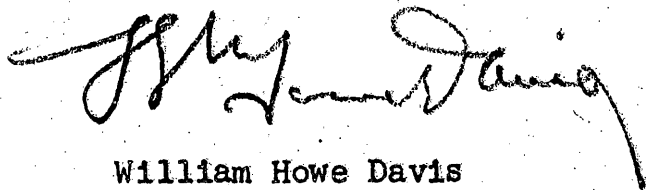
It is, on this 4th day of June, 1956,

ORDERED that the fifteen-day suspension heretofore imposed shall commence at 2:00 a.m. June 11, 1956 and terminate at 2:00 a.m. June 26, 1956.

WILLIAM HOWE DAVIS
Director.

10. STATE LICENSES - NEW APPLICATION FILED.

Pittsburgh Brewing Company
 3340 Liberty Ave., Pittsburgh 1, Pa.
 Application filed July 3, 1956 for Limited Wholesale License.



William Howe Davis
Director.