

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

February 25, 1957

BULLETIN 1152

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

BULLETIN 1152

February 25, 1957.

1. APPELLATE DECISIONS - FOUR CORNERS BAR v. NEWARK.
NEWARK DOWNTOWN ASS'N ET AL. v. NEWARK.
AND FOUR CORNERS BAR.

FOUR CORNERS BAR (a corporation),)

Appellant,)

-vs-

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

Respondent.)

ON APPEAL

Jack L. Cohen, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., Attorney for
Respondent.

CONCLUSIONS

Morris M. Schnitzer, Esq.; Mead, Gleeson,
Hansen & Pantages, Esqs., by Louis J.
Pantages, Esq.; and Charles Handler,
Esq., Attorneys for the Objectors.

AND

NEWARK DOWNTOWN ASSOCIATION,)
et als.,)

ORDERS

Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY OF)
NEWARK and FOUR CORNERS BAR)
(a corp.),)

Respondents.)

Mead, Gleeson, Hansen & Pantages, Esqs., by Louis J. Pantages,
Esq., and Stanley G. Bedford, Esq., Attorneys for Appellants
Newark Downtown Association and Board of Trustees, Second
Presbyterian Church.
Charles Handler, Esq., Attorney for Appellant S. Marsh & Sons, Inc.,
et als.
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,
Attorneys for Appellant Grant Lunch Corporation et al.
Vincent P. Torppey, Esq., Attorney for Respondent Municipal
Board of Alcoholic Beverage Control.
Jack L. Cohen, Esq. and Milton M. and Adrian M. Unger, Esqs.,
by Sidney S. Jaffe, Esq., Attorneys for Respondent Four
Corners Bar (a corp.).

BY THE DIRECTOR:

These closely related appeals will be decided together.

The first is from the action of the members of the
respondent Board who by a two to one vote denied the right to
Issie Chernichaw and Nathan Chernichaw to acquire a 25% interest,
respectively, in the issued and outstanding capital stock of the
appellant corporate-licensee. The second is from the unanimous
action of the members of the respondent Board in granting a
renewal for the current licensing year of a plenary retail con-
sumption license to respondent Four Corners Bar (a corp.), for
premises at 185 Market Street, Newark.

Hearer's Reports were filed in these matters and pursuant to Rule 14 of State Regulation No. 15, exceptions were taken in the first appeal by the objectors thereto and in the second appeal, exceptions were taken by the appellants therein.

As to the first above appeal:

It appears from the transcript of the testimony taken before respondent at hearings held on May 1 and May 15, 1956 that on April 13, 1956 a notice was forwarded by appellant's attorney to the respondent Board disclosing that Nathan H. Chernichaw and Issie Chernichaw had been elected president and secretary, respectively, of appellant corporation and that each had acquired twenty-five shares of its capital stock. Upon receipt of said notice the respondent Board requested "All old and new members" of appellant corporation to appear before it at a designated time "in connection with your change in corporate structure". On June 5, 1956, the respondent Board denied both Chernichaws the right to become substantial shareholders in appellant corporation.

Attorneys for the parties herein filed memoranda in support of their respective contentions. Furthermore, oral argument was had before me in both matters at which time, among other things, it was strenuously urged by the attorneys representing objectors (respondent Board was not represented) that the statute in question (first appeal) conferred jurisdiction upon the local issuing authority to determine the fitness of a transferee of capital stock of a corporate-licensee and to either permit or prohibit the same. I do not agree with this contention. The statute is clear and cannot be so construed. If it is deficient (and I do not so state), then the remedy lies with the legislature which created it and enacted it into law.

It might be well to point out that there are now pertinent protections in the Alcoholic Beverage Law whereby the local issuing authority may bring disciplinary proceedings against a corporate-licensee if there is a disqualified stockholder, (R. S. 33:1-31(i)) or if the bad character of new stockholders is reflected in the corporate-licensee's violation of the State Alcoholic Beverage Law and Regulations or of the municipal ordinance (R. S. 33:1-31(g), (h)). Furthermore, the local issuing authority may refuse to renew a corporate license where it can be shown that the new stockholders of ten percentum of the stock are demonstrably undesirable.

The matter now before me concerns the prior licensing term and the license has been renewed for the current licensing period pursuant to an application wherein it appears that the Chernichaws divested themselves of any and all stock in said corporation. Thus, the question herein has become moot. I shall, therefore, dismiss said appeal.

I shall now consider the other appeal filed herein. The Hearer's Report submitted in said case appears to have covered the matter quite adequately. After careful examination of the entire record in this case, I am satisfied with the result reached by the Hearer and I hereby adopt said report. For the sake of clarity and to avoid any misunderstanding that might arise, I am setting forth in detail the reasons for my action.

The matter in question was heard by the respondent Board on June 25, 1956 and according to the petition of appeal

filed herein the appellants were afforded an opportunity to express their opinions in opposition to the renewal of the respondent licensee's license. It was agreed at the time that in lieu of calling witnesses, the testimony of the witnesses presented on May 1 and May 15, 1956 at a hearing called by the respondent Board relative to the changes in the corporate structure of the respondent licensee be used. The respondent Board granted the renewal of respondent licensee's license in accordance with its application theretofore filed. At the hearings of May 1 and 15, 1956, the major complaint registered by appellants was against the purchase by Nathan Chernichaw and Issie Chernichaw, respectively, of 25% of the stock of respondent licensee. This situation at the time the renewal application was filed was changed when the original stockholders of the respondent corporate-licensee reacquired the stock from the Chernichaws and the latter resigned as officers and directors. Thus, I can dispense with that angle of the matter now under consideration.

It is true that during the hearing of the changes of the corporate structure on May 1 and 15, respectively, various witnesses, among whom were businessmen in the immediate neighborhood, testified that a new method of operation was invoked; that the licensee dispensed with the restaurant facilities; that the business was conducted exclusively for the sale of alcoholic beverages; that the prices of said drinks over the bar in open receptacles were reduced; and that undesirable and disreputable persons are attracted to the area wherein the licensed premises are situated.

The respondent Board by its action was apparently satisfied that the new method of operation would not be detrimental to the liquor business or to the other business establishments in the neighborhood and, hence, renewed the license in question.

The renewal of a license is primarily a matter of discretion on the part of the local issuing authority and the appellants herein must show to my satisfaction that such discretion was unreasonably exercised. In an effort to do so, appellants produced divers witnesses, as aforementioned, who were of the opinion that the license of respondent licensee should not be renewed for the current licensing period. The members of the respondent Board have decided otherwise.

My function on appeals of this type is not to substitute my personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and, if so, to affirm irrespective of my personal views on the subject.

I am satisfied after careful examination of all the evidence adduced herein that the members of respondent Board in approving the renewal in question were not improperly motivated in their action. Moreover, there is no evidence that they acted in an arbitrary, capricious or an unreasonable manner in reaching their determination.

The burden of establishing that the action of respondent was erroneous and should be reversed rests with appellants. Rule 6 of State Regulation No. 15. Under all the facts and circumstances of this case, I find that appellants have failed to carry the burden of establishing that the action of the respondent issuing authority was erroneous and should be

reversed. I find nothing in the written or oral arguments of the attorneys for the respective appellants which might change my opinion. I conclude that respondent Board's action be affirmed and that the appeal herein be dismissed.

Pointed comment is appropriate here. A licensee's responsibility for the conduct of his licensed premises in strict observance of the Alcoholic Beverage Law, State Regulations and local ordinances is a heavy one. Respondent licensee's responsibility to be conscientious and vigilant in this regard appears to be heightened in the situation created by the peculiar circumstances and general character of the neighborhood involved. Respondent licensee must realize this. It must clearly understand that my decision in this appeal is necessarily founded upon the testimony and record now before me -- that, while adequate affirmative proof of its having caused conditions which resulted in the complaints herein is lacking, there is strong suspicion that the conduct of its establishment contributed to such conditions. It is to be borne carefully in mind that respondent Board has full opportunity (in the exercise of its duty under R. S. 33:1-24 and R. S. 33:1-31) to enforce primarily the Alcoholic Beverage Law and Regulations so far as they pertain or refer to or are in any way connected with retail licenses, to consider the manner in which the premises are hereafter conducted and, in the event of a violation, to take prompt and effective action.

Accordingly, it is, on this 20th day of December, 1956,

ORDERED that the above appeal wherein the Four Corners Bar (a corporation) is the appellant and the Municipal Board of Alcoholic Beverage Control of the City of Newark is the respondent, be and the same is hereby dismissed; and it is further

ORDERED that in the above appeal wherein Newark Downtown Association et als. are the appellants and the Municipal Board of Alcoholic Beverage Control of the City of Newark and Four Corners Bar (a corp.) are the respondents, the action of respondent Board in granting renewal of the license to respondent licensee is hereby affirmed and the appeal therefrom be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - MAGUIRE v. ATLANTIC CITY AND LANIN CORPORATION.

DANIEL MAGUIRE,)
)
 Appellant,)
)
 -vs-)
)
 BOARD OF COMMISSIONERS OF THE)
 CITY OF ATLANTIC CITY, and)
 LANIN CORPORATION, trading as)
 BAMBOO CLUB,)
)
 Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

 John W. Keogh, Esq., Attorney for Appellant.
 Murray Fredericks, Esq., by Chaim H. Sandler, Esq., Attorney
 for Respondent Board of Commissioners.
 Edward I. Feinberg, Esq., Attorney for Respondent Lanin
 Corporation, trading as Bamboo Club.

BY THE DIRECTOR:

The Hearer has filed herein the following report:

"This is an appeal from the action of the respondent Board whereby it approved a transfer of the 1955-56 plenary retail consumption license held by respondent Lanin Corporation, trading as Bamboo Club from premises at 2101 Pacific Avenue, to premises comprising 2101 Pacific Avenue and 38 South Arkansas Avenue, Atlantic City.

"Three members of the five-man respondent Board who were present at the hearing in the matter unanimously approved the grant of the transfer.

"Appellant contends in his petition of appeal filed herein that the action of respondent Board was erroneous as the transfer granted was in violation of the provisions of the local ordinances and of the Alcoholic Beverage Law.

"This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"The undisputed proof in the instant case discloses that a plenary retail consumption license for the 1955-56 period was issued by respondent Board to respondent licensee for premises 2101 Pacific Avenue; that on or about May 16, 1956 an application was filed by respondent licensee to include, in addition to premises 2101 Pacific Avenue, premises known as 38 South Arkansas Avenue; and that objections to said transfer were filed by appellant herein. It further appears that on June 12, 1956, the respondent Board approved the transfer sought by the respondent licensee. The appeal herein was filed by appellant on June 27, 1956.

"At the time that respondent Board approved the application to transfer the license in question, Section 7 of amended Ordinance No. 15, approved on August 10, 1939, provided 'No transfer of a plenary retail consumption or plenary retail distribution license shall be permitted where any entrance to the premises to which the licensee proposes to move is within 300 feet from any entrance to premises for which a license is outstanding.' It was conceded that there are entrances to other

licensed premises within the prohibited 300 feet from the entrance of respondent licensee's premises, as extended, in violation of the aforesaid ordinance.

"However, on July 19, 1956, the respondent Board approved an amendment to Section 7 of the ordinance in question, effective on final publication July 21, 1956, which, among other things provided 'that a transfer may be granted to the same licensee to include the licensed premises and other parts of the premises, where said licensed premises and the other premises are part of the same building and under the same roof, notwithstanding the fact that the premises to which the transfer is to be made are within three hundred feet of premises for which a plenary retail consumption or distribution license is outstanding.' It further provides 'That all ordinances and parts of ordinances inconsistent herewith, be and the same are hereby repealed to the extent of such inconsistency or inconsistencies.'

"The appellant contends that the issue herein should be decided on the status of the ordinance at the time the application of respondent licensee was acted upon by the respondent Board.

"The law in this State, however, is to the contrary. There is a long line of legal adjudications in this State to the effect that the status of the municipal law at the time the appellate authority renders its decision governs, rather than when adjudicated by the municipal authority, which in this case resulted in the appeal from its action. Roselle v. Wright, 37 N. J. Super. 507.

"In Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N. J. L. 112, Justice Perskie, speaking for the New Jersey Supreme Court, said:

'Moreover, in my opinion, there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision of the court that is controlling. Cf. Westinghouse Electric Corp. v. United Electrical, &c., America (Court of Errors and Appeals, 1946), 139 N. J. Eq. 97, 105, 106; 49 Atl. Rep. (2d) 896.'

"The appellant further contends that, because respondent licensee had not obtained a building permit from the building inspector to make the required structural changes, the action of the respondent Board in this proceeding should be reversed. The failure by the respondent licensee to comply with the building code by obtaining a permit to make the structural changes as outlined herein is not a violation of the Alcoholic Beverage Law or the Rules and Regulations pertaining thereto. Hence, the contention with reference thereto is without merit in this case.

"It might at this juncture be pointed out that the latest amendment to the ordinance in question gives the local issuing authority the power to grant a place-to-place transfer such as the one now under consideration. Therefore, I am satisfied that if the action of the respondent Board were reversed,

or if the matter were remanded to the local issuing authority, an application for a transfer to include the additional premises would immediately be filed by respondent-licensee with the same result on the part of the respondent Board as heretofore. Thus, from a practical standpoint, nothing would be accomplished.

"The burden of establishing that the action of the issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The proof adduced by appellant herein falls short of meeting such requirement. I recommend that the action of the respondent Board of Commissioners be affirmed and that the appeal herein be dismissed."

On November 26, 1956, pursuant to Rule 14 of State Regulation No. 15, exceptions to said Hearer's Report were filed by appellant.

Appellant's contentions may be summarized as follows:

(a) That the amendment to Section 7 of the distance-between-premises ordinance passed July 19, 1956 exempting from the 300-foot minimum requirement extension of licensed premises to include other parts of the premises, where said licensed premises and the other premises are part of the same building and under the same roof was "tailored" to meet the situation under consideration and hence, constituted special legislation; (b) that respondent-licensee changed the exterior plan of its premises without first applying for or receiving the permission of the respondent Board, thus violating the provisions of Section 1(a) of Ordinance No. 15, adopted August 10, 1939, and (c) that the statement in the Hearer's Report that it would serve no useful purpose from a practical standpoint to reverse or remand the matter to respondent Board as the respondent-licensee would reapply under the ordinance that is now in effect with the same result on the part of respondent Board had no basis in fact.

As to appellant's first contention that the amendment passed July 19, 1956 constituted special legislation, I cannot agree. I have examined the cases cited by appellant to substantiate his argument in that respect but none of the cases appears to be applicable to the matter under consideration.

It appears with respect to appellant's second contention that through inadvertence he referred to Section 1(a) when it is apparent that he meant Section 1(c). Be that as it may, appellant called as a witness at the hearing herein one Bernard F. Murphy, local supervisor of alcoholic beverage licenses, who testified that a plan of the proposed premises was filed with the application on May 14, 1956. An examination of the plan (marked in evidence as Exhibit A-2) discloses a diagram of the proposed licensed premises (including the present licensed premises and the proposed extension) and a legend thereon stating the nature and intended operation of the business. Thus, the respondent-licensee complied with the pertinent section of the ordinance in question. Finally, it is apparent that the comment by the Hearer relative to the result that would be attained by the respondent-licensee if reapplication for a similar transfer were made by it to respondent Board, is in the nature of obiter dictum and must be so construed.

I have carefully considered the entire record in this case, including the transcript of testimony, the Hearer's Report and the exceptions and argument of counsel. I agree with the conclusions reached by the Hearer and adopt the conclusions in said Hearer's Report in this matter. I shall affirm the action of the respondent Board.

Accordingly, it is, on this 26th day of December, 1956,

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

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - SAUL AND HERSOHN v. EGG HARBOR TOWNSHIP.

RALPH I. SAUL and EVELYN HERSOHN,)	
)	
Appellants,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
TOWNSHIP COMMITTEE OF THE TOWNSHIP OF EGG HARBOR,)	
)	
Respondent.)	
-----))	
Isaac C. Ginsburg, Esq., Attorney for Appellants.)	
Harry Souchal, Esq., Attorney for Respondent.)	

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"This is an appeal from respondent's action whereby on June 27, 1956 it denied appellants' application for transfer of Plenary Retail Consumption License C-8 from Carmela Burgy to appellants and from premises located on Delilah Road, Farmington, to premises located at 1003 E. Verona Avenue, West Atlantic City, both premises being in the Township of Egg Harbor.

"Appellants contend that respondent's action was erroneous in that it was arbitrary and without legal basis.

"Respondent contends, inter alia, that its action was based upon the following reasons: (1) the application was defective, (2) one of the applicants who previously held a liquor license has an adjudicated disciplinary record and (3) the transfer would be violative of its zoning ordinance.

"The appeal was heard de novo, pursuant to Rule 6 of State Regulation No. 15 and thereafter memoranda of facts and law were submitted by counsel for the respective parties.

"It is deemed unnecessary to summarize all the testimony adduced at the hearing since a consideration of the evidence respecting respondent's reason (3) will suffice to dispose of the appeal. That evidence in brief is as follows: Appellants have operated a restaurant business on their premises without a liquor license for two years as had their grantors prior thereto for nearly 16 years; that in 1947 respondent Township passed a zoning ordinance classifying as 'Zone A' certain described boundaries of land for dwelling uses wherein 'no building shall be used in whole or in part for any industrial, manufacturing or

commercial purposes'; and that appellants' premises are in said restricted zone.

"It is a settled principle of law that an operative municipal ordinance is binding upon the action of the municipal governing body itself so that such governing body has no jurisdiction to grant a license in violation thereof. Bachman v. Town of Phillipsburg, 68 N. J. L. 552 (Sup. Ct. 1902). Although apparently recognizing the aforesaid principle appellants, nevertheless, assert that the Township zoning ordinance is not effective as to them because the prior operation of the restaurant business constituted a nonconforming use.

"While it is clear, under the decided cases, that appellants may continue to conduct a restaurant business on their premises despite the subsequent adoption of the zoning ordinance, it is equally clear that such nonconforming use may not be extended or enlarged, DeVito v. Pearsall, 115 N. J. L. 323; Dubin v. Wich, 120 N. J. L. 469; Vogel v. Bridgewater, 121 N. J. L. 236; Simone v. Peters, 135 N. J. L. 495; Scerbo v. Jersey City, 4 N. J. Super. 409; Struyk v. Samuel Braen's Sons, 17 N. J. Super. 1 (aff'd. 9 N. J. 294); Gerkin v. Ridgewood, 17 N. J. Super. 472, and it has long been established that the sale of liquor would constitute a new and independent use, not inherent in or incident to a restaurant business, Speake v. Gloucester (unreported, decided by Supreme Court April 4, 1934); Vogel v. Bridgewater, supra; Green v. Newark, 131 N. J. L. 336; National Lumber Products Co. v. Ponzio, 133 N. J. L. 95; Marinaccio v. Ocean, Bulletin 264, Item 11.

"I conclude, therefore, that respondent could not as a matter of law grant appellants' application for transfer of the license in question and I recommend that its action be affirmed."

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

Having carefully considered the evidence herein, I agree with the conclusions and the recommendation of the Hearer and adopt his conclusions as my conclusions herein.

Accordingly, it is, on this 26th day of December, 1956,

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

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - SPEZZI v. SAYREVILLE.

CHARLES SPEZZI,)	
)	
Appellant,)	
)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE)	
BOROUGH OF SAYREVILLE,)	
)	
Respondent.)	

Walter Wawerczak, Esq., Attorney for Appellant.
Joseph T. Karcher, Esq., Attorney for Respondent.
Wilentz, Goldman, Spitzer & Sills, Esqs., by Warren W. Wilentz,
Esq., Attorneys for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on June 20, 1956, it denied appellant's application for transfer to him of Plenary Retail Consumption License C-48 (for the 1955-56 licensing year) issued to Frank Heck, and from premises at 29 Smith Street to premises at the corner of Washington Road at Johnson's Lane, Borough of Sayreville.

"In his petition of appeal appellant alleges that respondent's action was erroneous in that it was arbitrary, capricious and unreasonable.

"Respondent in its answer alleges, in substance, that its action should not be disturbed since it was based on the following findings:

- (1) The proposed new location is too close to an elementary school;
- (2) The new location would create a traffic hazard;
- (3) There are adequate retail outlets in the area to serve the normal requirements of said area at this time.

"No question is presented here as to appellant's fitness or the suitability of the proposed premises or the statutory 200-foot provision of R. S. 33:1-76.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

"The undisputed facts adduced at the hearing are that appellant is the owner of property adjacent to a tract of land upon which a public school is being erected to accommodate some six hundred pupils; that on appellant's property there are two buildings, one of which houses a barber shop and grocery and meat market, the other being presently used as a gasoline service station; that the service station building is the proposed premises to which the license in question is sought to be transferred and the distance from its entrance to the nearest entrance of the school is three hundred thirty-four feet; that there are two licensed premises -- Buddies Bar and Schachel's -- serving an area wherein there are two thousand or more homes; that Buddies

Bar is located on property adjacent to appellant's and to the school tract and Schachel's is across the highway and closer to the entrance to the school than appellant's site; that Heck's premises, from which the license is sought to be transferred, is one of seven licensed premises within a mile radius and is about four miles from the proposed site; that, excluding the aforementioned taverns, licensed premises nearest to appellant's site are three to six miles distant; that in June 1954 the license for Buddies Bar was transferred to the present location from appellant's property on which a licensed liquor establishment had been in operation for more than twenty years; that the present population of the Borough is approximately 16,000, and that sixty-three licenses have been issued -- thirty of which are concentrated in the 'Borough proper.'

"The disputed matters are (a) the traffic hazard which would result if the license in question were transferred to appellant's site, and (b) the adequacy of the heretofore named licensed premises to serve the needs and convenience of the public in the surrounding area. As to (a): All the witnesses agree that any increase in traffic would be due to the pupils attending school and, as testified to by appellant, it is more likely that the present traffic situation would be decreased if a tavern were substituted for the existing gasoline service station. As to (b): The testimony reveals that more than four hundred persons in the surrounding area of appellant's site petitioned respondent to grant appellant's application for transfer of the license, and that but fifty persons petitioned respondent to deny it. Three of the four objectors who appeared at the hearing herein are licensees in the Borough and their testimony, in the main, was directed to the business competition that Schachel's (and more particularly Buddies Bar) would suffer. The testimony of the fourth objector is speculative for the greater part.

"While a municipal issuing authority may validly deny a place-to-place transfer of a license because of a reasonable apprehension or aggravated or undue traffic peril (Freed v. Wayne, Bulletin 892, Item 7), I find from the evidence herein that the transfer of the license in question to the proposed new location will not create such conditions. I find further that, while the matter of the number of licenses which should be permitted in any particular area is confided to the sound discretion of the issuing authority (Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2), there does not appear from the evidence in the instant case any reasonable cause for respondent's action in that respect.

"Respondent's contention respecting the general proximity of the new location to the school appears to be the main reason why it denied appellant's application for transfer. Suffice to say that, while no license may be transferred in violation of R. S. 33:1-76, the statutory discretion to grant or deny an application for transfer of a license is vested in the municipal issuing authority (R. S. 33:1-26) and the exercise of this discretion includes the power to determine the policy question of whether or not particular premises (although beyond the 200-foot distance) are 'too close' to a church or school (Trinity Methodist Church of Rahway v. Rahway et als., Bulletin 972, Item 3). When, however, a denial of an application to transfer is based upon the general proximity of the licensed premises to a church or school, such denial to have merit should be pursuant to a reasonable and bona fide municipal policy to that effect (Drozowski v. Sayreville, Bulletin 746, Item 5). The record discloses no evidence of any such municipal policy.

"The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed (Van Schoick v. Howell Township, Bulletin 120, Item 6). On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed (Shapley v. Delaware, Bulletin 294, Item 7).

"Considering all the facts and circumstances hereinabove set forth, I conclude that the action of respondent was arbitrary and unreasonable, and I recommend that it be reversed. Since the license has expired, it is recommended that the decision herein be merely advisory and that no order be entered herein (Pistilli v. Bernardsville, Bulletin 1030, Item 2)."

After the Hearer filed his report I notified all attorneys appearing in the case that I had decided to hear oral argument pursuant to Rule 14 of State Regulation No. 15. At the request of Edwin A. Kolodziej, Esq., counsel for the Board of Education for the Borough of Sayreville, I permitted him to participate in the oral argument which was heard by me on December 12, 1956.

I have carefully considered the entire record in this case, including the Hearer's Report and the oral argument. I agree with the finding of facts as set forth in the Hearer's Report but disagree with the conclusions of law set forth therein. The facts disclose that Buddies Bar was formerly located at the premises to which appellant seeks to transfer the license; that Buddies Bar is now located on Johnson's Lane about 280 feet (more or less) east of the premises in question and 180 feet from the nearest entrance to the school, and that Schachel's is located off Washington Road at Roosevelt Blvd. about 285 feet from the main entrance of the school and approximately 800 feet south (Engineer's map or survey Exhibit A-3) of the premises in question. Buddies Bar and Schachel's licensed premises were in existence at their present locations before the school was contemplated. By permitting appellant to transfer this license from other premises about four miles away to this proposed location, additional licensed premises would be located in close proximity to the new school, in an area which appears to be adequately served.

The question as to whether or not a place-to-place transfer should be granted is, in the first instance, within the sound discretion of the local issuing authority and, on appeal to this Division, the appellant has the burden of showing that the local issuing authority abused its discretion. Rule 6 of State Regulation No. 15. Bock v. Newark, Bulletin 952, Item 1; Segal et als. v. Clifton et als., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2. Moreover, the number of licensed premises to be permitted in any particular area has been held to be a matter confided to the sound discretion of the issuing authority. Longyear v. Jefferson, Bulletin 972, Item 4; DiGioacchino v. Atlantic City, Bulletin 1030, Item 3.

Under the circumstances of this case I find that appellant has not sustained the burden of proof in showing that the action of respondent Mayor and Council was erroneous and, hence, I shall affirm said action.

Accordingly, it is, on this 27th day of December, 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.

NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1956 TO DECEMBER 31, 1956 AS REPORTED TO THE DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19.

C L A S S I F I C A T I O N O F L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surren- dered Revoked Expired	Number Licen- ses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	489	\$ 208,750.00	71	\$ 25,575.00	21	\$ 1,946.59						581	\$ 236,271.59
Bergen	796	300,137.50	290	84,226.59	99	9,507.77	53	\$ 2,496.25	5	\$ 1,387.34	5	1238	397,755.45
Burlington	184	77,440.00	37	10,097.04	44	6,299.18	1	50.00				266	93,886.22
Camden	454	220,368.47	82	34,818.15	70	6,749.11			1	375.00	1	606	262,310.73
Cape May	134	73,900.00	11	4,000.00	18	2,148.90						163	80,048.90
Cumberland	80	40,875.00	15	4,100.00	29	3,910.00						124	48,885.00
Essex	1354	754,810.00	351	205,700.00	97	13,225.00	29	1,450.00	2	1,500.00	1	1832	976,685.00
Gloucester	108	34,400.00	14	3,000.00	22	1,922.88						144	39,322.88
Hudson	1539	698,537.79	298	122,400.00	84	9,781.77	66	2,850.00				1987	833,569.56
Hunterdon	79	27,200.00	8	3,000.00	8	948.90	1	50.00				96	31,198.90
Mercer	425	259,600.00	51	21,150.00	55	7,790.96			1	105.00	1	531	288,645.96
Middlesex	633	312,455.00	74	23,195.00	89	7,855.58	4	200.00				800	343,705.58
Monmouth	551	288,525.14	120	41,985.00	41	4,696.99	10	435.00	26	11,453.80	26	722	347,095.93
Morris	356	127,340.00	98	32,700.00	49	4,478.05	19	950.00	5	1,368.75	6	521	166,836.80
Ocean	198	107,093.79	47	19,680.00	25	2,650.00						270	129,423.79
Passaic	872	357,455.00	167	51,370.00	37	4,425.00	10	475.00			1	1085	413,725.00
Salem	51	19,300.00	8	1,550.00	18	1,725.00						77	22,575.00
Somerset	186	81,400.00	40	12,245.00	26	2,950.00						252	96,595.00
Sussex	168	45,855.00	20	3,955.00	9	535.00	1	50.00	1	182.40	1	198	50,577.40
Union	549	301,909.93	144	66,300.00	73	8,188.91	31	1,525.00				797	377,923.84
Warren	148	43,830.00	20	5,060.00	30	3,300.00			2	289.69	2	198	52,479.69
Totals	9354	\$4,381,182.62	1966	\$776,106.78	944	\$ 105,035.59	225	\$ 10,531.25	43	\$16,661.93	44	12488	\$5,289,518.22

5. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1956 THROUGH DECEMBER 31, 1956

	1st Quarter			2d Quarter			Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	Dec.	
ARRESTS:							
Total number of persons arrested	110			75			185
Licensees and employees	35			22			57
Bootleggers	74			52			126
ABC agent impersonator	1			1			2
SEIZURES:							
Motor vehicles - cars	11			4			15
- trucks	1			1			2
Still - over 50 gallons	2			3			5
- 50 gallons or under	2			7			9
Mesh - gallons	1,472.20			3,191.26			4,663.46
Distilled alcoholic beverages - gallons	241.38			457.67			699.05
Wine - gallons	82.44			199.18			281.62
Brewed malt alcoholic beverages - gallons	393.44			48.28			441.72
RETAIL LICENSEES:							
Premises inspected	1,572			1,837			3,409
Premises where alcoholic beverages were gauged	1,263			1,800			3,063
Bottles gauged	22,826			31,418			54,244
Premises where violations were found	120			110			230
Violations found	184			156			340
Type of violations found:							
Unqualified employees	98			57			155
Application copy not available	41			31			72
Reg. #38 sign not posted	10			15			25
Other mercantile business	9			7			16
Disposal permit necessary	3			9			12
Improper beer taps	4			0			4
Gambling devices	-			4			4
Prohibited signs	2			1			3
Probable fronts	2			1			3
Other violations	15			31			46
STATE LICENSEES:							
Premises inspected	39			134			173
License applications investigated	32			29			61
COMPLAINTS:							
Complaints assigned for investigation	1,134			1,111			2,245
Investigations completed	1,088			1,071			2,159
Investigations pending	(177)			122			122
LABORATORY:							
Analyses made	548			380			928
Refills from licensed premises - bottles	10			17			27
Bottles from unlicensed premises	195			137			332
IDENTIFICATION BUREAU:							
Criminal fingerprint identifications made	91			46			137
Persons fingerprinted for non-criminal purposes	832			543			1,375
Identification contacts made with other enforcement agencies	619			393			1,012
Motor vehicle identifications via N. J. State Police teletype	3			6			9
DISCIPLINARY PROCEEDINGS INSTITUTED:							
Cases transmitted to municipalities	25			46			71
Violations involved:							
Sale during prohibited hours	15			29			44
Sale to minors	7			12			19
Failure to close premises during prohibited hours	5			5			10
Sale to non-members by club	2			1			3
Failure to afford view into premises during prohibited hours	1			1			2
Employing female bartender (local reg.)	-			2			2
Permitting hostesses on premises	-			2			2
Sale to intoxicated persons	-			2			2
Service to women at a bar (local reg.)	1			-			1
Permitting lottery activity (sweepstakes) on premises	1			-			1
Permitting brawl on premises	-			1			1
Permitting foul language on premises	-			1			1
Permitting gambling (cards) on premises	-			1			1
Sale outside scope of license	-			1			1
Cases instituted at Division	90*			63**			153
Violations involved:							
Sale to minors	41			15			56
Sale during prohibited hours	16			13			29
Permitting immoral activity on premises	4			10			14
Sale below minimum resale price	8			5			13
Fraud and front	4			6			10
Possessing indecent matter	2			5			7
Sale outside scope of license	3			3			6
Conducting business as a nuisance	7			2			9
Permitting bookmaking on premises	4			1			5
Permitting lottery activity (numbers, raffle tickets, pools)	3			3			6
Employing unqualified persons	4			1			5

*Includes one cancellation proceeding - license improvidently issued

** Includes two cancellation proceedings - license improvidently issued

	1st Quarter			2d Quarter			Total
	July,	Aug.,	Sept.	Oct.,	Nov.,	Dec.	
DISCIPLINARY PROCEEDINGS (Continued)							
Cases instituted at Division (Continued)							
Violations involved:							
Possessing illicit liquor	3			2			5
Sale to intoxicated persons	3			1			4
Hindering investigation	2			1			3
Mislabeled beer taps	1			2			3
Failure to afford view into premises during prohibited hours	0			3			3
Storage off licensed premises	1			1			2
Permitting hostesses on premises	1			1			2
Possessing contraceptives on premises	0			2			2
Failure to close premises during prohibited hours	0			2			2
Service to women at a bar (local reg.)	1			-			1
Permittee engaging in conduct prohibited to employer	1			-			1
Furnishing gifts with retail sales	1			-			1
Failure to file notice of change in application	1			-			1
Exercising license privilege prior to transfer	1			-			1
Permitting gambling (pool game) on premises	1			-			1
Permitting prostitutes on premises	1			-			1
Sale without license	-			1			1
Sale to non-members by club	-			1			1
Failure to have copy of license application on premises	-			1			1
Employing female bartender (local reg.)	-			1			1
Employing bartender without identification card (local reg.)	-			1			1
Unauthorized transportation	-			1			1
Delivery without bona fide invoice	-			1			1
Possessing pin ball machine on premises	-			1			1
Cases brought by municipalities on own initiative and reported to Division	31			34			65
Violations involved:							
Sale to minors	20			17			37
Permitting brawl on premises	5			11			16
Sale during prohibited hours	2			5			7
Permitting minors to loiter on premises (local reg.)	4			0			4
Conducting business as a nuisance	3			1			4
Failure to close premises during prohibited hours	1			2			3
Permitting immoral activity on premises	1			1			2
Permitting gambling on premises	1			-			1
Sale outside scope of license	1			-			1
Fraud in application	1			-			1
Permitting lottery activity on premises	1			-			1
Employing bartender without identification card (local reg.)	1			-			1
Service to women at a bar (local reg.)	1			-			1
Hindering investigation	-			1			1
Failure to afford view into premises during prohibited hours	-			1			1
Sale to non-members by club	-			1			1
Employing unqualified persons	-			1			1
Sale to intoxicated persons	-			1			1
HEARINGS HELD AT DIVISION:							
Total number of hearings held	158			117			275
Appeals	36			9			45
Disciplinary proceedings	94			71			165
Eligibility	18			14			32
Seizures	6			14			20
Tax revocations	-			5			5
Applications for license	4			4			8
STATE LICENSES AND PERMITS ISSUED:							
Total number issued	4,870			4,649			9,519
Licenses	936			8			944
Employment permits	776			485			1,261
Solicitors' "	154			95			249
Disposal "	246			243			489
Wine "	-			1,403			1,403
Social affair "	1,073			1,109			2,182
Miscellaneous "	577			554			1,131
Transit insignia	1,022			691			1,713
Transit certificates	86			61			147

Dated: January 10, 1957

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE REGULATIONS - REGULATION NO. 38 - CLARIFICATION AND INTERPRETATION OF RECENT AMENDMENT.

January 28, 1957

TO ALL CHIEFS OF POLICE AND CLERKS OF MUNICIPAL ISSUING AUTHORITIES:

To clarify any confusion or misunderstanding that may exist with respect to the recent amendment of Rule 1 of State Regulation No. 38, it is pointed out that the amendment was not intended to and does not prohibit the sale by consumption licensees of draft beer in open (as distinguished from opened -- the word used in the rule) containers such as pails, pitchers or paper or cardboard containers for off-premises consumption during all permissible hours of sale for on-premises consumption, unless, perchance, such sale is specifically prohibited by municipal ordinance. See Bulletin 950, Item 9, the most recent explanation of the so-called "growler" sale privilege.

The sole purpose of the new prohibition against sale, etc. of opened containers (i.e., containers originally sealed but with the seal broken) was to bring home to licensees, by inclusion of appropriate language in the rule, the fact that the rule cannot be evaded merely by breaking the seal of package goods before permitting its removal from the licensed premises during hours when sale of package goods for off-premises consumption is prohibited.

The net effect of the amended rule is:

(1) to continue the prohibition against sale of package goods during prohibited hours as heretofore whether or not the seal is broken; and

(2) to prohibit the mere removal of package goods from licensed premises during prohibited hours, notwithstanding their alleged sale and delivery to a consumer during permissible hours.

To repeat -- no change was intended, nor is any made, in the long-standing ruling permitting "growler" sales of draft beer during all hours heretofore permissible.

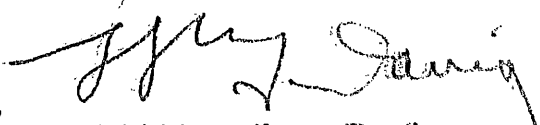
WILLIAM HOWE DAVIS
Director

8. STATE LICENSES - NEW APPLICATION FILED.

William Robert Shaiman
t/a Beverages Unlimited
N.W. Cor. Concord St. & St. Georges Ave.
Rahway, New Jersey

Application filed February 19, 1957 for place to place transfer of State Beverage Distributor's License SBD-32 from 56 West Main Street, Rahway, New Jersey.

New Jersey State Library


William Howe Davis
Director