

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

SEPT.
~~August~~ 7, 1972

BULLETIN 2063

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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BULLETIN 2063

August 7, 1972

1. APPELLATE DECISIONS - CROSS KEYS LIQUOR STORE, INC. v. WINSLOW.

Cross Keys Liquor Store, Inc.,)
Appellant,)
v.) On Appeal /
Township Committee of the) CONCLUSIONS and ORDER
Township of Winslow,)
Respondent.)

Higgins & Trimble, Esqs., by John W. Trimble, Esq., Attorneys
for Appellant
Samuel L. Supnick, Esq., Attorney for Respondent
Wilinski, Coruzzi and Suski, Esqs., by Robert Wilinski, Esq.,
Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Township Committee of the Township of Winslow (hereinafter Committee) whereby it denied appellant's application for a place-to-place transfer of its plenary retail distribution license from premises Williamstown Road and Atlantic Avenue to Williamstown and New Freedom Road, Winslow Township.

In its resolution dated January 6, 1972 the Committee set forth the following reasons for its action:

- "1-- There are four liquor licenses in the immediate area, which are deemed more than adequate to service and satisfy the needs of the public.
- "2-- The licensees now existing in the immediate area already sell package goods.
- "3-- All licensees in the area, and especially the three Plenary Retail Distribution Licensees in the Township are all now well spaced and located in said Township.
- "4-- Package stores and taverns in the Township are held sufficient to meet the needs of the people and satisfy the public interest."

Appellant alleges that the action of the Committee was erroneous for reasons which may be briefly summarized as follows:

1. The appellant complied with the legal requirements

- and the action was not based on adequate evidence to support its action;
2. The Committee is attempting to regulate the business economics of the appellant by denying the transfer while "simultaneously protecting four taverns in the local area;"
 3. The proposed new premises are located in an area surrounded by new home construction which would justify an additional liquor outlet;
 4. The new premises would be located approximately three miles from the present premises;
 5. The only objectors were the four licensees who hold "C" licenses;
 6. Appellant catered to a patronage other than those who patronize the "C" licensees.

The committee in its answer sets forth that its determination was made upon due consideration of all of the evidence and it relies upon the grounds as set forth in the adopted resolution. In a separate answer filed by several residents of the municipality they allege that there were several facts presented to the Committee which supported its finding that the said proposed transfer "would result in an undue concentration of liquor licenses in an area already adequately being served by the present liquor outlets."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to produce testimony and cross-examine witnesses.

I

The dispositive issue in these matters is: Did the Committee act reasonably and in the best interests of the municipality? It is basic that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App.Div. 1960), aff'd 33 N.J. 404 (1960):

"... No person is entitled to [the transfer of a license] as a matter of law"

and

"... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial"

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

"The primary purpose of the act is to promote temperance (R.S. 33:1-39) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the

Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.

"The Legislature has entrusted to municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, 135 N.J.L. 502 (1947).

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"... Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the recent case of Lyons Farms Tavern v. Mun. Bd. Ale. Bev., Newark, 55 N.J. 292, 303 (1970), the court stated:

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

II

Appellant contends that the Committee had no evidence to support its action and therefore acted erroneously. It argues that the only persons who objected were the four licenses located in the area and that they were interested in protecting their economic interests in so objecting.

It also produced a petition signed by ninety-four persons urging the approval of the said application for transfer. On the other hand, the minutes of the meeting introduced into evidence at the de novo hearing show that there was also a petition introduced in evidence signed by sixty-seven residents objecting to the said application for transfer.

The members of the Committee made their own investigation of the location of the proposed transfer and determined that the area wherein the license is sought to be transferred was adequately serviced and that there was no need for an additional license in that area.

Petitions are always influential and persuasive. However, it must be recognized that the mere counting of noses cannot serve as a substitute for the considered determination of the municipal issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest, and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must in large measure depend upon what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of law, and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

The Committee obviously took into consideration the petition as well as other factors in reaching its ultimate determination as set forth in its resolution.

III

Appellant next urges that the Committee is attempting to regulate the business economics of appellant by denying the transfer while simultaneously protecting four taverns in the local area.

The short answer to this allegation is that it is cardinal that, unlike other businesses, the dimension of competition is inapplicable to the liquor industry and cannot be used as a basis for the issuance or transfer of liquor licenses. The court in Fanwood v. Rocco, supra (33 N.J. at p.14) noted this distinction citing Eckert v. Jacobs, 142 S.W. 2d 374, 377 (Texas Civ. App. 1940) where the court, in sustaining a zoning ordinance which excluded the sale of beer from a designated area, pointed out that it is common knowledge that the sale of intoxicating beverages is accompanied by "objections not common to other types of commercial enterprises." From the earliest history of our State, the sale of intoxicating liquor has been dealt with by the Legislature in an exceptional way. Because of its sui generis nature and significance, it is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other administrative agencies, cannot be indiscriminately applied. Paul v. Gloucester, 50 N.J.L. 585 (1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup.Ct. 1938). Unlike other businesses, the liquor traffic has been singled out for peculiar limitation. See Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, supra. Thus the test for the establishment of a liquor facility is whether there is a public need or convenience to be served. Cf. Blanck v. Mayor & Borough Council of Magnolia, 38 N.J. 484 (1962). Therefore this contention lacks merit.

IV

The next point urged by appellant is that the new premises are located in an area in which there will be a considerable amount of new home construction. The Committee determined, however, that at the present time there was no showing of lack of facilities to serve the needs of its residents.

V

I reject appellant's next point that women, specifically "housewives", will refuse to purchase package goods from the present licensees in the area because they would be disinclined to enter a bar or tavern. Such reasoning may have had minimal validity years ago in the old type saloon era, but in today's new climate of women's liberation I do not believe that females have any more timidity than men about using such facilities for purchases of alcoholic beverages.

VI

Appellant next asserts that the transfer is approximately three miles from the present location of appellant's present premises on the same road. It is quite apparent that the proposed transfer would be to premises located in another area in the township which is presently serviced by four existing licensees. The Committee apparently decided to retain the present geographical balance of licenses rather than have one part of the municipality inadequately serviced while concentrating licenses in another part of the municipality which it felt has adequate facilities to meet the public need.

Mayor Dominic Maiese, who has been a resident of this municipality for fifty-two years and its mayor since 1962, testified at this de novo hearing that in his opinion and in the opinion of the Committee the liquor distribution licenses as they are presently constituted are well distributed in the township to service the entire township and the developments contemplated therein. In his words, "By the testimony presented, and by what we know of our community, how our community make-up is, how people drive automobiles to and from. After hearing all the evidence, this gave us the conclusion that we've made."

VII

In conclusion it may be stated that, in matters involving transfers of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the public interest. Lubliner v. Paterson, 33 N.J. 428 (1960). As noted hereinabove, the Director, in these matters, is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, supra; cf. Fanwood v. Rocco, supra (59 N.J. Super. at p. 320); Lyons Farms Tavern v. Mun.Bd. Alc.Bev. Newark, supra.

The Committee has in my opinion understood its full responsibility and has acted circumspectly and in the reasonable exercise of its discretion in denying said transfer. Absent improper motivation, not alleged herein, the action of the Committee, based upon such bona fide use of its discretion, must be affirmed.

Therefore, upon consideration of all of the credible evidence herein, including transcript of the testimony, exhibits and the argument of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

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

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

Accordingly, it is, on this 18th day of July 1972,

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

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - THE CAJE INC. v. PASSAIC.

The Cafe Inc.,)	
t/a The Cafe, Inc.,)	
Appellant,)	On Appeal
v.)	
)	CONCLUSIONS and ORDER
Municipal Board of Alcoholic)	
Beverage Control of the City)	
of Passaic,)	
Respondent.)	

Herman Osofsky, Esq., Attorney for Appellant.
William P. Schey, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Alcoholic Beverage Control of the City of Passaic (hereinafter Board) which, by resolution dated June 21, 1971 denied renewal of appellant's plenary retail consumption license C-36, for the 1971-1972 licensing period. Appellant contends that there was no legal ground for denial of renewal and there existed no acts or conduct by the licensee within the licensed premises which warranted said denial.

The Board contends that it resolved "upon due examination and consideration...public convenience and necessity require that... the licenses not be renewed". That resolution was the result of the Board's consideration of all of the facts and circumstances pertaining to the renewal application.

Upon the filing of the appeal, by order dated June 28, 1971, the Director extended appellant's 1970-71 license until further order herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15 with full opportunity afforded counsel to introduce testimony and cross-examine witnesses.

Jerry Hilliard testified, on behalf of appellant, that he is a claims adjuster for an insurance company, has personally known the appellant Carl L. Ellen for 15-20 years and has been at the licensed premises on some 50 occasions since Ellen has been the operator thereof.

He personally observed rigid enforcement of age requirements upon patrons entering the premises. He observed no altercation or difficulties within the premises and has seen Ellen "...ask people to disperse from in front of the establishment."

On further examination, he testified that, on one or two occasions, he had seen crowds of approximately 15-25 people congregated on the sidewalk in front of the licensed premises and that Ellen asked them to disperse because "...they were blocking the sidewalk or the entrance to his premises," and that "...There might have been one or two times when they didn't move." He saw police officers on the outside of the premises on two occasions but never saw them inside the premises. He concluded with a very favorable opinion of Ellen's reputation for honesty and veracity.

Carl Ellen testified that he purchased the licensed premises on July 2, 1970 and for a short period thereafter had a partner, one Jerry Stein, who left the partnership in the Spring of 1971.

He characterized the neighborhood as being in a period of transition from what was formerly a predominantly Polish neighborhood to what is presently a predominantly negro and Puerto Rican neighborhood.

He testified at some length regarding the precautions taken to conduct the premises within the law. On more than one occasion he contacted police officers to quell disturbances. He has had occasion to disperse crowds from in front of his premises and on rare occasions when experiencing difficulty, he would merely summon a patrol car and thereupon the crowds would disperse. The groups in front of his premises never numbered more than twenty.

He added that he had never been charged with any violation of Alcoholic Beverage Control laws, rules or regulations. When his application for renewal of this license was considered at a hearing one objector appeared. Lastly, there are 10 licensed premises within a two block radius of The Cafe.

Reco Wallace testified that he is a native of Passaic and a local businessman. He has known Ellen for many years, and gave a favorable opinion of Ellen as to his good reputation for honesty and veracity in the community.

He further testified as to his frequent visits to the licensed premises and described the strict management policies imposed by the licensee.

Jerome Stein testified that he is a long personal friend of Ellen. He joined Ellen as a partner in this business several months after Ellen acquired the license and remained as such for approximately six months. He corroborated the strict management policies of appellant.

Brenda Dukes testified that she has been in the premises some 50-75 times during the period June 1, 1970 - July 1, 1971. She has never seen police enter the premises; she has seen no unruly conduct and has seen crowds outside the premises only for a few minutes at closing time.

Bruce Scattergood, testified that he has frequented the premises on the average of 3-4 times per week during the past year. He has occasionally seen groups of 11-12 persons on the sidewalk in front of the premises but never any crowd of 40-50. He has seen Ellen

disperse small groups on five or six occasions; he has seen the police on the premises once; and having worked as a "bouncer" in several taverns, he was of the opinion that the premises did not constitute a nuisance.

Dennis Hooker, an officer of the Passaic Police Department testified that, during the 12 month period from June 30, 1970 - June 30, 1971 he was on duty from 8 a.m. - 4 p.m., five days a week; for approximately six months he was assigned to the post including the instant licensed premises. In patrolling his territory he would pass the licensed premises some 20-25 times during a given eight hour shift.

He described several instances in which he observed some 50 or more persons congregating on the sidewalk blocking pedestrian traffic and making it difficult for persons to walk. "A large percentage of them were standing outside the bar drinking beer out of a bottle or leaning against cars drinking alcoholic beverages out of a glass..." He described the condition outside the premises: "...they were loud, boisterous, using loud profanity. It was the area was unsafe to walk in. They had the sidewalk completely blocked and persons were unable to make passage on the sidewalk..."

He continued that on one occasion, at his request, Ellen tried to clear the sidewalk of these persons but met with only temporary success. In his opinion, conditions at the licensed premises were "Very poor, very, very poor."

On cross-examination, he testified that some of the persons congregated were "...scattered up and down the street" and that there are three other bars in the immediate area although not on the same side of the street. He candidly admitted while such conduct was constant, and while he had knowledge that the persons were subject to arrest he filed no complaints against the individuals or the appellant.

He concluded by asserting that while Ellen did attempt to cooperate with police regarding the crowds congregating in front of the premises and while Ellen was able to effect immediate relief, it was invariably temporary in nature and the same situation would re-occur within a short time.

Sgt. Italo Ubaldini, of the Passaic Police Department testified that, during the period between June 30, 1970 and July 1, 1971 he served on the 8 p.m. - 4 a.m. shift, for approximately 10 months. For approximately half of a daily shift he served as desk officer, accepting calls at police headquarters and for the other half of the shift he served in field supervision. In this latter capacity he was required to visit the licensed premises "...in excess of 25 times" during this period. Additionally, he was familiar with numerous other licensed premises in the immediate area.

In his opinion, the licensed premises constitutes a trouble spot in the community and a problem to the police department. He indicated that Ellen had genuinely made an effort to control the situation but that it was beyond his ability to control.

Albert Mack, Passaic police officer testified substantially to the same effect as had Officer Ubaldini. He felt that the licensed premises constituted a trouble spot, and Ellen attempted to control the troublesome conditions.

Donald J. Kokawski, Passaic police officer testified that during the period June 30, 1970 - July 1, 1971 he was assigned to the 8 p.m. - 4 a.m. shift in the area of the licensed premises for approximately six months. In his opinion the premises constituted "...a nuisance to the police officers that have to work on my shift and also to the pedestrians that are walking and the traffic that goes past that place."

He described three specific instances during which 40-50 persons were congregating on the sidewalk in front of the premises. These incidents included persons drinking on the sidewalk, fights, profanity and one incident wherein at least one glass was thrown at the police car from within the crowd.

James Gregg, Passaic police officer testified that, in his opinion, from his observations of the premises in question and other licensed premises in the area, based on his presence in the area approximately two nights a week for two-three years, the subject premises were "...one of the biggest trouble spots" in the area. He added that Ellen has called the police for assistance.

Chester Nadolny testified that he is a native resident of the area and passes the premises usually about twice daily. He has observed crowds congregating on the sidewalk in front of the premises on numerous occasions. They have caused problems both to vehicles and pedestrian traffic. He concluded that he has high personal regard for Ellen and that his objection is not directed at Ellen personally but rather at the conduct of the licensed premises.

It is well established that the grant or denial of an alcoholic beverage license rests in the sound discretion of the Board in the first instance and, in order to prevail on this appeal, the appellant must show unreasonable action on the part of the Board, constituting a clear abuse of such discretion. Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super 598 (App.Div. 1955); Blanck v. Magnolia 38 N.J. 484 (1962).

The dispositive issue in this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license. Nordco Inc. v. Newark, Bulletin 1148, Item 2. In analyzing the testimony, it would be helpful to state the applicable legal principles pertinent to a determination hereof. The burden of proof in all these cases which involve discretionary matters where the applicant seeks a renewal of the license, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super 84 (App.Div. 1957). As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (1946):

"The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail. Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners 73 Id. 382; affirmed 75 Id. 557. No licensee has a vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses."

As early as in Conte v. Princeton, Bulletin 139, Item 8, the well established principle was cited to the effect that a licensee is responsible for conditions both in and outside his licensed premises which are caused by patrons thereof. Cf. Garcia v. Fair Haven, Bulletin 1149, Item 1, where the Director cites Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup. Ct. 1947) as follows:

"Although the word 'suffer' may require a different interpretation in the case of a trespasser, it imposes responsibility on a licensee regardless of knowledge where there is a failure to prevent the prohibited conduct by those occupying the premises with his authority."
Guastamachio v. Brennan, 128 Conn. 356.

The principles set forth in Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970) are particularly applicable here:

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

In the instant matter the witnesses for the Board attest consistently to the attempts by Ellen to cooperate with the police in an effort to correct the crowded and unruly conditions caused by the continued congregation of patrons on the public sidewalk in front of the licensed premises. Indeed, on several occasions the licensee was requested and did attempt to disperse the unruly congregation. Nevertheless, it is also abundantly clear that he was unable to control his patronage, to the detriment of the public. It is apparent that the repeated gathering by patrons in front of the licensed premises constituted the "nuisance condition which served as the basis for the denial of the renewal herein.

I find from the credible evidence presented that the local enforcement officers were frequently required to disperse unruly crowds which had gathered on the sidewalk in front of the licensed premises. These crowds regularly disrupted the free flow of traffic, both vehicular and pedestrian, and that the improper control and operation of the licensed premises herein was the primary cause of the conditions.

A licensee must keep his place and his patronage under control and is responsible for conditions both outside and inside his premises. Galasso v. Bloomfield, Bulletin 1387, Item 1. In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. Blanck v. Magnolia, Supra. In the matter of licensing, the responsibility of a local issuing authority is "high", its discretion is "wide" and its guide is "the public interest." Lubliner v. Paterson, 33 N.J. 428 (1960) at 446. Thus, entirely apart from the consideration as to the appellant's culpability for the above-described conditions existing at this establishment, the broad question posed before the Board on appellant's application for renewal was whether, in the light of the surrounding circumstances and conditions it was in the public interest for this tavern to continue to operate. The objective judgment of the Board was that its continuance would be inimical to the public interest. R.O.P.E. Inc. v. Fort Lee, Bulletin 1966, Item 1.

Appellant argues that it did not violate any State regulation governing the conduct of licenses and use of licensed premises and that no disciplinary proceedings were instituted against it by the Board. While it may well have been a more satisfactory procedure for the Board to initiate such proceedings on specific charges, and to base its refusal to renew on an adjudicated record, it is understandable that local issuing authorities may decide to withhold the institution of disciplinary proceedings with the expectation that the licensee will correct the unlawful activities. See R.B. & W. Corp. v. North Caldwell, Bulletin 1921, Item 1.

"Our penetrating review of all the evidence was engaged in by retreating to the fundamental issue...Did the decision of the local board represent a reasonable exercise of discretion on the basis of the evidence presented? If it did, that ends the matter of review both by the Director and by the Courts..." Lyons Farms Tavern, Inc. v. Newark, Supra.

I find, from my careful examination of the evidence herein, that the Board's determination was supported by substantial evidence and that it acted in the public interest when, in the exercise of its lawful discretion, it denied the renewal of appellant's license. I, therefore, conclude that the appellant has not established that the action of the municipal board was erroneous and should be reversed. Rule 6 of State Regulation No. 15.

It is, therefore, recommended that the action of the Board be affirmed and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report were filed by appellant herein pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire matter herein, including transcript of testimony, the exhibits, the Hearer's report and the exceptions filed thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 24th day of July 1972,

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 order dated June 28, 1971, extending the term of appellant's 1970-71 plenary retail consumption license pending determination of the appeal herein be and the same is hereby vacated, effective immediately.

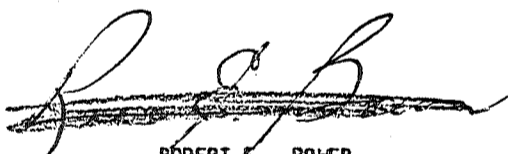
Robert E. Bower,
Director.

3. ACTIVITY REPORT FOR JULY 1972

ARRESTS:		
Total number of persons arrested - - - - -	8	
Licensees and employees - - - - -	1	
Bootleggers - - - - -	6	
Minors - - - - -	1	
SEIZURES:		
Distilled alcoholic beverages - gallons - - - - -		.65
Brewed malt alcoholic beverages - - - - -		9.56
COMPLAINTS AND INVESTIGATIONS:		
Inspection & visits made on assigned investigations - - - - -	3,065*	
Complaints assigned for investigation - - - - -	243	
Investigations completed - - - - -	246	
Investigations pending - - - - -	369	
Premises where alcoholic beverages were gauged - - - - -	364	
Bottles gauged - - - - -	5,879	
Premises where violations were found - - - - -	529*	
Number of violations found - - - - -	622*	
License applications investigated - - - - -	17	
Contacts made with other law enforcement agencies - - - - -	437	
LABORATORY:		
Analyses made - - - - -	108	
Refills from licensed premises - bottles - - - - -	72	
Bottles from unlicensed premises - - - - -	8	
IDENTIFICATION:		
Criminal fingerprint identifications made - - - - -	5	
Persons fingerprinted for non-criminal purposes - - - - -	497	
Identification contacts made with other enforcement agencies - - - - -	420	
DISCIPLINARY PROCEEDINGS:		
Cases instituted at Division - - - - -	40	
Violations involved - - - - -	55	
Sale during prohibited hours - - - - - 11	Permit Gambling (Numbers) - - - - - 3	
Sale to minors - - - - - 11	Sale to intoxicated person - - - - - 1	
Possession liquor not truly labeled - - - - - 4	Possession indecent matter - - - - - 1	
Fraud & front - - - - - 6	Obscene language & conduct - - - - - 1	
Aiding and Abetting - - - - - 4	No license application - - - - - 2	
No true books of account - - - - - 3	No Form E-141-A - - - - - 3	
Permitting immoral activity - - - - - 1	Obstruct view - - - - - 1	
Sales to non-member club - - - - - 2	Nuisance - - - - - 1	
Cases brought by municipalities on own initiative and reported to Division - - - - -	25	
Violations involved - - - - -	33	
Sale to minors - - - - - 13	Disturbance - - - - - 2	
Permit person to work w/o requisite permit - - - - - 1	Employ person convicted crime - - - - - 1	
Conduct business as nuisance - - - - - 2	Gambling - - - - - 4	
Sale during prohibited hours - - - - - 1	No Form E-141-A - - - - - 1	
Permit brawl on licensed premises - - - - - 3	Unqualified Employee - - - - - 1	
Act of Violence - - - - - 3	Alterations w/o approval - - - - - 1	
HEARINGS HELD AT DIVISION:		
Total number of hearings held - - - - -	47	
Appeals - - - - -	5	
Disciplinary proceedings - - - - -	32	
Eligibility - - - - -	10	
STATE LICENSES AND PERMITS:		
Total number issued - - - - -	2,280	
Licenses - - - - - 548	Wine Permits - - - - - 20	
Solicitors & permits - - - - - 34	Miscellaneous - - - - - 540	
Employment permits - - - - - 556	Transit insignia - - - - - 170	
Disposal permits - - - - - 48	Transit certificates - - - - - 24	
Social affair permits - - - - - 340		
OFFICE OF AMUSEMENT GAMES CONTROL:		
Licenses issued - - - - -	8	Number violations found - - - - - 16
Premises inspected - - - - -	450	State Fair Licenses issued - - - - - 40
Premises where violations found - - - - -	14	Enforcement files established - - - - - 37

*1972 Sales Tax Survey figures included

Dated August 8, 1972


ROBERT E. BOWER
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

4. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR SIMILAR AND DISSIMILAR OFFENSES - LICENSE SUSPENDED FOR 45 DAYS, LESS 8 FOR PLEA.

In the Matter of Disciplinary Proceedings against :

Caputo's Liquor Corp. :
2815 Bergenline Ave. :
Union City, N.J. :

Holder of Plenary Retail Distribution License D-10 (for the 1971-72 and 1972-73 license periods) issued by the Board of Commissioners of the City of Union City. :

CONCLUSIONS and ORDER

.....
Licensee, Pro Se.
Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 6, 1972, it sold alcoholic beverages to two minors, ages 17 and 19, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspensions of license for (1) ten days effective January 7, 1968 by the local issuing authority, for sale to a minor; (2) for ten days effective March 31, 1969 by the Director on a charge of selling below filed price, and (3) for thirty days by the Director effective July 21, 1969 for selling below filed price. Re Caputo's Liquor Corp., Bulletin 1856, Item 9 and Bulletin 1874, Item 5.

License will be suspended on the charge herein for twenty days (Re Bilrose, Inc., Bulletin 2030, Item 8) to which will be added ten days by reason of the similar offense within the past five years, (Re Triangle Inn, Inc., Bulletin 2029, Item 16) and ten days by reason of the two dissimilar offenses within the past five years (Re Rosenbauer, Bulletin 1979, Item 5) making a total of forty days, with remission of eight days for the plea entered, leaving a net suspension of thirty-two days.

Accordingly, it is, on this 24th day of July, 1972,

ORDERED, that Plenary Retail Distribution License D-10 issued by the Board of Commissioners of the City of Union City to Caputo's Liquor Corp. for premises 2815 Bergenline Ave., Union City, N.J. be and the same is hereby suspended for thirty-two (32) days commencing 2:00 A.M. on Monday, August 7, 1972 and terminating 2:00 A.M. on Friday, September 8, 1972.

Robert E. Bower,
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - PRIOR SIMILAR VIOLATION -
LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
 Proceedings against)
 Somerset Hills Elks Club)
 Main Street at Pottersville Road)
 Peapack-Gladstone)
 PO Gladstone, N. J.,)
 Holder of Plenary Retail Consumption)
 License C-1 (for 1971-72 and 1972-73)
 license periods), issued by the Mayor)
 and Council of the Borough of Peapack-)
 Gladstone.)

CONCLUSIONS
and
ORDER

Peter L. Hughes, III, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that it sold alcoholic beverages to three minors, all age 18, on February 26, 1972, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension of license for ten days by the Director effective September 28, 1964, for sale to minors. Re Somerset Hills Elks Club, Bulletin 1587, Item 7.

The prior record of violation for similar offense occurring within the past ten years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Glitter Club, Inc., Bulletin 1726, Item 6.

Accordingly, it is, on this 25th day of July 1972,

ORDERED that plenary retail consumption license C-1, issued by the Mayor and Council of the Borough of Peapack-Gladstone to Somerset Hills Elks Club, for premises Main Street at Pottersville Road, Peapack-Gladstone, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. Monday, July 31, 1972, and terminating at 2 a.m. Sunday, August 20, 1972.

Robert E. Bower,
Director.

6. DISCIPLINARY PROCEEDINGS - VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against :

Wally's Bar and Grill, Inc. :
t/a Wally's Bar and Grill, Inc. :
Mill Street :
Branchville, N.J. :

CONCLUSIONS
and
ORDER /

Holder of Plenary Retail Consumption License C-1 (for the 1971-72 and 1972-73 license periods) issued by the Common Council of the Borough of Branchville. :

Licensee, Pro Se.
Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Friday, April 21, 1972, at about 10:35 P.M. it sold alcoholic beverages for off premises consumption in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days with remission of five days for the plea entered, leaving a net suspension of ten days. Re Magan, Bulletin 2047, Item 7.

Accordingly, it is on this 26th day of July, 1972

ORDERED that Plenary Retail Consumption License C-1 issued by the Common Council of the Borough of Branchville to Wally's Bar and Grill, Inc., t/a Wally's Bar and Grill, Inc., for premises Mill Street, Branchville be and the same is hereby suspended for ten (10) days commencing 3:00 A.M. on Tuesday, August 8, 1972 and terminating 3:00 A.M. on Friday, August 18, 1972.

ROBERT E. BOWER
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO NON-MEMBERS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 Overton Social & Pleasure Club
 265½ - 267 Fourteenth Avenue
 Newark, N.J.
 Holder of Club License CB-23
 (for the 1971-72 and 1972-73
 license periods) issued by the
 Municipal Board of Alcoholic
 Beverage Control of the City of
 Newark.

CONCLUSIONS
 and
 ORDER

.....
 Licensee, Pro Se.
 Peter E. Rhatican, Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on May 20, 1972 it sold alcoholic beverages to other than bona fide members or their bona fide guests of the licensed club, in violation of Rule 8 of State Regulation No. 7.

Absent prior adjudicated record, the license will be suspended for fifteen days with remission of five days for the plea entered, leaving a net suspension of ten days. Re Cape May Loyal Order of Moose #1054, Bulletin 2017, Item 4.

Accordingly, it is on this 26th day of July, 1972

ORDERED that Club License CB-23 issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Overton Social & Pleasure Club for premises 265½ - 267 Fourteenth Avenue, Newark be and the same is hereby suspended for ten (10) days commencing 2:00 A.M. on Tuesday, August 8, 1972 and terminating 2:00 A.M. on Friday, August 18, 1972.

Robert E. Bower,
 Director

8. STATE LICENSES - NEW APPLICATION FILED.

Allo Enterprises, Inc.
 383 Meisel Avenue
 Springfield, N. J.

Application filed September 5, 1972 for wine wholesale license.

Robert E. Bower
 Robert E. Bower
 Director