

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

BULLETIN 1486

December 18, 1962

TABLE OF CONTENTSITEM

1. COURT DECISIONS - BLANCK AND SOUTH JERSEY RLS ASSN. v. MAGNOLIA, D'AMICO AND DIRECTOR OF DIVISION OF ALCOHOLIC BEVERAGE CONTROL - APPELLATE DIVISION AFFIRMANCE OF DIRECTOR REVERSED.
2. DISCIPLINARY PROCEEDINGS (Wildwood) - PERMITTING PROSTITUTES ON LICENSED PREMISES - PERMITTING PROCUREMENT FOR PROSTITUTION - LICENSE SUSPENDED FOR 120 DAYS.
3. DISCIPLINARY PROCEEDINGS (Cliffside Park) - NUISANCE (HOMOSEXUALS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE TO A MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.
5. DISQUALIFICATION REMOVAL PROCEEDINGS - EMPLOYMENT ON LICENSED PREMISES SUBSEQUENT TO DENIAL OF PREVIOUS APPLICATION - DISQUALIFICATION REMOVAL DEFERRED FOR 6 MONTHS.
6. DISCIPLINARY PROCEEDINGS (Jefferson Township) - PERMITTING CONSUMPTION BY MINORS AT SOCIAL AFFAIR CONDUCTED ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
7. STATUTORY AUTOMATIC SUSPENSION (Camden) - ORDER LIFTING SUSPENSION.
8. STATE LICENSES - NEW APPLICATIONS FILED.

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

BULLETIN 1486

December 18, 1962

1. COURT DECISIONS - BLANCK and SOUTH JERSEY RLS ASSN. v. MAGNOLIA, D'AMICO and DIRECTOR OF DIVISION OF ALCOHOLIC BEVERAGE CONTROL - APPELLATE DIVISION AFFIRMANCE OF DIRECTOR REVERSED.

SUPREME COURT OF NEW JERSEY
A-27 September 1962

HORACE W. BLANCK and ANGELINE V.)
BLANCK, trading as BLANCK'S LIQUOR)
STORE, and the SOUTH JERSEY RETAIL)
LIQUOR STORE ASSOCIATION,)

Petitioners-Appellants,)

v.)

MAYOR AND BOROUGH COUNCIL OF MAGNOLIA,)
HARRY R. D'AMICO AND CATHERINE D'AMICO,)
trading as D'AMICO LIQUOR STORE and)
DIRECTOR OF DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL.)

Respondents-Respondents)

Argued October 9, 1962.

Decided November 19, 1962

Mr. Grover C. Richman, Jr., argued the cause for petitioners-appellants; Messrs. Richman and Berry, attorneys.

Mr. Norman Heine, attorney, argued the cause for respondents, Harry A. D'Amico and Catherine D'Amico, trading as D'Amico Liquor Store.

Mr. Herbert S. Alterman, Deputy Attorney General of New Jersey, filed "Statement In Lieu of Brief" for respondent, Director of Division of Alcoholic Beverage Control; Mr. Arthur J. Sills, Attorney General of New Jersey, Attorney.

The opinion of the Court was delivered by SCHETTINO, J.

An appeal had been taken to the Director of the Division of Alcoholic Beverage Control to rescind the issuance of a license permitting plenary retail distribution of liquor in the Borough of Magnolia and to set aside, as invalid, a 1960 ordinance creating the license. From an order of the Director affirming the issuance of the license, petitioners appealed to the Appellate Division, which affirmed. 73 N.J. Super. 306 (App. Div. 1962). (Bulletin 1443, Item 1). We granted certification. 38 N.J. 182 (1962).

Petitioners-appellants are Horace W. and Angeline V. Blanck, holders of one of the plenary retail consumption licenses in the borough, and the South Jersey Retail Liquor Store Association, an unincorporated association consisting of holders of plenary retail distribution licenses in South Jersey. The respondents

are the Mayor and Borough Council of Magnolia, and Harry R. and Catherine D'Amico, trading as the D'Amico Liquor Store, holders of the challenged license.

By virtue of an ordinance adopted March 12, 1940, the Borough of Magnolia had limited the number of plenary retail consumption licenses to three and the number of club licenses to one, with no provision for any plenary retail distribution license. At a meeting held on August 24, 1960, the Borough Council approved on first reading an ordinance amending the 1940 ordinance and establishing the plenary retail distribution license and set October 5, 1960 as the date for public hearing and final passage of the ordinance. Respondent Harry D'Amico, who served as a councilman for many years and at the time of the passage of the amendatory ordinance complained of was serving as president of the council, was not present at the meeting of August 24. Notice of the council's action was published in the Camden Courier-Post on September 23, 1960. Mr. D'Amico did attend the meeting held on September 7, 1960, and moved that the minutes of the last regular meeting of August 3 and the adjourned meeting of August 24 be approved. His motion was seconded and unanimously adopted. On October 1, 1960, Harry D'Amico presented his resignation as president and member of the council to the borough clerk, his brother Samuel D'Amico. The record shows that no other official knew of the resignation. Harry D'Amico was not present at the council meeting of October 5, 1960, at which the first order of business was consideration of the pending ordinance. The ordinance was read and the mayor opened the public hearing thereon. There being no comment on the ordinance from the citizens in attendance, the public hearing was closed and the ordinance passed by a unanimous vote of the councilmen present at the meeting. Later in the same meeting, D'Amico's resignation was submitted and accepted by the Council. Notice of the council's action was published in the Camden Courier-Post on October 14, 1960.

On October 7, 1960, the D'Amicos filed an application for the newly established license. On October 26 the only other application filed was received by the Borough Clerk. Two others inquired about license applications and were given the forms, but neither filed.

At a meeting of November 2, 1960, certain citizens appeared in order to determine what could be done to have the ordinance rescinded. The mayor and council advised them that if they filed a petition to that effect, their petition would be considered. The meeting was adjourned to November 7, 1960. The council also announced that it would, at the adjourned meeting, consider the two applications for the plenary retail distribution license.

At the adjourned meeting, the mayor and council received a petition containing 142 signatures requesting that the ordinance be rescinded. After a short recess, during which the mayor and council conferred privately, it was announced that the mayor and council saw no justification for rescinding the ordinance. A statement was read by a councilman stating that the council was inclined to award the license to the respondents D'Amico because the D'Amicos, upon obtaining the license, planned to build a combination store and residence which would represent a valuable property improvement and result in general improvement

of the business area, whereas the other applicant, Myers, intended to use his existing residence as a temporary liquor store and had no definite future plans; that the premises owned by Myers were only 500 feet distant from the place of business of petitioners Blanck, while the premises contemplated by respondents D'Amico were a considerable distance away "at the opposite end of town"; and that the increased population since 1940 lent further propriety to the creation of such a license. Motions were then introduced and carried granting the application of the D'Amicos, subject to the completion of the planned premises, and denying the application of the other applicant.

An appeal from the issuance of the license was filed with the Director of the Division of Alcoholic Beverage Control. On November 30, 1960, the Director sent a notice of a hearing scheduled for December 19, 1960. The hearings were conducted and on April 11, 1961, the Alcoholic Beverage Control Hearer concluded that there was no indication that the mayor and council members had acted improperly, and that the ordinance and the issuance of the license were proper in all other respects. In his report the Hearer stated:

"Determination as to the number of licensed places to be permitted in any particular area is a matter confided, in the first instance, to the sound discretion of the issuing authority. The burden of showing an abuse of discretion rests with the appellants. Union County Retail Liquor Stores Association v. Roselle, et al., Bulletin 772, Item 11. Considering the increase in population, the distance between the Blanck and D'Amico premises and the fact that the latter premises are in a commercial zone, it does not appear that respondent Mayor and Council abused its discretionary power. Moreover, under the facts of this case, it does not appear that its action was arbitrary or unreasonable."

This approach was consistent with the principle that the issuance, renewal and transfer of liquor licenses rest in the sound discretion of the issuing authority and will not be disturbed in the absence of a clear abuse of discretion. Paul v. Brass Rail Liquors, Inc., 31 N.J. Super. 211, 214 (App. Div. 1954).

The petitioners filed exceptions to the Hearer's Report, but on June 1, 1961, the Director concurred in and adopted the findings and conclusion of the Hearer.

During the hearings, the following were elicited; (1) that respondent Harry R. D'Amico had, prior to the passage of the ordinance, told both the mayor and the borough clerk, in separate private conversations, that if the ordinance were passed, he would like to apply for the license; (2) that D'Amico had spoken to one member of the council with regard to the ordinance before its passage and indicated his interest in obtaining the license, but that D'Amico had never spoken to the other four borough councilmen; (3) that D'Amico had ordered plans for his new building before the ordinance was passed; and (4) that the D'Amicos complied with the conditions of the grant by completing the premises. (They have been operating under the license since July 1961.)

The petitioners on their appeal to the Appellate Division urged two grounds for reversal: (1) that the ordinance under which the plenary retail distribution license was issued to respondent Harry R. D'Amico was invalid because he was president of the Borough Council of Magnolia at the time the ordinance was enacted and had a personal and financial interest which conflicted with his public duty to the citizens of the Borough of Magnolia; and (2) that the application by respondents Harry R. and Catherine D'Amico for the plenary retail distribution license should have been made to the respondent Director of the Division of Alcoholic Beverage Control and not the respondent Mayor and Borough Council of Magnolia. Thereafter, petitioners moved before the Appellate Division for a stay of the proceedings and for leave to take the testimony of one Walter Peters, Sr., who stated to petitioner Horace W. Blanck subsequent to the Director's hearing that Peters had had a conversation with the mayor "in the early fall of 1960" and that the mayor had told Peters that the passage of the ordinance and issuance of the license to the D'Amicos was "all fixed." Petitioners also moved for the taking of additional testimony of the mayor on the grounds that a letter sent by him to some of the citizens of Magnolia subsequent to the Director's hearing conflicted with his testimony at that hearing. These motions were denied.

I

The right, most extensive in nature, to regulate the field of intoxicating liquors is within the police power of the State, and this power is practically limitless. Borough of Fanwood v. Rocco, 33 N.J. 404, 411 (1960); Meehan v. Board of Excise Commissioners, 73 N.J.L. 382, 386 (Sup. Ct. 1906), affirmed, 74 N.J.L. 557 (E. & A. 1908). 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 County, 50 N.J.L. 585, 595 (E. & A. 1888). This field is peculiarly subject to strict governmental control. Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup. Ct. 1938). Consistent therewith is the Legislature's mandate that "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." R.S. 33:1-73.

Chief Justice Case, writing for the Court of Errors and Appeals in Hudson Bergen County Retail Liquor Stores Assn v. Board of Com'rs of City of Hoboken, 135 N.J.L. 502, 507-509 (E. & A. 1947), stated that the reason and the need for singling out the liquor traffic for peculiar limitation and strict supervision may be read in our statutes for nearly 250 years, from early colonial times through the post prohibition legislative requirements. He also emphasized that, historically, the Legislature has determined who the licensing tribunal should be and that the authority to issue or control licenses need not necessarily be limited to municipal action, pointing out that the Director of Alcoholic Beverage Control has, with respect to numerous grades of licenses, the issuing authority. R.S. 33:1-18. He pointed out, moreover, that our courts have held that, in interpreting statutes in this field, meticulous technicalities should not be permitted to thwart the Legislature's effort to keep a public convenience from becoming a social evil and therefore state authorities should be given every opportunity to work out the mandate of the Legislature. Thus, having regard

for the historically exceptional treatment accorded the sale of intoxicating liquor and for the extensive expressions of authority in the statute, the Director has powers of supervision and control which set him apart from any other formal appellate tribunal. See also Brush v. Hock, 137 N.J.L. 257, 259-60 (Sup. Ct. 1948).

The test in the establishment and issuance of liquor licenses is whether the public good requires it. Paul v. Gloucester County, supra (50 N.J.L. 585). In Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946) the court said: "The common interest of the general public should be the guide post in the issuing and renewing of licenses." Likewise, the Director may cancel licenses issued by local issuing authorities when not warranted by public need. Brush v. Hock, supra (137 N.J.L. 257).

Ordinarily, the matter lies within the discretion of the local issuing body. However, the Director possesses the final agency review of the action of a local board relating to liquor licenses. Neiden Bar & Grill, Inc. v. Municipal Bd. of Alcoholic Beverage Control of City of Newark, 40 N.J. Super. 24, 29 (App. Div. 1956). "Within their respective spheres the * * * [Director] and the municipal governing bodies * * * [are] vested with very broad measures of discretion in passing upon applications for licenses." Borough of Fanwood v. Rocce, supra (33 N.J. at 412). In the same opinion, Mr. Justice Jacobs pointed out (at page 414):

"Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a * * * license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him. * * * Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

No party to this action disputes these principles, but we reiterate them in order to focus on the specific problem confronting us against a back-drop of historical and present day guide posts.

II

In our view, the present action is unique in its facts, and these facts required an entirely different review by the Director than was accorded. In petitioners' notice of appeal, they alleged that the grant of the pñenary retail distributors license to the D'Amicos was erroneous for the following reasons: (1) the ordinance under which the license was issued was invalid because respondent Harry D'Amico was president of the Borough Council at the time the ordinance became law; (2) the granting of the license was a violation of the alcoholic beverage control laws and regulations of the State of New Jersey; (3) there was no public need or necessity for the issuance of the license because the area was amply served by existing outlets; and (4) the granting of the license was arbitrary and unreasonable and

constituted an abuse of discretion.

In the Director's Conclusions and Order, adopting the Hearer's recommendations that the action of the local body in granting the license be affirmed, he stated:

"Moreover, and of considerable import, it is well to mention that Mr. D'Amico need not have resigned from the Council to qualify as a retail licensee although, if such a situation had developed, application would then have had to be made to the Director instead of to the local governing body."

In their brief in the Appellate Division, petitioners for the first time contended that as Harry D'Amico applied for the license less than 48 hours after he resigned as president of the borough council, his application should have been made directly to the Director of the Division of Alcoholic Beverage Control as provided by R.S. 33:1-20. The Appellate Division stated (73 N.J. Super. at 310):

"The latter point will be considered first. By R.S. 33:1-20 it is provided that no liquor license shall be issued by any issuing authority to any member thereof, and that in any such case, application may be made to the Commissioner (Director) who may issue the license. This provision does not apply to the instant case. Harry R. D'Amico had resigned as councilman prior to applying for the license. True, the time interval was short, but the council did not issue a license to one of its members, so that the mandate of R.S. 33:1-20 was not disobeyed. Such circumstances would be pertinent to the charge of corruption or favoritism hereafter considered, but do not make out a violation of R.S. 33:1-20."

As we view R.S. 33:1-20 its purposes are several. Ordinances establishing local bodies for the issuing of liquor licenses provide little or no compensation for the members. Conceivably, the members perform arduous and time-consuming work and are frequently subject to public and private criticism. The rewards are no more than those usually enjoyed by one who feels that he should perform a public service. Thus, when proper circumstances arise, no such member should be barred from receiving a license. Another purpose is to put into the hands of an outsider and an impartial judge the power to grant or deny the license to a member of the local issuing body. This authority is lodged in the Director. The obvious underlying purpose of this section is to eliminate not only actual favoritism by fellow members of the local body but also any aura of it which might diminish the public feeling that there is strict impartial supervision and control of the liquor industry.

We also must bear in mind the strong language of R.S. 33:1-73 that the basic legislative philosophy and intent of the Alcoholic Beverage Control Law is "to be remedial of abuses inherent in liquor traffic and shall be liberally construed," and of R.S. 33:1-23 that the Director shall "do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive" enforcement of the Alcohol Beverage Control Law.

The case before us admittedly does not fall into the category of one involving an applicant who is a member of the local body at the time his application was filed. Although R.S. 33:1-20 does not expressly cover this case, a fair reading of all these sections compels a conclusion that where a member of a local body is interested in obtaining a license and an ordinance creating and authorizing such license is introduced and passed, and thereafter such member resigns and the license is issued to him, the Director should closely scrutinize the entire transaction to determine (1) whether the ordinance was adopted in the public interest or to favor the member, and (2) whether, as an original proposition, the license should be issued to the former official rather than a competing applicant. This, we think, is required to satisfy the legislative aim that the Director exercise a broad supervisory power in this delicate area. But there should be an initial application to the local body. Such a procedure would save to the local body the first determination of the grant of the license and yet give to the Director the broad powers of R.S. 33:1-20, without restricting the Director's determinations by the findings of the local body as in the ordinary appeal. Cf., Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955), cert. den. 18 N.J. 204 (1955).

In passing we note a similar philosophy already ordained by the Director in R.S. 33:1-20 applications. State Regulation No. 4, Rule 7 provides:

"There shall also be submitted a certified copy of resolution adopted by the issuing authority of the municipality wherein the premises sought to be licensed are situated, setting forth that said issuing authority has no objection to the issuance (or the transfer, as the case may be) of the license applied for and consents thereto and, furthermore, is not aware of any circumstances or provisions of law or local ordinance which would prohibit the issuance (or the transfer, as the case may be) of the license." Division of Alcoholic Beverage Control, Rules and Regulations 13-14 (1957).

The Director there has imposed upon himself certain procedures not necessarily required by the Alcoholic Beverage Control Law.

In our view, the Director should have taken petitioners' appeal and molded it as if it were a direct application by the D'Amicos for a license. He would have had before him the competing applicant, Myers, and could have then decided all the issues. He would have made a determination as to whether public welfare or favoritism was the basis for enacting the ordinance. If he found public welfare, he would have then considered the relative merits of the two applications. If he found that the amendment was passed for a reason not permitted by the Legislature, he would not have granted a license to either applicant. Cf. Board of Commissioners of the Town of Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940). Nevertheless, the power he would exercise would be in the nature of an issuing authority (such as he exercises under R.S. 33:1-20) rather than an appellate one.

We shall remand the cause to the Director of Alcoholic Beverage Control for action not inconsistent with this opinion.

In view of our action we find it unnecessary to pass upon the alleged erroneous determination of the Appellate Division on the motions for the taking of additional testimony. We assume that such testimony will be available before the Director.

Reverse and remand. No costs.

2. DISCIPLINARY PROCEEDINGS - PERMITTING PROSTITUTES ON LICENSED PREMISES - PERMITTING PROCUREMENT FOR PROSTITUTION - LICENSE SUSPENDED FOR 120 DAYS.

In the Matter of Disciplinary Proceedings against

THE GINGHAM, INC.
t/a GINGHAM RESTAURANT
4415 Park Boulevard
Wildwood, N. J.

)
)
) CONCLUSIONS
) AND ORDER
)

Holder of Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Wildwood.)

Perskie and Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"Licensee has pleaded not guilty to the following charges:

- '1. On divers days between November 1, 1961 and February 28, 1962, you allowed, permitted and suffered prostitutes in and upon your licensed premises; in violation of Rule 4 of State Regulation No. 20.
- '2. On divers days between November 1, 1961 and February 28, 1962, you allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises and your licensed place of business to be conducted in such manner as to become a nuisance, viz., in that you, through agents, servants, employees, officers directors and shareholders, procured and allowed, permitted and suffered the procuring of females for purpose of prostitution, acts of illicit sexual intercourse and acts of perverted sexual relations with customers and patrons; engaged and participated in and allowed, permitted and suffered in and upon your licensed premises solicitation for prostitution, acts of illicit sexual intercourse and acts of perverted sexual relations; engaged and participated in and allowed, permitted and suffered in and upon your licensed premises the making of arrangements for acts of illicit sexual intercourse and acts of perverted sexual relations; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.'

"It appears from the testimony of Rhondda that about the middle of November 1961, during the time she was engaged in prostitution, a man who promoted her immoral activities introduced her to and made arrangements with an officer of the corporate licensee in the licensed premises for the purpose of sexual intercourse at a designated apartment in the community, off the licensed premises. She further testified that such illicit act took place as a result of the aforesaid agreement.

"The testimony of Marianne, who admittedly engaged in prostitution, disclosed that, although she had sexual relations with the officer of the corporate licensee in question, no arrangements were made for such immoral purposes in the licensee's premises.

"The officer of the corporate licensee categorically denied that at any time he had made arrangements in the licensed premises with anyone concerning sexual intercourse to be consummated off the licensed premises. Further, he declined to answer a question whether he had engaged in alleged illicit relations with either Rhondda or Marianne.

"Other witnesses who were alleged to be implicated in the immoral activities charged denied that they heard or participated in any such arrangements being made in the licensee's establishment.

"Licensee produced many patrons as witnesses who were agreed that the licensed premises are highly regarded and at no time have they seen anything improper occurring on the occasions when they were there.

"I have carefully examined the testimony without attempting to set forth a detailed analysis thereof because it would serve no useful purpose.

"I believe the testimony of Rhondda and am convinced that at least on one occasion in the licensed premises arrangements were made for illicit sexual intercourse with the knowledge, if not the acquiescence, of a responsible officer of the corporate licensee.

"I recommend, therefore, that the licensee be found guilty of the charges.

"Licensee had no prior adjudicated record.

"I further recommend that, under the circumstances herein, an order be entered suspending licensee's license for one hundred twenty days."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for the licensee pursuant to the provisions of Rule 6 of State Regulation No. 16.

I have given careful consideration to the evidence and exhibits herein, the Hearer's Report and exceptions and written argument of counsel for the licensee in support thereof. I concur in the conclusions of the Hearer and adopt his recommendations. Hence I find the licensee guilty as charged.

Accordingly, it is, on this 5th day of November 1962,

ORDERED that Plenary Retail Consumption License C-46, issued by the Board of Commissioners of the City of Wildwood to The Gingham, Inc., t/a Gingham Restaurant, for premises 4415 Park Boulevard, Wildwood, be and the same is hereby suspended for one hundred twenty (120) days, commencing at 2 a.m. Tuesday, November 13, 1962, and terminating at 2 a.m. Wednesday, March 13, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - NUISANCE (HOMOSEXUALS) - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FILIPPI, INC.)
t/a PEPPER BOX BAR & RESTAURANT)
771 Palisade Avenue)
Cliffside Park, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Cliffside Park.)

Licensee, by Vincent Brancato, President, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge as follows:

"On September 9, 15 and 30, 1962 and on divers days prior thereto you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e.g. females impersonating males, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Reports of investigation disclose that on the dates mentioned, the licensed premises was patronized by a large number (as many as fifty) of apparent lesbians who gathered in a basement room to which general public access was denied by the management for the alleged reason that a private party was in progress in the room. No overt acts or immoral activity or indecent conduct were observed.

Licensee has a previous record of suspension of license by the municipal issuing authority (1) for twenty days effective June 1, 1954, for sale to minors, (2) for five days effective June 10, 1956 and (3) for forty-five days effective March 20, 1961, both for permitting a brawl and act of violence on the licensed premises.

The prior record of suspension for dissimilar violation in 1954 and 1956 occurring more than five years ago disregarded but the prior record of suspension for dissimilar violation in 1961 considered, on the basis of the facts appearing (simple congregation of a relatively large number of apparent homosexuals with no evidence of overt acts or immoral activity) the license will be suspended for sixty-five days (Cf. Re Savoy Club, Inc., Bulletin 1289, Item 7), with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 29th day of October, 1962,

ORDERED that Plenary Retail Consumption License C-32, issued by the Mayor and Council of the Borough of Cliffside Park to Filippi, Inc., t/a Pepper Box Bar & Restaurant, for premises 771 Palisade Avenue, Cliffside Park, be and the same is hereby suspended for sixty (60) days, commencing at 3:00 a.m. Monday, November 5, 1962, and terminating at 3:00 a.m. Friday, January 4, 1963.

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE TO A MINOR - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILLIAM BOYER AND ELEANORE BOYER)
t/a BOYD TAVERN)
482 West Side Avenue)
Jersey City, New Jersey)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Consumption License C-113, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

Licensees, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on October 12, 1962, (1) at 10:40 p.m. they sold six cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) they sold drinks of beer to a minor, age 19, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Suk, Bulletin 1477, Item 5) and on the second charge for fifteen days (Re Highlander Hotel Corp., Bulletin 1475, Item 1), or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 29th day of October 1962,

ORDERED that Plenary Retail Consumption License C-113,

issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to William Boyer and Eleanore Boyer, t/a Boyd Tavern, for premises 482 West Side Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, November 5, 1962, and terminating at 2 a.m. Friday, November 30, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - EMPLOYMENT ON LICENSED PREMISES SUBSEQUENT TO DENIAL OF PREVIOUS APPLICATION - DISQUALIFICATION REMOVAL DEFERRED FOR 6 MONTHS.

In the Matter of an Application)
to Remove Disqualification because) CONCLUSIONS
of a Conviction, Pursuant to R.S.) AND ORDER
33:1-31.2.)

Case No. 1723

Charles L. Rudd, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

Petitioner renews his application for relief pursuant to the terms of an order dated May 5, 1961, denying a prior application with leave to reapply after June 27, 1962. Re Case #1606, Bulletin 1396, Item 7.

The records of the Division disclose that in 1933 petitioner was convicted of grand larceny and in 1954 he was convicted of carrying concealed weapons; that on June 27, 1957, petitioner was twice convicted in a Magistrate's Court; that the aforesaid convictions in 1933 and 1954 were determined to be convictions of crime involving the element of moral turpitude (Re Case #1606, supra); that on May 5, 1961, because of the aforesaid convictions in 1957, the petitioner's application was denied pursuant to R.S. 33:1-31.2, with permission to reapply for relief on or after June 27, 1962.

It further appears that on June 27, 1962, petitioner, by his attorney, submitted a second application to remove his disqualification setting forth therein that, during the past five years, he had been employed as a handyman in licensed premises in this State; that by letter dated July 2, 1962, petitioner's attorney was advised that the application would not be entertained prior to October 1, 1962, in view of petitioner's failure to comply with the aforesaid order of May 5, 1961, and that on October 15, 1962, petitioner renewed his application.

At the hearing held herein petitioner testified that ever since June 27, 1957, he has not been in trouble with the law; that from about June 15, 1961, to October 20, 1962, he worked as a cook's helper and handyman in the kitchens of two licensed premises; that subsequent to the entry of aforesaid order on May 5, 1961, he discontinued working for his former employer (a retail distribution licensee); that he was ignorant of the full effect of the order; that he did not know that he was ineligible to accept aforesaid employment in licensed premises; that he believed his ineligibility was limited to handling alcoholic beverages; that he had not been informed to the contrary; that he believed a licensed premises was "like a whiskey store" and that he is presently unemployed.

The petitioner produced three character witnesses (a painter, a tank maker and the owner of a grocery store) who testified that they have known him for over five years last past and that he now bears a reputation for being a law-abiding person.

The Police Department of the municipality wherein petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

I hesitate to grant the relief sought for the reason that for the past one and one-half years petitioner worked in a licensed premises in this State despite the order and conclusions entered on May 5, 1961, on his original application advising that he was ineligible to do so. I am, however, favorably influenced by the testimony of his character witnesses, his sworn testimony that he believed he was eligible to accept aforesaid employment, and the fact that he has not been convicted of a crime within the past eight and one-half years nor arrested in the past five years.

Considering all of the aforesaid facts and circumstances, I shall grant his application but shall withhold relief until six months after October 15, 1962 (the date upon which he filed the within application). Re Case No. 1701, Bulletin 1470, Item 7).

Accordingly, it is, on this 5th day of November 1962,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2, effective April 15, 1963; provided, however, that the petitioner shall not in the interim become associated with the alcoholic beverage industry in this State in any manner whatsoever.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - PERMITTING CONSUMPTION BY MINORS AT SOCIAL AFFAIR CONDUCTED ON LICENSED PREMISES - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CHESTER JAGEN AND ANNA M. JAGEN)
t/a CHET'S)
Sioux Trail, Woodport)
Jefferson Township)
PO RD 2 Wharton, N. J.)

CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-24, issued by the Township Committee of the Township of Jefferson.)

Nusbaum and Lazorisak, Esqs., Attorneys for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on September 13, 1962, they permitted consumption of drinks of beer on the licensed premises by three minors, two age 18 and one age 20, in violation of Rule 1 of State Regulation No. 20.

In alleged mitigation, licensees claim that the consumption occurred during the course of a social affair conducted by an organization to which beer had been sold in bulk for service to persons attending the affair and that the consumption by the minors was contrary to the caution against such service expressed by the licensees to a committee of the organization. As to this, it is pointed out that since the public impact of the violation is the same, licensees are nevertheless responsible where there is a failure, for whatever reason, to prevent the prohibited conduct by those occupying the licensed premises with their authority. Re Polish National Home of Linden, N. J. Inc., Bulletin 1118, Item 6, and cases cited therein, particularly Essex Holding Corp. v. Hock, 136 N.J.L. 28.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Rose, Bulletin 1446, Item 12.

Accordingly, it is, on this 31st day of October, 1962,

ORDERED that Plenary Retail Consumption License C-24, issued by the Township Committee of the Township of Jefferson to Chester Jagen and Anna M. Jagen, t/a Chet's, for premises on Sioux Trail, Woodport, Jefferson Township, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Wednesday, November 7, 1962, and terminating at 3:00 a.m. Thursday, November 22, 1962.

WILLIAM HOWE DAVIS
DIRECTOR

7. STATUTORY AUTOMATIC SUSPENSION - ORDER LIFTING SUSPENSION.

Auto. Susp. #219)
 In the Matter of the Automatic)
 Suspension of Plenary Retail)
 Consumption Licens C-36 issued)
 by the Municipal Board of Alcoholic)
 Beverage Control of the City of)
 Camden to) ORDER

MARY E. LIEBERT)
 t/a CHESTNUT GRILL)
 513 Chestnut Street)
 Camden, N. J.)

BY THE DIRECTOR:

On August 14, 1962, the licensee was fined \$100 in the Camden County Court after she had pleaded guilty to a charge alleging that she had sold alcoholic beverages to a minor on February 2, 1962, in violation of R.S. 33:1-77. Said conviction resulted in the automatic suspension of her license for the balance of its term. R.S. 33:1-31.1.

By order dated April 4, 1962, I suspended the license then held for fifteen days, effective April 16, 1962, after the licensee pleaded non vult in disciplinary proceedings to a charge alleging that she sold alcoholic beverages to the same minor. Re Liebert, Bulletin 1453, Item 3. Under the circumstances, I shall, upon my own motion, enter an order lifting the statutory automatic suspension, effective immediately. Re DeLellis, Bulletin 1443, Item 9.

Accordingly, it is, on this 8th day of November, 1962,

ORDERED that the statutory automatic suspension of said licens C-36 be and the same is hereby lifted, and said license is restored to full force and operation, effective immediately.

WILLIAM HOWE DAVIS
 DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

Affiliated Distillers Brands Corp.
1290 Avenue of the Americas
New York, New York

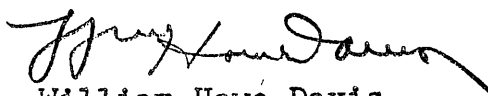
Application filed December 6, 1962 for place-to-place transfer of Licensed Salesroom on Plenary Wholesale License W-41 from 586 Kearny Avenue, Kearny, New Jersey to 38-40 6th Street, Harrison, New Jersey

Canandaigua Industries Co., Inc.
116 Buffalo Street
Canandaigua, New York

Application filed December 17, 1962 for Wine Wholesale License.

Marine Tobacco Co. Inc.
208-210 Eighth Avenue
New York, New York

Application filed December 17, 1962 for Plenary Wholesale License.



William Howe Davis
Director