

BULLETIN 1081

SEPTEMBER 29, 1955.

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THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
5708 SOUTH CAMPUS DRIVE
CHICAGO, ILLINOIS 60637

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1081

SEPTEMBER 29, 1955.

1. APPELLATE DECISIONS - SKRIPKO v. RARITAN TOWNSHIP (MONMOUTH COUNTY).

ANNE M. SKRIPKO, t/a MICHANNE'S
RESTAURANT & COCKTAIL LOUNGE,

Appellant,

-VS-

TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF RARITAN, MONMOUTH COUNTY,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Benjamin Kleinberg, Esq., Attorney for Appellant,
Roberts, Pillsbury & Carton, Esqs., by Michael J. Barnacle,
Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action taken by respondent at a hearing held on March 23, 1955, when it suspended appellant's plenary retail consumption license for a period of 15 days effective at 2:00 a.m. April 10, 1955, as a result of finding appellant guilty of sale and service of alcoholic beverages to a minor, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of this appeal, I entered an order dated April 12, 1955, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

The petition of appeal alleges that the finding of guilt was contrary to the weight of the evidence and that the penalty imposed by respondent was excessive.

It appears from the testimony presented in the instant case that on January 1, 1955, two State Police officers were summoned to appellant's licensed premises. John Cusick, one of the officers referred to above, testified that he arrived at the premises about 2:00 a.m., and that he interviewed a person who had cut himself while in the act of "squeezing a beer bottle of glass and it broke." He further testified that he saw a boy, subsequently identified as James S. --- (hereinafter referred to as James), strike a man over the head with a beer bottle; that after he arrested the boy, he "smelled alcohol on him in the car."

James testified that he was born April 2, 1937; that he and four companions arrived at appellant's premises about 12 o'clock midnight and that he remained there until 2:20 a. m. January 1, 1955; that the place "was pretty crowded"; that during the time he spent in appellant's licensed premises, he was served with and consumed "3 or 4" whiskey highballs; that he was not questioned as to his age; that service of some of the drinks was made by a man and that service of some was made by the appellant; that prior to going to appellant's premises, while in a car outside of a poolroom, he had one drink of whiskey from a paper cup; that he did not have a sandwich or coffee at appellant's premises (as testified to by appellant) during the time that he was there.

John F. Chorbak testified that "close to one o'clock" on January 1, 1955, while in appellant's licensed premises, he observed that James had his hand on a bottle of beer which was on the bar in front of him and that there was also on the bar in front of him a partially filled highball glass; that he did not know the ingredients of the contents thereof; that James was still in appellant's premises when he left about 2:00 a.m.

Appellant testified that she saw James come into the premises on January 1, 1955, and "he looked as though he was tired or something, he sort of staggered up"; that she "was busy at the time waiting on a waiter"; that he sat at the bar in front of her; that she observed James take an empty beer bottle which the bartender had placed on the bar and put it under his coat; that she then asked him to leave; that her mother (Mary Blazo) asked James to "please quiet down and if he didn't leave would he be nice and quiet, she would get him a sandwich and cup of coffee"; that she did not serve James any alcoholic beverages; that he had been in the premises "altogether about 20 minutes, twenty-five minutes, no longer." Appellant produced various employees who were working in the licensed premises at the time in question. All were in agreement that they did not see James being served alcoholic beverages by appellant or by any other employee that morning. Mary Blazo, mother of the appellant, testified that she served coffee and sandwiches to James who was seated at a table. This testimony was corroborated by several of the appellant's witnesses.

Appellant's attorney took exception to the fact that the minor in question was permitted to testify as to his age. A person is competent to testify as to his or her own age irrespective of the consideration that the fact of age is one of the essentials necessary to be established in order to constitute the violation charged. Cf. State v. Huggins, 83 N.J.L. 42; State v. Girone, 91 N.J.L. 498.

Appeals to the Director from the action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3; Lawrence Harbor Amusement Corp. v. Township of Madison, Bulletin 955, Item 1; Roth v. Newark, Bulletin 993, Item 5; Tumulty v. Dunellen, Bulletin 1024, Item 3.

The case for respondent rests primarily upon the testimony of the minor. The testimony of John F. Chorbak only corroborates to some degree the testimony given by said minor. The parties herein, through no fault of their own, could not produce as witnesses any of the four companions who allegedly accompanied the minor to the appellant's premises on the night in question. Their testimony would have been most valuable. I am satisfied that James was in the appellant's licensed premises for at least two hours on the morning in question rather than the short period of time that appellant would like me to believe. What impresses me most is that the State Police officer smelled liquor on James' breath when he was taking him away in his car, despite the testimony of appellant's witnesses that the only drink James had obtained in the premises during the time he remained there was coffee. According to the testimony of the State Police officer, it was approximately 2:30 a.m. when he left with James. Moreover, James denies that he drank any coffee or ate a sandwich in the premises during the time he was there. I believe the testimony of James that he was served with alcoholic beverages during the time he spent in appellant's premises.

Appellant contends as one of the grounds in her petition of appeal for reversal hereof, that the penalty imposed by the respondent was excessive. The power of the Director to reduce a penalty on appeal should be exercised only in those cases where the penalty imposed is manifestly unreasonable and clearly excessive. The Ebony Corporation v. Trenton, Bulletin 958, Item 1. In view of the fact that the minor was 17 years of age at the time, it is apparent that a reduction in penalty is not warranted in this case.

After carefully considering the entire record before me, I am unable to find that respondent's finding of guilt was erroneous and should be reversed. The action of respondent will be affirmed. The appeal will be dismissed, and the 15-day suspension imposed will be reinstated.

Accordingly, it is, on this 29th day of August, 1955,

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

ORDERED that the 15-day suspension by respondent of appellant's 1954-55 plenary retail consumption license C-14 for premises S/S State Highway No. 36, Raritan Township, Monmouth County, be and the same is hereby restored and reimposed against appellant's 1955-56 plenary retail consumption license C-14 for the same premises, to commence at 2:00 a.m. September 6, 1955, and to terminate at 2:00 a.m. September 21, 1955.

WILLIAM HOWE DAVIS
Director.

NOTE: By order dated September 2, 1955, the above order was amended to provide that the suspension would commence at 2:00 a.m. September 19, 1955 and terminate at 2:00 a.m. October 4, 1955.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - EPISCOPO v. TRENTON.

CARMELA EPISCOPO and MARCO)
EPISCOPO, partners,)
Appellants,)
-vs-)
BOARD OF COMMISSIONERS OF)
THE CITY OF TRENTON,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

Felcone & Felcone, Esqs., by Joseph J. Felcone, Esq., Attorneys
for Appellants.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

This is an appeal from denial of an application to transfer to appellants a plenary retail consumption license which had been issued to Mamie Ridolfi, Administratrix of the Estate of Oswaldo Ridolfi. The premises are located at 142 Mott Street, Trenton.

The petition of appeal herein alleges that respondent denied the application without giving any reason for said action and that said action was illegal, erroneous and arbitrary.

The answer herein alleges that the grounds upon which the Board based its action are as follows:

- "1. That one Soso Episcopo, husband of the applicant Carmela Episcopo and father of the applicant Marco Episcopo, due to his lengthy police record and conviction of crimes involving moral turpitude, as by the records and evidence to be established at the hearing, is ineligible to hold such license or to be permitted to be employed in such licensed premises.
- "2. That for the aforesaid reasons it was the opinion and belief of the respondent-board that while the application for the transfer was in the name of the wife and son, that the father, aforementioned, was the real party in interest, and that it was not conducive to public interest and welfare that such a condition be created or permitted to exist in connection with the sale of alcoholic beverages."

At the hearing held herein it was stipulated that there is no question with respect to the reputation or character of either of the appellants. By stipulation, copies of various records of a bank and a Savings and Loan Association were introduced into evidence for the purpose of establishing that the money intended to be used for the purchase of the property and business at 142 Mott Street was the money of appellants and not the money of Soso Episcopo. By further stipulation there was introduced into evidence a copy of a local investigator's report which had been presented to the members of the Board of Commissioners at its meeting on July 14, 1955, at which meeting the application for transfer was denied. Attached to said report is the criminal record of Soso Episcopo. Without detailing his record at length, it is sufficient to say that it appears therefrom that Soso Episcopo was convicted on various gambling charges in 1935, 1938, 1942, 1944, 1945 and 1950 and that on September 25, 1953, he was sentenced to serve from one-and-one-half to two years in State Prison after he pleaded non vult to a charge of maintaining a disorderly house. Apparently Carmela Episcopo and Soso Episcopo are now living together as husband and wife.

The minutes of the meeting held on July 14 show that, after the attorney for appellants had presented his argument and after one member of the Board had stated that the applicants should be considered "on their own individual merit", a resolution to grant the transfer was lost when this member voted in the affirmative and the other four members voted in the negative. Thereupon the member who had voted in the affirmative changed his vote "from aye to abstaining."

No one has a "right" to a license. It is at most a privilege conferred by the State which the issuing authority may deny in the exercise of sound discretion. Bumball v. Bernardsville, Bulletin 66, Item 9. The present case is very similar in its facts to Hodanish v. Trenton, Bulletin 121, Item 6, wherein Commissioner Burnett said:

"There is no conviction against appellant, let alone conviction for a crime involving moral turpitude. Nevertheless, it is competent for municipal issuing authorities to confine their selection of licensees to those who are clearly worthy."

See also Adler v. Camp, Bulletin 256, Item 5, and Clark v. West Orange, Bulletin 631, Item 7. Cf. Florence Methodist Church v. Florence et al., Bulletin 1074, Item 2.

Under the circumstances, I cannot find that the action of respondent was arbitrary or unreasonable. Hence, the action of respondent will be affirmed.

Accordingly, it is, on this 29th day of August, 1955,

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.

3. APPELLATE DECISIONS - KURSCHNER v. NEWARK.

HARRY & KATIE KURSCHNER,
t/a HARRY'S LONG BAR,

Appellants,

-vs-

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

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellants.
Vincent P. Torppey, Esq., by Jacob M. Goldberg, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellants' license for ten days (to commence July 11, 1955) after finding them guilty of a charge alleging that on March 24, 1955, they sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor in and upon their licensed premises, in violation of Rule 1 of State Regulations No. 20. The licensed premises are located at 189 South Orange Avenue, Newark.

Upon the filing of this appeal I entered an order on July 7, 1955, staying respondent's order of suspension until entry of a further order herein, pursuant to R. S. 33:1-31.

Transcript of the proceedings before respondent was submitted in evidence at the hearing on appeal and additional testimony was presented in accordance with Rule 8 of State Regulations No. 15.

Appellants in their petition allege in substance that the action of respondent was erroneous in that the finding of guilt was contrary to the weight of the evidence.

The testimony before respondent Board is substantially as follows:

J. V.--- testified he was born on February 4, 1935; that at about 9:00 a.m. March 24, 1955, he visited appellants'

licensed premises; that the bartender (Rubin Raines) who required no proof of his age, served him "some beer and I might have gotten some whiskey," and "I did not get any more." He identified Raines from the witness chair. On cross-examination he admitted that on two occasions he falsified his age under oath in applications to the Motor Vehicle Department and again when registering for selective service. He testified further that he met Yvonne Wiggins at appellants' tavern on the evening of March 21, 1955. When recalled to the stand he testified that on a previous night of the same week he purchased liquor from Leo Kurschner on the licensed premises and that he visited said premises "about 75 or 100 times." A city detective testified that he was assigned to investigate the aforesaid alleged violation and on March 25, 1955, he obtained a written statement from the minor in which he stated that "On March 24, Leo [Leo Kurschner] served me about 4 or 5 glasses of beer."

Yvonne Wiggins, called as a witness for appellants, denied that she met the minor in appellants' tavern on March 21, 1955, and stated that he approached her as she walked along South Orange Avenue and at gunpoint forced her into his car. She testified that she later preferred a felony charge against him. Rubin Raines testified that he was bartender on the licensed premises on March 24, 1955; that he commenced working at 7:00 a.m. and quit at 5:00 p.m.; that he didn't serve the minor and never saw him at any time on the licensed premises. Leo Kurschner, a son of the licensees, testified that he was identified in police court by the minor as the person who sold him beer on the "evening" of March 24, 1955; that he was off duty on that night; that his brother was then tending bar and that the minor, after his arrest, approached him and asked him to say that on the night of March 21, 1955, he (the minor) met Yvonne Wiggins at appellants' tavern.

At the oral argument before me appellants' attorney stressed the fact that respondent's proof as to the time of the alleged violation was at variance with that set forth in the charge. However, it is established law in this State that it is not necessary to prove that a violation was committed on the date alleged in the charge unless it is an essential element of the offense. State v. Yanetti, 109 N.J.L. 85, and cases cited therein; State v. Butler, 7 Misc. 868.

I have carefully examined the record herein and considered the arguments of counsel, and I find that the uncorroborated testimony of the minor is vague, contradictory and unbelievable and was contrived, presumably, to establish an alibi in the criminal proceedings pending against him. I conclude, therefore, that the finding of guilt by respondent is not supported by a fair preponderance of the evidence and its action should be reversed.

Accordingly, it is, on this 6th day of September, 1955,

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

WILLIAM HOWE DAVIS

Director

4. APPELLATE DECISIONS - BECKERT v. JERSEY CITY AND LOYAL ORDER OF MOOSE.

ADOLPH BECKERT,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF JERSEY CITY, and LOYAL ORDER OF MOOSE, JERSEY CITY LODGE NO. 266 (a corp.),)

Respondents.)

-----)
James F. McGovern, Jr., Esq., Attorney for Appellant.
John B. Graf, Esq., by Louis E. Saunders, Esq., Attorney for Respondent Municipal Board of Alcoholic Beverage Control of the City of Jersey City.
William P. Taylor, Esq., by Charles G. Carluccio, Esq., Attorney for Respondent Loyal Order of Moose, Jersey City Lodge No. 266 (a corp.).

BY THE DIRECTOR:

This is an appeal from respondent Board's action whereby, on May 4, 1955, it granted a transfer of Plenary Retail Consumption License C-493 from James J. Linskey to respondent Loyal Order of Moose, person to person, and from premises located at 53 Sussex Street to premises located at 305-307 West Side Avenue, Jersey City, place to place. The appeal is presented upon an agreed statement of facts pursuant to Rule 8 of State Regulations No. 15.

It appears that Mr. Linskey held License C-493 as of April 1, 1941, when an ordinance (including Section 4 hereinafter set forth) was adopted by the Board of Commissioners of Jersey City; that respondent Loyal Order of Moose applied for a transfer of said license to it at the Lodge premises, a distance of approximately two and one-half miles from Linskey's premises and within six hundred feet of the premises of a licensee who holds a plenary retail consumption license; that, at a hearing on the application before respondent Board, evidence was submitted by respondent Loyal Order of Moose indicating its intention to operate a bar at its premises for the exclusive use of its members, the profits derived therefrom to be utilized for eleemosynary projects; that appellant and others objected to the transfer and that, on May 4, 1955, respondent Board granted the same.

Appellant contends that the action of respondent Board violated Section 4 of a local ordinance which provides:

"Section 4. From and after the passage of this ordinance, no Plenary Retail Consumption License shall be granted for or transferred to any premises within the area of a circle having a radius of seven hundred fifty (750) feet and having as its central point an existing licensed premises covered by a Plenary Retail Consumption License, provided, however, that if any licensee holding a Plenary Retail Consumption License at the time of the passage of this ordinance shall be compelled to vacate the

licensed premises for any reason that in the opinion of the Board of Commissioners of the City of Jersey City was not caused by any action on the part of the licensee, said licensee may, in the discretion of the Board of Commissioners of the City of Jersey City, be permitted to have such license transferred to another premises within a radius of five hundred (500) feet of the licensed premises so vacated."

Respondent Board contends that the transfer is not in conflict with the spirit and intent of the ordinance and that the operation of a bar by respondent Loyal Order of Moose, being limited in its use, would present no danger to existing licensees in the area.

The action of respondent Board was clearly in violation of both the general and escape provisions of the ordinance in question. See Tube Bar, Inc. v. Commuters Bar, Inc., 18 N. J. Super. 351 (App. Div. 1952); Dal Roth v. Div. of Alcoholic Beverage Control, 28 N. J. Super. 246 (App. Div. 1953).

If the Board of Commissioners of Jersey City was sympathetic to the plight in which respondent Loyal Order of Moose finds itself, it could have amended the ordinance to exclude from its effects national fraternal organizations. This it has not seen fit to do and respondent Board, therefore, is bound by the express terms, conditions and exceptions of the municipal legislative act -- the ordinance in question. The action of respondent Board must be reversed.

Accordingly, it is, on this 12th day of September, 1955,

ORDERED that the action of respondent Board be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

5. APPELLATE DECISIONS - HIGGINS v. ELIZABETH.

JAMES W. HIGGINS and)
HELEN M. HIGGINS,)
Appellants,)
-vs-)
MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF ELIZABETH,)
Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

John T. Glennon, Esq., Attorney for Appellants.
Norbert T. Burke, Esq., Attorney for Mrs. John W. Burke.
O'Connor, Morss & Mancini, Esqs., by Richard R. O'Connor, Esq.,
Attorneys for Owl Drug Company.
Louis P. Longobardi, Esq., Attorney for Respondent Municipal
Board.

BY THE DIRECTOR:

This is an appeal from the alleged denial of an application to transfer a plenary retail distribution license (issued for the 1954-1955 licensing year) from James W. Higgins, t/a Higgins Liquor Store, to Helen M. Higgins, t/a Higgins Liquor Store, and

from premises 625 Pennsylvania Avenue (rear) to premises 573 North Broad Street, City of Elizabeth.

At the threshold of the appeal it must be determined whether there has been any action by the respondent Board from which an appeal could be taken.

The respondent Board consisted of three members. There was an objection to one of such members acting on the application for transfer because he had previously acted as a character witness for James W. Higgins when he and his brother originally applied for the plenary retail distribution license at another address. At an adjourned public meeting held on May 9, 1955, such member disqualified himself and the applications for transfer were considered by the two remaining members of the Board. Witnesses in favor of, and objectors to, the transfers were heard, as well as summations of counsel for the interested parties. One of the members of the Board then made a motion that the application for a place-to-place transfer be denied. The motion was not seconded. The other member of the Board then made a motion that the place-to-place transfer be granted. This motion likewise was not seconded. Counsel for the Board then voiced his opinion that because neither motion had been seconded, and a majority of two affirmative votes were required, and none were forthcoming, that he considered such action a denial of the application. Thereupon this appeal was filed.

An appeal may be taken from formal action by a local issuing authority, or from its unwarranted failure to take action within a reasonable time after a request so to do. If it takes the latter course, it is held to be tantamount to a denial, in that it is an abdication of its obligation. If what transpired does not represent either formal action, or failure to act, the appeal is remanded for formal action by the issuing authority. Re Salsburg, Bulletin 118, Item 11; Re Llewellyn Recreation Center, Inc. v. Orange, Bulletin 709, Item 2; Re Price v. East Rutherford, Bulletin 754, Item 8; Re Irvington Wonder Bar, Inc. v. Irvington, Bulletin 884, Item 4; Re Ridgefield Delicatessen v. Ridgefield, Bulletin 908, Item 4; and Re Gelber v. Freehold and McCormick, Bulletin 957, Item 2.

It is self-evident that no formal action was taken by the respondent Board in the instant case. Was the successive failure to second the respective motions equivalent to a denial of the application to transfer from place-to-place. In Charnack v. Sea Bright, Bulletin 644, Item 1, it was held that a motion to deny the application, not seconded, required remand for formal action. On the other hand, in Bradford v. Paulsboro, Bulletin 419, Item 11, it was held that a motion to grant the application, not seconded, and failure to act thereafter was tantamount to a denial of the application. It may well be that the failure to second a motion to grant should be distinguished from a motion to deny, because an affirmative vote is required to grant an application.

In any event, where, as here, the action at the meeting consists of a motion to deny followed by a motion to grant, neither of which is seconded, with each of the quorum of two members holding opposite views, it is common sense that it demonstrates a stalemate, deadlock, or tie, which, unresolved, of necessity renders it impossible for the Board, as such, to adopt a resolution indicating its action on the application. Under such circumstances the action taken is equivalent to a denial of the application. For instance, the vote of a board

of review to table an appeal indefinitely is equivalent to a denial of the appeal. Richard v. Board of Review of Woonsocket, 129 Atl. 736. A Board of Review of five members, requiring three votes to reverse a decision below, where a quorum is present, and the vote is a tie, it is held that the appeal is considered denied. Richard v. Zoning Board of Review, 130 Atl. 802.

In so far as the application to transfer from person-to-person is concerned, no action whatsoever was taken thereon at the meeting of May 9, 1955, although at the hearing of the appeal, counsel for the respondent Board stated that the respondent had no objection thereto. The application for such transfer of the expired license is now moot, and hence needs no decision thereon, since it is to be assumed that if a similar application is presented for transfer from person-to-person of the current license the respondent will take appropriate action.

This leaves for decision the merits of the application for place-to-place transfer.

In their petition of appeal appellants set forth the various grounds upon which they urge reversal of the action of respondent Board. These grounds, in substance, are as follows:

(a) That the issuing authority violated Section 7 of an ordinance of the City of Elizabeth, the pertinent portion of which reads as follows:

"Section 7. No licenses, excepting club licenses and excepting renewals and person-to-person transfers of other licenses now outstanding, shall be granted for or transferred to premises within a radius of 1500 feet of then existing licensed premises.

"This section shall not apply in situations covered by supplemental section 7A in the ordinance adopted June 29, 1954, concerning transfers from premises destroyed by fire, earthquake, hurricane or other disaster.

"Nothing in this section shall prevent transfer of a license to premises located within a radius of 1500 feet of the premises for which the license sought to be transferred is issued, provided that no part of the 1500 feet has been used up in a previous transfer; it being the intention of this ordinance to permit transfers only in cases where an extreme hardship is established."

(b) & (e) The premises presently licensed by reason of the physical condition thereof and the refusal of the landlord to correct it, makes continued occupancy thereof difficult for the proper conduct of appellants' business.

(d) That about March 7, 1955 appellant James W. Higgins received notice from his landlord that the rent of the premises would be increased from \$30.00 to \$75.00 per month.

(d) That about April 1, 1955, James W. Higgins received formal notice from his landlord to vacate the Pennsylvania Avenue premises on or before June 1, 1955.

(f) & (g) That the appellants are the owners of premises 573 North Broad Street, Elizabeth to which transfer is sought, and such premises are in Business "B" zone.

(h) That the denial of the applications constitutes a hardship for the reason that the relationship of landlord and tenant of the Pennsylvania Avenue premises is uncertain and subject to the whim of the landlord.

Respondent Board in its answer to the petition of appeal admits the allegations of the petition concerning its course of action in considering the applications as hereinabove set forth and the existence of the ordinance in question; it leaves appellants to their proof of the other allegations in the petition, concluding with the statement that the respondent Board, in the exercise of its discretionary power, had the right either to grant or deny the applications.

James W. Higgins entered into a written lease with his landlord on March 1, 1954, for the term expiring March 31, 1955, covering what is described as a two-car garage structure located at the Pennsylvania Avenue address, such structure to be used for the storage and delivery of alcoholic beverages under the tenant's liquor license. The lease does not provide that the landlord was to make any repairs.

In establishing his licensed business at such premises, James W. Higgins obviously was aware of the physical limitations of conducting his business in a two-car garage structure as distinguished from a normal store for commercial purposes. It should be noted that on appeal from a previous transfer of the license to the Pennsylvania Avenue premises, the decision of the Director of Alcoholic Beverage Control affirming the transfer recites that the premises are a garage, certainly not elaborate; "but it is proposed to install a telephone and to use those premises not as a package store but for taking orders for delivery". Monroe Tavern, Inc. v. Elizabeth and Higgins, Bulletin 1022, Item 3.

Higgins' present complaint as to the facilities of the premises is that the roof was damaged by a storm so that the rain damages his stock and prevents him from maintaining heat in the premises; that the landlord prevents him from erecting a sign on the garage and from arranging for electric current. These items, even if not exaggerated, do not present any serious handicap to the conduct of his business. The damage to the roof of a two-car garage and the installation of a stove to replace the one originally there, if the latter is unusable, does not involve any great expense. Failure to have a sign does not appear to be an impediment where the establishment is used merely for storage and to receive orders by telephone. As to the electric current, it appears that there was a difference of opinion as to the method of installation and not an absolute denial of such facility by the landlord. In any event, all factors complained of were foreseeable when he located his business in such premises. He experienced no unforeseen extreme hardship. So far as his present or future occupancy of the premises is concerned, it appears that the landlord withdrew his eviction notice and he presently occupies the premises. At the hearing on the appeal the landlord professed himself willing to make reasonable arrangements for Higgins to continue to occupy the premises (it appears from the briefs submitted that since the hearing on the appeal some of the objectors have purchased the premises and express a similar attitude). The

evidence presented does not establish that appellants have suffered any substantial, let alone extreme hardship sufficient to take into account in considering their application for transfer.

Accordingly, there is no merit to the grounds advanced by appellants for reversal, excluding grounds (f) and (g). Those grounds present the single issue as to whether there is any basis in fact or in law to justify the denial of the transfer of the license to the premises owned by appellants.

Considerable substantial evidence was presented at the hearing of the appeal regarding the location of a school, church and public park in the immediate vicinity of the proposed licensed premises, as well as evidence of the nearby residential character of the neighborhood. This evidence was designed to establish that even if it was a hardship for the licensee to continue his business at his present premises, the proposed premises are not an appropriate location for such business. However, no decision on that score is necessary since the transfer to the North Broad Street location is prohibited by the above mentioned ordinance.

It was stipulated by counsel for the Owl Drug Company (also referred to as Owl Liquor Company) and counsel for appellants that the licensed premises of Owl Drug Company (which holds a plenary retail distribution license) are approximately 650 feet distant from the premises to which transfer is sought by appellants.

Since, for the reasons heretofore expressed, I have decided that appellants have not established any hardship, the first paragraph of the aforementioned ordinance applies.

This provision of the ordinance prohibiting transfer of a license to premises within a radius of 1500 feet of then existing licensed premises was considered in Monroe Tavern, Inc. v. Elizabeth and Higgins, *supra*, where, upon failure to establish that there was a then existing licensed premises at 562 North Broad Street, the transfer of appellants' license to the Pennsylvania Avenue premises was affirmed.

The policy of the City of Elizabeth since 1935 to maintain a distance of 1500 feet between licensed premises, excepting renewals, and recently club licenses, has been set forth by various resolutions and ordinances and has been uniformly upheld on appeal. Gural and Toplovich v. Elizabeth, Bulletin 153, Item 7; Fine v. Elizabeth, Bulletin 346, Item 18; Elizabeth Beverage Dealers Association, Division No. 2, et als. v. Elizabeth et al., Bulletin 514, Item 3; New Jersey Licensed Beverage Assn. et al. v. Elizabeth et al., Bulletin 665, Item 9; Burns v. Elizabeth, Bulletin 794, Item 5; Perry v. Elizabeth, Bulletin 847, Item 4.

The license held by James W. Higgins cannot lawfully be transferred to 573 North Broad Street, Elizabeth in face of the existing ordinance prohibiting such transfer. Moschera v. Plumsted, Bulletin 1075, Item 8.

Appellants have failed to establish that respondent acted in an arbitrary or unreasonable manner in denying their application for a place-to-place transfer and the action of respondent will therefore be affirmed. Price v. East Rutherford, *supra*.

Accordingly, it is, on this 12th day of September, 1955,

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

WILLIAM HOWE DAVIS
Director.

6. STATE REGULATIONS - REGULATIONS NO. 34 AND NO. 39 - REPLACEMENT OF FLOOD-DAMAGED MERCHANDISE AND REPORTING DEFAULTS AT FLOOD-DAMAGED PREMISES.

TO ALL NEW JERSEY WHOLESALE LICENSEES:

RE: FLOOD-DAMAGED MERCHANDISE

Several problems have arisen in connection with the damage to or destruction of premises of New Jersey retail licensees as a result of the recent storm and resulting floods. The principal problems which have arisen thus far involve the replacement of damaged merchandise and the inability of the retailers to make payment to the wholesalers within the thirty-day period following delivery as required by State Regulations No. 39.

With respect to replacement of damaged merchandise, the usual practice under State Regulations No. 34 is for the wholesaler to make written request (in duplicate) to the Director for permission to accept return of the damaged merchandise. However, the New Jersey Department of Health has placed an embargo on all flood-damaged merchandise, including alcoholic beverages. As the result of conferences between the New Jersey Department of Health, New Jersey Beverage Tax Bureau, New Jersey Division of Alcoholic Beverage Control, and Federal Alcohol & Tobacco Tax Division authorities, and with representatives of the brewers, distillers and wholesalers, it has been determined that all flood-damaged alcoholic beverages will be destroyed under official supervision.

Because of the embargo, there may be no physical return of flood-damaged alcoholic beverages. However, the Director will permit the replacement of flood-damaged merchandise with identical merchandise under the following conditions:

I

MALT ALCOHOLIC BEVERAGES. Such beverages destroyed by the health authorities may be replaced by the brewer or supplier, who shall first notify the Director of such replacement.

II

ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES.

1. The retailer will inventory and segregate the damaged merchandise (if it can be found) and await destruction of such merchandise by the health and tax authorities.

2. The retailer will contact the wholesaler who delivered the damaged merchandise to said retailer and request replacement thereof.

3. If the wholesaler desires to replace the damaged merchandise, such wholesaler will make written request (in duplicate) of the Director so to do. The Director will process each request individually.

4. The wholesaler replacing damaged merchandise will keep available for inspection by this Division such records as may be necessary to establish that the transaction was in fact merely a replacement of merchandise previously delivered to the retailer.

5. The flood-damaged merchandise is being officially inventoried and arrangements are being made for its physical destruction under official supervision of the health and tax authorities.

6. As soon as the flood-damaged merchandise has been destroyed by the health and tax authorities, the retailer will send notice of such fact to the Director and to the wholesaler or wholesalers who originally delivered the merchandise to said retailer. Such notice shall be accompanied by a copy of the official destruction receipt. Upon receipt of such notice, the matter will be further considered by the Director.

NO EMBARGOED MERCHANDISE MAY BE ACCEPTED FOR RETURN BY A WHOLESALER.

Where a wholesaler has replaced destroyed flood-damaged merchandise for a retailer or retailers, any manufacturer or other supplier who had previously delivered such merchandise to said wholesaler may replace such merchandise for such wholesaler, after notice to the Director.

NO MANUFACTURER OR OTHER SUPPLIER AND NO WHOLESALER MAY DISCRIMINATE BETWEEN LICENSEES BY REPLACING THE FLOOD-DAMAGED MERCHANDISE OF SOME LICENSEES WHILE REFUSING TO REPLACE THE FLOOD-DAMAGED MERCHANDISE OF OTHER LICENSEES SIMILARLY SITUATED.

* * * * *

With respect to State Regulations No. 39 (Credit Regulations), the Director has determined that, even though a retailer may be on the official Default List, the wholesaler may deliver replacements for flood-damaged merchandise to such retailer and such delivery will not be considered as a delivery in violation of the regulation even though, under ordinary circumstances, no alcoholic beverages could be delivered to a retailer on the Default List, except for payment in cash. However, no such replacements may be made without first obtaining permission from the Director. Requests for such replacements shall be submitted in duplicate.

Default notices must be sent to the Director as required by the regulations, but in all cases where the premises have been damaged by the recent floods, such default notice shall bear conspicuously the legend "FLOOD-DAMAGED PREMISES", or similar designation. Notices so marked will receive special attention and, where the circumstances warrant, the account will not be placed on the official Default List until reasonable opportunity has been afforded the retailer to comply with the regulations.

Where a retailer already on the Default List requests a wholesaler to extend credit for merchandise so as to permit him to resume or continue in business and such wholesaler desires to comply with such request, the wholesaler shall transmit this request to the Director and there shall be furnished to the Director complete details of the proposed transaction including the name and address of the licensee, the type and quantity of merchandise, and the amount of money involved.

Dated: September 15, 1955.

WILLIAM HOWE DAVIS
Director.

ACTIVITY REPORT FOR AUGUST 1955

ARRESTS:			
Total number of persons arrested	-----	27	
Licensees and employees	----- 14		
Bootleggers	----- 13		
SEIZURES:			
Motor vehicles - cars	-----	4	
Stills - over 50 gallons	-----	2	
Mash - gallons	-----	1,670.00	
Distilled alcoholic beverages - gallons	-----	138.00	
Wine gallons	-----	.25	
Brewed malt alcoholic beverages - gallons	-----	102.91	
RETAIL LICENSEES:			
Premises inspected	-----	847	
Premises where alcoholic beverages were gauged	-----	476	
Bottles gauged	-----	9,207	
Premises where violations were found	-----	99	
Violations found	-----	133	
Type of violations found:			
Unqualified employees	----- 59	Gambling devices	----- 2
Reg. #38 sign not posted	----- 13	Improper beer taps	----- 2
Disposal permit necessary	----- 12	Prohibited signs	----- 1
Other mercantile business	----- 11	Probable front	----- 1
		Other violations	----- 32
STATE LICENSEES:			
Premises inspected	-----	15	
License applications investigated	-----	10	
COMPLAINTS:			
Complaints assigned for investigation	-----	562	
Investigations completed	-----	544	
Investigations pending	-----	218	
LABORATORY:			
Analyses made	-----	144	
Refills from licensed premises - bottles	-----	5	
Bottles from unlicensed premises	-----	25	
IDENTIFICATION BUREAU:			
Criminal fingerprint identifications made	-----	22	
Persons fingerprinted for non-criminal purposes	-----	217	
Identification contacts made with other enforcement agencies	-----	191	
Motor vehicle identifications via N. J. State Police teletype	-----	4	
DISCIPLINARY PROCEEDINGS:			
Cases transmitted to municipalities	-----	9	
Violations involved:			
Sale during prohibited hours	----- 7		
Sale to minors	----- 3		
Cases instituted at Division	-----	33	
Violations involved:			
Sale to minors	----- 19	Possessing pin ball machine	----- 1
Permitting bookmaking on premises	----- 7	Sale during prohibited hours	----- 1
Permitting lottery activity (pools, sweepstakes tickets, numbers)	----- 7	Possession of indecent matter	----- 1
Permitting immoral activity	----- 3	Possessing illicit liquor	----- 1
Permitting hostesses on premises	----- 2	Permitting female impersonator on premises	----- 1
		Sale below minimum resale price	----- 1
Cases brought by municipalities on own initiative and reported to Division	-----	11	
Violations involved:			
Permitting brawls on premises	----- 5	Failure to afford view into premises during prohibited hours	----- 1
Sale to minors	----- 2	Permitting premises to be used in connection with illegal activity	----- 1
Sale during prohibited hours	----- 2	Permitting immoral activity	----- 1
Hindering investigation	----- 2		
Permitting gambling (cards)	----- 2		
HEARINGS HELD AT DIVISION:			
Total number of hearings held	-----	42	
Appeals	----- 9	Seizures	----- 5
Disciplinary proceedings	----- 21	Tax revocations	----- 1
Eligibility	----- 5	Applications for license	----- 1
STATE LICENSES AND PERMITS ISSUED:			
Total number issued	-----	1,310	
Licenses	----- 7	Social affair permits	----- 362
Employment permits	----- 199	Miscellaneous "	----- 136
Solicitors "	----- 88	Transportation insignia	----- 396
Disposal "	----- 92	Transportation certificates	----- 30

Dated: September 2, 1955

WILLIAM HOWE DAVIS
DIRECTOR

8. STATE LICENSES - NEW APPLICATIONS FILED.

Needes' Express, Inc.
21-02 Morlot Avenue
Fairlawn, N. J.

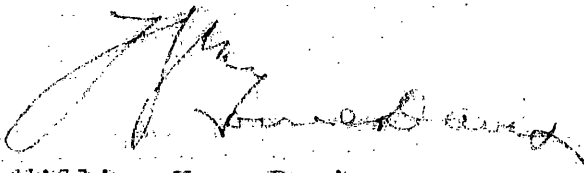
Application filed September 23, 1955 for Transportation License.

Peter Merola
Apartment 8
94 Mt. Prospect Ave.
Newark, N. J.

Application filed September 27, 1955 for Transportation License.

Kelleher Motor Freight Lines, Inc.
621 Grove Street
Elizabeth, N. J.

Application filed September 28, 1955 for Transportation License.



William Howe Davis
Director.