

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1768

December 20, 1967

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - FREY v. HOBOKEN.
2. APPELLATE DECISIONS - CENTRAL JERSEY PACKAGE STORES ASSOCIATION v. POHATCONG and FALK'S BAR-LIQUORS INC.
3. DISCIPLINARY PROCEEDINGS (Highlands) - GAMBLING (HORSE RACE BETS) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.
4. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.
5. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE DURING PROHIBITED HOURS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.
6. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1768

December 20, 1967

1. APPELLATE DECISIONS - FREY v. HOBOKEN.

Henry R. Frey,)	
)	
Appellant,)	
v.)	On Appeal
)	CONCLUSIONS
Municipal Board of Alcoholic)	and
Beverage Control of the City)	ORDER.
of Hoboken,)	
Respondent.)	

-----)
Calligy & Flynn, Esqs., by Thomas P. Calligy, Esq., Attorneys
for Appellant
E. Norman Wilson, Esq., by William J. Miller, Esq., Attorney
for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 28, 1967 respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) unanimously denied appellant's application for renewal of his plenary retail consumption license for the license year 1967-68, for premises 113 Hudson Street, Hoboken.

The stated basis for its action was the testimony submitted by members of the Police Department.

Appellant challenges the action of the Board in his petition of appeal as being (a) arbitrary and capricious, (b) unconstitutional and in violation of the "due process clause of the Constitution" and for (c) failure to serve proper notice upon appellant, (d) failure to hold hearing "on charges", and that (e) he was denied the right to counsel.

The answer of the Board admits the jurisdictional allegations of the petition and denies each of the substantive allegations.

In separate defenses the Board asserts that the action was based upon the testimony of the police officers and the recommendation of the Chief of Police, (a) "all of which proves the operation to be a nuisance", (b) the appellant was specifically notified of an objection to his application for renewal and of the hearing date thereon, (c) appellant is "even now awaiting disciplinary action on a non vult plea to a charge of permitting a brawl entered on May 24, 1967."

Upon the filing of this appeal the Director entered an order on July 7, 1967, extending the term of the said license pending the determination of this appeal and the entry of a further order herein.

This is an appeal de novo with full opportunity for

counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15. The Board submitted the transcript of the proceedings below, in accordance with Rule 8 of State Regulation No. 15, and relied thereon at the within hearing.

I

I shall first consider several challenges with respect to the hearing before the Board. In his petition of appeal appellant contends that he was not served with a notice of the hearing and was denied the right to be represented by counsel. However, at this plenary appeal hearing appellant admitted that he did receive notice of the hearing which was held upon objections filed with the Board to the grant of his application, and he appeared and testified. He further admitted that he was specifically questioned whether he desired to have counsel represent him. He stated definitely that he did not desire any counsel and that he preferred to represent himself. His admission to these facts clearly establishes that his constitutional rights have not been violated, and that he has been afforded due process, contrary to the allegations in his petition.

II

We thus consider the central issue, namely, whether the action of the Board in denying his application was arbitrary and an unreasonable exercise of its discretion.

The transcript in this matter shows that appellant has been the operator of these licensed premises since 1963. Captain August Ricciardi, of the Hoboken Police Department, testified that he is familiar with the activities of the Police Department, vis-a-vis of these licensed premises, and the reports of the Police Department indicate that there has been a total of sixteen incidents at these premises since 1961 "consisting of fights and shootings." He specifically noted that on April 2, 1967, a patron was shot and critically injured in the tavern; on October 5, 1966 an assault on a patron occurred in the said premises; on September 11, 1965 there was a report of an assault at these premises. During the 1966-67 licensing period the police responded to five calls. He further stated that in the investigations of these various incidents at the licensed premises he found the bartender to be uncooperative. It was also his opinion that the operation of this tavern for the past four years has been unsatisfactory and "a nuisance."

Police Officer Frank F. Tortorella, of the Hoboken Police Department, corroborated the testimony of Ricciardi with respect to the April 2, 1967 incident wherein a patron was shot at the licensed premises and hospitalized as a result thereof. He also stated that the bartender was very uncooperative and insisted that he "didn't see or witness any incident" although there was blood on the floor near the juke box. This witness also related his investigation of these premises as a result of the assault on a patron on October 5, 1966, at which time the bartender was similarly uncooperative. The witness further noted that the appellant was warned on several occasions that his business was not being properly conducted and that, unless it was better controlled, he was going to find himself in difficulty. The last warning took place about five or six months ago and, as stated, there were two serious incidents involving an assault and a shooting which

took place after that time.

Acting Chief Walter F. Fallon, of the Hoboken Police Department, testified that the Police Department had received many complaints about unlawful activities and operation of these premises. In his opinion "this tavern is a nuisance, not only to the location it's in in the city, but to the people in the neighborhood and with the numerous incidents that have been occurring there from time to time...." It was the Chief's feeling, and he so recommended to the Board, that the application for renewal should be denied.

Henry R. Frey (appellant herein), testifying in his own behalf, gave the following account: He has been operating these premises for the past four years and admitted that he pleaded non vult to a charge by the Board that he permitted and suffered a brawl, involving a shooting, at his tavern on April 2, 1967. He explained that he was not on the premises at that time and that the bartender has since been discharged.

He insisted that the Police Department visited his premises "very seldom", maybe "once a month", and only on a routine basis. He denied that his place is being operated as a nuisance; stated that he has received no complaints from any of the neighbors, and that he feels that he is entitled to a renewal.

On cross examination the witness admitted he had had a prior suspension by the local Board for permitting an unauthorized person (his brother) to tend the bar. Finally he insisted that the various incidents involving brawls and assaults during his entire period of operation which were directed to his attention were caused by persons who were not really patrons of his tavern; that he was not responsible for these incidents, and "I don't think my license should be taken away from me over something that I have no control over."

The decisive 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 evaluating and assessing the testimony, certain established legal principles should be restated. The burden of proof in all of these cases which involve discretionary matters where an applicant seeks a renewal of the license falls upon the appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277. As was stated in Zicherman v. Driscoll, 133 N.J.L. 586, 587:

"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 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 license."

See Freddie's Blue Room, Inc. v. Elizabeth, Bulletin 1422, Item 1.

In the consideration of this matter the Board was guided by the principles enunciated in Downie v. Somerdale, supra, as follows:

"The problem before [the Board] upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed." (Emphasis supplied)

I am persuaded that the Board took seriously its commitment and responsibility to limit the issuance and renewal of liquor licenses to those persons who were clearly worthy of the privilege.

As cited hereinabove, the Board felt that liquor licensed premises should be conducted by reputable people in a reputable manner (Zicherman v. Driscoll, supra) and it is quite apparent that it did not consider the operation of these premises, which were characterized by the Police Department as a "nuisance", to be conducted in a reputable manner. The incidents complained of by the appellant himself received unfortunate notoriety in the local press and may well have caused the serious reflection upon all other licensed premises. The desire of the Board to upgrade licensed premises by setting reasonable standards for such operations is commendable and should not be diluted or negated by this Division.

In the area of licensing, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In thus implementing the salutary objectives of statutory liquor control, the responsibility of a local authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). And, while the nature of the application, i.e., for renewal rather than for original issuance, is a proper factor for consideration, yet in principle "a renewal license is in the same category as an original license." Zicherman v. Driscoll, supra, at p. 587; Quaglia v. Highlands, Bulletin 1736, Item 2.

Appellant seems to disclaim responsibility for the serious incidents which occurred in his premises, asserting that

he had no real control over these patrons. However, 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. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup.Ct. 1947); Oak Inn, Inc. v. Division of Alcoholic Beverage Control and Elizabeth (App.Div. 1963), not officially reported, reprinted in Bulletin 1523, Item 2.

It should be pointed out that there is no suggestion in this case of any improper motivation on the part of the Board in its action and it must be assumed that it acted in good faith and in the best interests of the community. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501; Paul v. Brass Rail Liquors, 31 N.J. Super. 211.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Tumulty v. Dunellen, Bulletin 1487, Item 4. Or, to put it in another way, where reasonable men, acting reasonably, determine that the license should not be renewed, the Director should affirm such determination in the absence of a finding that "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

My careful consideration of the evidence presented herein, the exhibits and the summation of counsel leads me to the irresistible conclusion that the Board exercised its discretion circumspectly, reasonably and in the best interests of the community in refusing to renew appellant's license for the current licensing year.

It is therefore recommended that the Board's action in denying appellant's application be affirmed, and that the appeal herein be dismissed.

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 the transcript of the testimony, the exhibits, the argument of counsel in summation and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 23rd day of October 1967,

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

ORDERED that my order entered on July 7, 1967, extending the term of appellant's license pending the determination of the appeal herein, be and the same is hereby vacated.

JOSEPH P. LORDI
DIRECTOR.

2. APPELLATE DECISIONS - CENTRAL JERSEY PACKAGE STORES ASSOCIATION v. POHATCONG and FALK'S BAR-LIQUORS INC.

Central Jersey Package Stores)
Association, et als.,)

Appellants,)

v.)

On Appeal
CONCLUSIONS
and
ORDER

Township Committee of the Township)
of Pohatcong, and Falk's Bar-)
Liquors Inc., t/a Falk's Bar-)
Liquors Inc.,)

Respondents.)

- - - - -)

Samuel J. Davidson, Esq., Attorney for Appellants
Howard W. Swick, Esq., Attorney for Respondent Township Committee
Robert E. Frederick, Esq., Attorney for Respondent Falk's Bar-Liquors Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

The appellants herein appeal from the action of respondent Township Committee (hereinafter Committee) whereby it unanimously granted a person-to-person and place-to-place transfer of a plenary retail consumption license (without broad package privileges) from Thomas B. Poska and Anna M. Poska, t/a Pohatcong Tavern, to respondent Falk's Bar-Liquors Inc. (hereinafter Falk's) and from premises on Route 22 to premises also on Route 22, Pohatcong.

Appellants' petition of appeal contends that the action of the Committee in granting the transfer in question was erroneous for the following reasons:

- "(a) The entrance to Falk's Bar-Liquors, Inc. is contiguous to and adjacent with one of the main entrances to Falk's Department Store so that Falk's Bar-Liquors, Inc. is an integrated business unit in which the licensed premises is a department thereof contrary to R.S. 33:1-12(1).
- "(b) The application of Falk's Bar-Liquors, Inc. did not disclose the interest which Falk's of Warren, Inc., a New Jersey corporation, has in the licensee and its premises.
- "(c) The premises to which the license is transferred does not constitute a bona fide public bar-room with adequate facilities to extend an invitation to the public to be served and to consume alcoholic beverages by the glass within the contemplation of R.S. 33:1-12.23.
- "(d) The area to which the subject license was transferred was adequately serviced and there exists no need or necessity to mandate such transfer.

- "(e) The operation is a subterfuge to convert a Plenary Retail Consumption License into a Plenary Retail Distribution License and obtain a privilege which it is not legally entitled to have, repugnant to R.S. 33:1-12.14, and the population limitations imposed by Statute of one Distribution License for every 5,000 persons in a community.
- "(f) The transfer of the subject license place to place is socially undesirable.
- "(g) The removal of the License from its location to the new location left a void in the area from which it was moved.
- "(h) Although there is nothing in the Alcoholic Beverage Law which prohibits the transfer of a liquor license to a Shopping Center, the mere fact that Falk's of Warren, Inc. Shopping Center will attract crowds of customers from distant points did not mandate the Township Committee to disturb its existing distribution of licenses in the municipality without regard to the public need or necessity of the residents to place the License in such area.
- "(i) The Township Committee of Pohatcong Township, Warren County, New Jersey, was guilty of abuse of discretion and mistake of law and fact in granting the place to place transfer of said license.
- "(j) The granting of said place to place transfer to the premises located on Route 22, R.D. Phillipsburg, New Jersey, known as Falk's Department Store, was arbitrary, capricious, unreasonable and not based on any applicable law, fact or public policy."

Although no answer to the above stated allegations was filed by the Committee, Falk's filed an answer wherein it denies the allegations set forth in appellants' petition and, by way of support of the action of the Committee, listed the following defenses:

"First Defense. 1. The entrance to Falk's Bar-Liquors, Inc. is separated by a neutral area from Falk's of Warren, Inc., the plans for which neutral area were forwarded to the Division of Alcoholic Beverage Control prior to the construction of said bar, and were given ex parte approval by said Division.

"Second Defense. Falk's Bar-Liquors, Inc. is physically separated from and distinct from Falk's of Warren, Inc. and is a separate and distinct corporation although the stockholders of both corporations are Mr. and Mrs. Oscar Falk and their three sons.

"Third Defense. The application of Falk's Bar-Liquors, Inc. fully discloses that Falk's of Warren, Inc. is the lessee of the premises on which the cocktail lounge is located.

"Fourth Defense. Falk's Bar-Liquors, Inc. consists of a public bar-room on premises which are approximately 80 feet long and 30 feet wide, containing a public bar counter designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass, or other open receptacles, for consumption on the licensed premises. The said bar is 8 feet by 12 feet and has 13 stools for the use of persons sitting at same. It contains separate toilet facilities for men and women. The bar also has running water, mixing facilities, and all of the other utensils and accouterments of a public bar. In addition thereto, there are booths and tables for a restaurant and public barroom seating approximately 72 persons which are an integral part of said licensed premises.

"Fifth Defense. The premises owned by Thomas B. Poska and Anna M. Poska, t/a Pohatcong Tavern, which had been formerly issued the Plenary Retail Consumption License, were in a portion of Pohatcong Township cut off from the remainder of the Township by a heavily travelled four-lane highway, U. S. Route 22, in a location which did not have adequate parking facilities and which was dangerous to the public leaving and entering said premises. The present premises, as disclosed by the testimony of citizens of Pohatcong Township and experts, are more accessible and more adequately services the needs of the people of Pohatcong Township and there was a public need for such a transfer.

"Sixth Defense. Falk's Bar-Liquors, Inc. is a bona fide public bar pursuant to the provisions of the Alcoholic Beverage Law of the State of New Jersey and the Appellants, who are all owners, or represent the owners of Plenary Retail Distribution Licenses, are attempting to abrogate to themselves the function of the Township governing body and the Division of Alcoholic Beverage Control in attempting to decide whether a Plenary Retail Consumption License can be transferred from place to place and person to person in Pohatcong Township.

"Seventh Defense. The evidence proved that the transfer of the subject license was socially desirable and would promote temperance since most of the inhabitants of the Township using the subject premises would be husbands and wives who would visit said premises together as part of a family shopping trip.

"Eighth Defense. The testimony showed a deficiency and lack in the former facilities and it was in the public interest and convenience to transfer the license to a modern attractive cocktail lounge and bar with a much better location for the people of the Township and much more convenient for them.

"Ninth Defense. The Township Committee recognized that local sentiment and public good required the transfer of the license to a place where the business center had shifted to the terminus of new U. S. Routes 78 and 22 and the population had shifted into the same area."

This matter was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for the attorneys representing the respective parties herein to present testimony under oath and to cross-examine witnesses.

The stenographic transcript of the hearing below was submitted pursuant to Rule 8 of State Regulation No. 15 and was supplemented at the hearing herein by testimony of witnesses produced on behalf of both the appellants and the respondents.

Stephen W. Falk, vice president of Falk's, testified that the premises to which the liquor license was transferred is "a good quarter of a mile" from Route 22, next to or on the same property as the Falk's Department Store where parking facilities are provided adjacent to and in the immediate area thereof for fifteen hundred cars; that the section of the building for the sale or service of alcoholic beverages is "eighty feet nine inches long, thirty-two feet eight inches wide;" that, when a person enters from the street at the front of the building there is an area eight feet by eight feet "which is a more or less neutral zone", where there is a door to the left which leads into the cocktail lounge and another door to the right which leads into the department store; that in the center of the cocktail lounge is a bar "approximately eight foot wide, twenty-four foot long" around which are thirteen chairs; the bar is equipped with a bottle-cooler, cocktail mix-server section, a sink, a drain and hot and cold running water; that the area where the bartender would stand is "depressed about one foot;" so that "the bartender would be standing below the normal level of the floor;" there are four booths erected toward the middle of the floor with four tables to accommodate approximately twenty people; that there are nine booths on both sides of the room, each able to accommodate four people; that the cocktail lounge is separated completely from the department store by solid walls without any door or opening between the said cocktail lounge and the department store; that on both walls of the barroom or cocktail lounge are shelves for storage and for display purposes of alcoholic beverages in their original container.

The Revised floor plan of the licensed premises submitted in this matter substantially corroborates the testimony of Stephen Falk as to the interior layout.

I shall first discuss appellants' objection concerning the interior layout of the premises whereby it is contended that the present operation of Falk's is contrary to R.S. 33:1-12.23, the pertinent part of which provides as follows:

"The holder of a plenary retail consumption license or a seasonal retail consumption license, after the effective date (May 28, 1948) of this act, (33:1-12.23 to 33:1-12.25) may sell and display for sale alcoholic beverages in original containers for consumption off the licensed premises only in the public barroom of the licensed premises, such barroom being a room containing a public bar, counter or similar piece of equipment designed for and used to facilitate the sale and dispensing of alcoholic beverages by the glass or other open receptacle for consumption on the licensed premises..."

In Coral Lounge and Cocktail Bar, Inc., v. Hock, 5 N.J. Super. 163, 167, Judge Colie said:

"... it seems clear to us that a barroom means that portion included within the four walls of the room in which the bar is located"

Vide Eskridge v. Division of Alcoholic Beverage Control, 30 N.J. Super. 472, 476 (App.Div. 1954); Passaic County Retail Liquor Dealers Association v. Board etc. of Paterson, 37 N.J. Super. 187, 194 (App.Div. 1955); Totowa v. Chicken Barn, Inc., 41 N.J. Super. 459 (App.Div. 1956).

An examination of the revised floor plan of the interior of the premises discloses that the sale or display of alcoholic beverages in original containers for consumption off the licensed premises will be exclusively in the public barroom. From the record herein I find as a fact that the said room wherein the bar is located and alcoholic beverages are sold to be a bona fide barroom with adequate bar facilities, to constitute an invitation to the public to be served and to consume alcoholic beverages therein within the contemplation of R.S. 33:1-12.23.

Appellants further contend that the entrance to Falk's "is contiguous to and adjacent with one of the main entrances to Falk's Department Store" and thus "is an integrated business unit in which the licensed premises is a department thereof contrary to R.S. 33:1-12 (1)."

In No. Central Counties Retail Liquor, etc. v. Edison Tp., 68 N.J. Super. 351, 363 (App.Div. 1961), Judge Conford, speaking for the court, stated:

"The practical question remains as to whether and how the instant licensee can conduct its business without violation of the statute. Plaintiff concedes, and we agree, that the escalator properly separates the two floors into different premises. It argues, however, that the licensed area would have to be the sole business conducted on the second floor. We do not think the statute requires that extreme. The mere closing up of the open area on the second floor by a partition will not suffice, if a door remains for passage from unlicensed to licensed areas by the general public, as the administrative rulings clearly indicate. But if there were interposed between the two respective areas, otherwise physically walled off from each other, a neutral area or space from which a customer who had come there from an exit door in one of the areas, licensed or unlicensed, could elect whether to go into the other or to pass to the lower floor via the escalator, the intent and purpose of the statute as reflected by the administrative rulings would be satisfied. The same holds true as to the elevator. In other words, whatever the physical arrangements, there must intervene between the licensed and unlicensed areas on the second floor a neutral space or area, from which a customer can leave the floor, if he chooses, without having to enter either of the business areas mentioned."

In the case sub judice, a person walking into the building through the front door would enter a neutral area or space and, upon using the door to the left of him, would enter the licensed premises, whereas if he used the door to his right it would lead him into the department store. Therefore, the

arrangements as provided for entrance into the licensed premises would not constitute a violation of the statute in question.

The three committeemen who make up the respondent Committee were called to testify by the appellants herein. Out of the lengthy testimony given by said committeemen, it appears that one of the main reasons for approving the transfer of the license in question was that the old establishment had very little parking facilities for patrons, and it was extremely hazardous when leaving in cars for people to get on to the highway because of a traffic circle a short distance away. The committeemen were of the opinion that at Falk's ample parking facilities were available and it was a great deal safer to leave and enter the area where Falk's licensed premises are located. All of the committeemen testified that they inspected Falk's premises and were in accord that in their opinion it was conducive to the best interests of the community to permit a license to be situated there.

Although some distance away there are two other liquor licensed premises which also serve meals, the location of Falk's and the large number of persons who shop in the immediate area point up a need for the type of establishment provided by Falk's.

In so far as the premises from which the license had been transferred were concerned, the committeemen felt that it was just an old-fashioned barroom and thus did not in any way compare with Falk's premises.

Nicholas Varhall (the holder of the only plenary retail distribution license in the community, and also an appellant herein) testified in opposition to the transfer of the license in question. He stated that Falk's did not attract the major portion of the business in the liquor establishment from the immediate area but, rather, from a large area "perhaps up to thirty miles" because "they're on the main thoroughfare and people will be coming shopping from that distance at least."

Petitions were filed by the parties herein. Appellants filed a petition with 108 names who opposed the transfer of the license to Falk's. Respondents filed a petition with 375 names requesting that the transfer of the license be granted.

To be successful in the instant appeal the appellants herein must show that the Committee abused its discretion in approving the application for the transfer. It has been well established and consistently followed that a local issuing authority's discretionary power is broad in determining whether or not a liquor license should be transferred. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, the following general principles were stated:

"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.... 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 Rocco case, supra, it was stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board 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. Board of Com'rs. of City of Hoboken*, supra, 135 N.J.L., at page 511"

No evidence has been presented herein to indicate that the Committee was in any way improperly motivated or abused the discretion vested in it by granting the transfer of the license in question.

I have considered all of the grounds of appeal set forth by the appellants in their petition of appeal and the contents of the answer filed on behalf of Falk's.

After careful consideration of the entire record presented herein, including the memoranda submitted on behalf of the parties herein, I conclude that the appellants have failed to sustain the burden of proof in showing that the action of the Committee was erroneous. Rule 6 of State Regulation No. 15.

For the reasons aforementioned, it is recommended that an order be entered affirming the action of the Committee herein and dismissing the appeal.

Conclusions and Order

Exceptions to the Hearer's report and argument in substantiation thereof were filed by appellants' attorney, and answers, together with arguments in support thereof, were filed by the attorney for respondent-licensee, pursuant to Rule 14 of State Regulation No. 15.

I have considered the exceptions taken on behalf of appellants and find that they have been either adequately answered by the Hearer or lack merit.

I have carefully considered the entire record herein, including the exceptions filed by appellants' attorney, the transcripts of the proceedings, the exhibits and the Hearer's

report. I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 25th day of October 1967,

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

JOSEPH P. LORDI,
Director.

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Highlands Marina, Inc.
t/a Highlands Marina, Inc.
258 Bay Avenue (Rear)
Highlands, N. J.

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-10 issued by the Mayor and Council of the Borough of Highlands

D. Joseph DeVito, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that (1) on April 20, 26 and May 3, 1967, it permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (2) on April 12, 1967, it sold a pint bottle of whiskey for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended on the first charge for sixty days (Re Pelzer, Bulletin 1754, Item 5) and on the second charge for fifteen days (Re A. & T. Tavern, Inc., Bulletin 1756, Item 17), or a total of seventy-five days, with remission of five days for the plea entered, leaving a net suspension of seventy days.

Accordingly, it is, on this 25th day of October, 1967,

ORDERED that Plenary Retail Consumption License C-10, issued by the Mayor and Council of the Borough of Highlands to Highlands Marina, Inc. for premises 258 Bay Avenue (Rear), Highlands, be and the same is hereby suspended for seventy (70) days, commencing at 2:00 a. m. Wednesday, November 1, 1967, and terminating at 2:00 a. m. Wednesday, January 10, 1968.

JOSEPH P. LORDI,
Director.

4. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #311)
 In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-23)
 issued by the Board of Commissioners) On Petition
 of the City of Passaic to) ORDER

Bernard Slaff)
 t/a Corner Liquor Store)
 29 Monroe Street)
 Passaic, N. J.)

- - - - -

Feder and Rinzler, Esqs., by Joseph A. Feder, Esq.,
Attorneys for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on October 13, 1967, licensee-petitioner was fined \$500 and \$5 costs in the Passaic Municipal Court after being found guilty of a charge of sale of alcoholic beverages to minors on August 23, 1967, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that an appeal has been taken from the criminal conviction and that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minors. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Dopart, Bulletin 1733, Item 7.

Accordingly, it is, on this 26th day of October, 1967,

ORDERED that the aforesaid automatic suspension of license D-23 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI,
Director.

5. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

O'Leary House, Inc.)
582 West Side Avenue)
Jersey City, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-160 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City)
-----)

Licensee, by John O'Leary, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, September 24, 1967, it (1) and (2) sold a pint bottle of whiskey before 1:00 p. m., in violation of municipal ordinance, and (3) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

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 Hutchins, Bulletin 1725, Item 10.

Accordingly, it is, on this 24th day of October, 1967,

ORDERED that Plenary Retail Consumption License C-160, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to O'Leary House, Inc. for premises 582 West Side Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a. m. Tuesday, October 31, 1967, and terminating at 2:00 a. m. Wednesday, November 15, 1967.

JOSEPH P. LORDI,
DIRECTOR.

6. STATE LICENSES - NEW APPLICATIONS FILED.

Harry Barr
t/a Barr Dist. Co.
Claridge House, Claridge Drive
Verona, New Jersey

Application filed December 18, 1967 for person-to-person
and place-to-place transfer of State Beverage
Distributor's License SBD-209 from All State Beverage
Distributing Co., Inc., 218 River Drive, Garfield, N. J.

Medley Distilling Company
6 Princess Road
Lawrenceville, New Jersey


Application filed December 20, 1967 for place-to-place
transfer of Rectifier and Blender License R-2 from
120 West Franklin Avenue, Pennington, New Jersey.

Cointreau, Ltd.
6 Princess Road
Lawrenceville, New Jersey

Application filed December 20, 1967 for place-to-place
transfer of Rectifier and Blender License R-47 from
110 West Franklin Avenue, Pennington, New Jersey.

Renfield Importers, Ltd.
591-629 Rahway Avenue
Union, New Jersey

Application filed December 20, 1967 for place-to-place
transfer of the licensed warehouse operated under
Plenary Wholesale License W-99 from 120 West Franklin
Avenue, Pennington, New Jersey, to 6 Princess Road
Lawrenceville, New Jersey.



Joseph P. Lordi
Director