

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

BULLETIN 1662

March 7, 1966

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STATE OF NEW JERSEY
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BULLETIN 1662

March 7, 1966

1. COURT DECISIONS - MODERELLI and LYNDHURST v. PICCIRILLO and
DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-20-64

FLORENCE M. MODERELLI and BOARD
OF COMMISSIONERS OF THE TOWNSHIP
OF LYNDHURST,

Respondents-Appellants,

vs.

ANGELO A. PICCIRILLO, t/a ANGELO'S
and DIVISION OF ALCOHOLIC BEVERAGE
CONTROL,

Appellants-Respondents.

Argued January 31, 1966 - Decided February 10, 1966.

Before Judges Sullivan, Lewis and Kolovsky.

Mr. Alfred A. Porro, Jr. argued the cause for
appellants.

Mr. Charles L. Bertini argued the cause for
respondent Angelo A. Piccirillo, t/a Angelo's
(Mr. Macy Davidson, of counsel).

Mr. Samuel B. Helfand, Deputy Attorney General,
argued the cause for respondent Division of
Alcoholic Beverage Control (Mr. Arthur J. Sills,
Attorney General of New Jersey, attorney).

PER CURIAM.

(Appeal from Director's decision in Piccirillo v.
Lyndhurst, Bulletin 1578, Item 3. Director affirmed. Opinion
not approved for publication by the Court committee on opinions.)

2. APPELLATE DECISIONS - L. KUBISKY, INC. v. PATERSON.

L. KUBISKY, INC.,
t/a CLUB POLYNESIAN,

Appellant,

v.

BOARD OF ALCOHOLIC BEVERAGE
CONTROL FOR THE CITY OF
PATERSON,

Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

William J. Rosenberg, Esq., Attorney for Appellant.
Adolph A. Romei, Esq., by Marino Tedeschi, Esq., Attorney for
Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This appeal challenges the action of respondent Board of Alcoholic Beverage Control for the City of Paterson (hereinafter Board) whereby on November 22, 1965 it denied the application for a place-to-place transfer of appellant's plenary retail consumption license from premises 45 West Broadway to 49-53 West Broadway, Paterson, about thirty feet away, on the same street.

The petition of appeal alleges that, although there were no objections to the said transfer (at the hearing below) and that it had complied with all the rules and regulations concerning the said transfer, the Board erroneously denied its application therefor. It contends that such action was discriminatory and unjust, not based on any evidence showing that the "proposed transfer would be improper" and was "illegal, oppressive and contrary to both law and decency."

Respondent filed an answer, and an amended answer, containing a general denial and four separate defenses. These defenses are (1) the Board acted fairly and reasonably, within its sound discretion; (2) the action was based upon the fact that there were already "sufficient taverns in the area to service the public;" (3) there was no prior approval of the proposed premises from the Board of Health and Fire Department which the Board states "is a condition precedent to the approval of a transfer" and was therefore "justified in refusing to grant the transfer;" (4) the proposed premises had formerly been occupied as a tavern and "had been a very troublesome location."

It should be noted that the Board in its resolution denying the said transfer failed to set forth specific reasons for its action as required by Rule 8 of State Regulation No. 2, as amended, which enjoins in its pertinent part that:

"...In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

Additionally it should be noted that no member of the Board was called at this appeal de novo hearing to testify with respect to such reasons, nor indeed were any witnesses produced on behalf of the Board. The rule as quoted above was promulgated because this Division has consistently felt that fairness to the applicant requires that such reasons for its decision be made. Where such reasons are stated at the time the decision is made, there can be no charge of after-thought or disaffection against the issuing authority. Rosenvinge v. Metuchen, Bulletin 249, Item 6; cf. Plainfield-Union Water Co. v. Board of Public Utility Comm., 57 N.J. Super. 158, 174. While I do not recommend in this case that a remand be made to the Board for such appropriate statement, is nevertheless suggested that this rule be scrupulously followed in similar matters in the future.

The apparent reasons for denial were developed in some length at this appeal de novo, as reflected in the answer. Cf. Club Warren Inc. v. Newark, Bulletin 1585, Item 4. The record at the hearing herein discloses the following: The applicant presently operates a tavern at 45 West Broadway in rented premises. Its present premises are in disrepair; "the building has just deteriorated. The ceilings is falling down; the commodes are craked; the sewerage is lousy; the plumbing is lousy. There's even a gas leak in the building that hasn't been fixed." The appellant desires to move to a building two doors away, on the same street, in corner premises which are described by its corporate secretary Louis Kubisky as "clean." He states that the ceiling and walls are good, the plumbing and electricity are good, and all the facilities are good. The proposed premises have just been vacated by a tavern licensee which had received approval by the Board for a transfer of its license to other premises in another part of the municipality. The deponent stated that appellant intends to cater to the same patronage which it presently serves, and that its primary reason for moving was to operate in the more desirable premises.

This witness further asserted that the proposed premises was not a trouble spot as contended by the Board, and he can remember only one occasion on which they had any kind of trouble at their place during their twelve years of operation.

It was further developed that at the hearing before the Board no objectors appeared nor were any objections made to the said application for transfer.

William W. Harris, secretary of the Board, testified that a hearing on this application was held on two dates -- October 27, 1965 and November 10, 1965 -- and the minutes of those meetings were introduced into evidence. Two of the commissioners expressed the view that the proposed premises had been a trouble spot and that, if the appellant's license were transferred to those premises, "you would have the same kind of trouble that licensee had." Apparently that was the reason upon which the Board grounded its refusal to transfer.

Harris also testified that he had been in communication with both the Board of Health and the Fire Department regarding the alleged violations, and stated that it was the usual practice to approve such transfers conditionally upon the correction of such violations.

Testimony was also adduced from representatives of both the Fire Department and the Board of Health which indicated that

the violations were substantially corrected and that, at this time, the building has received conditional approval by these departments.

As stated hereinabove, no witnesses were produced at this hearing on behalf of the Board.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary and unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Bomwell v. Newark, Bulletin 1639, Item 1. The instant case is comparable to and governed by the case of Bivona v. Hock et al., 5 N.J. Super. 118. As the court pointed out in that case:

"... the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based." Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940).

The court further pointed out that:

"... the Legislature has not sought to delegate unlimited 'discretion' to these agencies, but rather has spelled out a system within the principles of which the agencies shall act. Accordingly, the courts must measure the propriety of the administrative action by the authority granted, and may not merely surrender the subject matter to the agencies on the premise that theirs is a discretion exercisable on the basis of any and all factors which pertain to the political issue of prohibition."

In Bivona the court reversed the decision of the Director affirming denial by the local issuing authority of an application for a place-to-place transfer diagonally across the street from the original premises. In the case sub judice the premises sought by transfer are located two doors away, within approximately thirty feet, on the same street, and are premises which have for many years been operated as a tavern. Since that operation has now been moved to another part of the City, the present action would result in only one consumption license instead of two being conducted in that immediate area. Cf. Piccirillo v. Lyndhurst, Bulletin 1578, Item 3; Abramson v. Lakewood, Bulletin 1516, Item 1.

The apprehension of the Board that continuance of a liquor operation at the proposed premises would be troublesome is factually unfounded in the record. It is assumed that appellant's premises will be conducted in a law-abiding manner. If, however, the appellant operates its licensed premises in an unlawful manner, the Board will thereupon have an adequate remedy through disciplinary proceedings to either suspend or revoke its license. The appellant has justified its desire to move to the new premises on the ground that the said premises is in better physical condition and more suitable for such operation in the public interest. Obviously it will have to fully comply with the rules and regulations of both the fire and health departments. However, this cannot be a reason for denying the application for transfer under these circumstances.

The transfer of a license in the same area, and within a few feet of the present location, does not aggravate the existing concentration of licenses for, as pointed out above, the fact is that there will be one less license in that location. As the then Commissioner pointed out in Costa v. Verona, Bulletin 501, Item 2:

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

Under the facts and circumstances appearing herein, it is my opinion that the respondent's denial of the appellant's application for a place-to-place transfer was unreasonable, arbitrary and an abuse of its discretion. I therefore recommend that its action be reversed, and that the application for transfer be granted, conditioned upon proof of satisfactory compliance with the requirements of the fire and health departments.

Conclusions and Order

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

After carefully considering the transcript, including the oral argument of counsel contained therein, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. I find that the denial of the transfer was unreasonable. The action of respondent will, therefore, be reversed. Piccirillo v. Lyndhurst, supra; affirmed Moderelli and Lyndhurst v. Piccirillo and Division of Alcoholic Beverage Control (App. Div. 1966), not officially reported, recorded in Bulletin 1662, Item 1..

Accordingly, it is, on this 14th day of February, 1966,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to transfer appellant's plenary retail consumption license in accordance with the transfer application heretofore filed by appellant.

Joseph P. Lordi,
Director

3. APPELLATE DECISIONS - KARAM and FRANK O'HARA, INC. v. WEST ORANGE and RALLO'S BAR, INC.

APPELLATE DECISIONS - PLEASANTDALE PRESBYTERIAN CHURCH v. WEST ORANGE and RALLO'S BAR, INC.

Emile J. Karam, t/a The Crest,)
and Frank O'Hara, Inc., t/a)
O'Hara's Cafe,)

Appellants,)
v.)

Town Council of the Town of West)
Orange, and Rallo's Bar, Inc.,)

Respondents.)

On Appeal

CONCLUSIONS
and
ORDER

Pleasantdale Presbyterian Church,)

Appellant,)
v.)

Town Council of the Town of West)
Orange, and Rallo's Bar, Inc.,)

Respondents.)

Grosso, Beck & Mangino, Esqs., by Vincent M. Mangino, Esq.,
Attorneys for Appellants
Kenneth R. Stein, Esq., Attorney for Respondent Town Council
Martin Gelber, Esq., Attorney for Respondent Rallo's Bar, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

These appeals are from the action of respondent Council whereby on June 15, 1965, by a vote of three-to-two, it granted the application (subject to certain conditions) of Rallo's Bar, Inc., for transfer of a plenary retail consumption license from Green's Hotel, Inc. and from premises 103 Pleasant Valley Way, to premises 3 Beasley Street, West Orange.

The granting resolution, among other things, provided that the transfer of the license in question should not be effective until respondent Rallo's Bar, Inc. complies with the following conditions:

- "1. Construction of a new entrance on the Beasley Street side of the premises in accordance with the plans submitted to the Board, said entrance to be appropriate in design for use as a main entrance.

- "2. Sealing of all entrance doors to the premises located on Eagle Rock Avenue except for those doors to be used as fire exits as may be required by the Fire Department.
- "3. Construction of a 3- $\frac{1}{2}$ foot high masonry wall of decorative design with no openings therein from point abutting building on Eagle Rock Avenue to the point on Beasley Street shown on plan submitted by applicant, said point being more than 500 feet from nearest holder of a Plenary Retail Consumption License.
- "4. Repair and rehabilitation of upper portion of structure so as to improve attractiveness of same and so as to cause same to comply with applicable municipal ordinances, including Property Maintenance Code."

The appellants herein in substance allege that there is no need for a license at the proposed location; that the proposed premises, being within 500 feet of another plenary retail consumption licensed premises, are in violation of a local footage ordinance and, furthermore, are within 200 feet of a church, in violation of R.S. 33:1-76. For the aforesaid reasons the appellants contend that the Council's action was erroneous because it was arbitrary, capricious, unreasonable and constituted an abuse of discretion.

The respondents, in answers filed, deny the aforesaid allegations contained in the petitions of appeal.

The pertinent part of the footage ordinance (Sec. 2, Section 306 of Chapter 3, Article 1 of the Revised Ordinances of the Town of West Orange), applicable herein, provides:

"No plenary retail consumption license ... shall be granted or transfer made to other premises within a distance of 500 feet from any other premises then covered by a plenary retail consumption license

"Where the 500 feet distance is referred to in this section the same shall be measured in the same manner as required by statute for the measuring of 200 feet relative to schools or churches."

R.S. 33:1-76 provides that the "two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

It has been ruled by the court that the accepted and proper method of measurement in a matter of this kind is not between the building entrances but between points on the public way intersecting any walk which a person would use in entering the properties in question. Presbyterian Church of Livingston v. Division of Alcoholic Beverage Control, et al., 33 N.J. Super. 271.

Four surveys have been marked as exhibits herein which depict various methods used in measuring the distances involved.

After careful examination of these surveys I am satisfied that Exhibit RL-1 in evidence, prepared by John J. Vreeland, L.S., of the Engineering Department of West Orange, conforms to the proper method of measurement between the entrance of the pro-

posed premises and the entrance of the nearest licensed premises. As indicated by said exhibit, a pedestrian would start at a point on the public way in front of the nearest entrance (designated above the door as "Bar Entrance" in Exhibit R-13) of the premises of appellant Frank O'Hara, Inc., on Pleasant Valley Way, and walk in a general southerly direction on Pleasant Valley Way, cross at the intersection of Eagle Rock Avenue to the southwest corner thereof (a distance of 146.9 feet); thence continue walking in a general easterly direction on Eagle Rock Avenue to the southwest corner of Eagle Rock Avenue and Beasley Street (a distance of 284.2 feet), and proceed from and in a general southerly direction on the west side of Beasley Street to a point on the street walk opposite to the proposed entrance of the premises of respondent Rallo's Bar, Inc. (a distance of 62.6 feet). Thus the distance walked would be 493.7 feet.

It is apparent that the distance between the nearest entrance of premises of appellant Frank O'Hara, Inc., located on Pleasant Valley Way, and the nearest entrance of premises of respondent Rallo's Bar, Inc. has fallen short of the requisite 500 feet distance by 6.3 feet. While the shortage is perhaps small, nevertheless, since the local ordinance definitely sets the distance at 500 feet, it is just as fatal as a greater shortage.

In view of the fact that the grant of the transfer is violative of Sec. 2, Section 306 of Chapter 3, Article 1 of the Revised Ordinances of the Town of West Orange, it is unnecessary to discuss any other reason for reversal advanced by appellants herein.

It is recommended that the action of respondent Council, in granting the transfer of the plenary retail consumption license from Green's Hotel, Inc. to respondent Rallo's Bar, Inc., and from premises 103 Pleasant Valley Way to premises 3 Beasley Street, West Orange, be reversed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions were filed to the Hearer's report by the attorney for respondent Town Council and answering argument thereto was filed by the attorneys for appellants. Thereafter, oral argument was presented before me.

In the Hearer's report, it was recommended that the method of measurement must be between the entrance of Rallo's proposed premises and the nearest entrance of the licensed premises (designated in Exhibit R-13 as the "Bar Entrance") of appellant Frank O'Hara, Inc. According to the surveys submitted, this represents a distance of 493.7 feet, which is lineally insufficient to meet the distance requirements of the ordinance.

In the exceptions to the Hearer's report, counsel asserts that if respondent Rallo's Bar, Inc. complies with the conditions set forth in the resolution granting the transfer, "The physical arrangement of the premises will allow for the construction of an entrance which will meet the requirements of the applicable ordinance and which will meet the requirements of the conditions set by the West Orange Board of Alcoholic Beverage Control (sic)."

My examination of the surveys indicates that the "condition" which were made part of the approval were based on the erroneous

criterion, namely, the measurement from the main entrance of O'Hara's Cafe, rather than from its nearest entrance, as above indicated. Hence, compliance with these "conditions", including condition #3, would not, on the evidence presented, cure the infirmity. While the shortage is only 6.3 feet, the measurement nevertheless falls short of the distance requirement and would be violative of the applicable ordinance. Thus, I am constrained to agree with the Hearer that granting of the application must be reversed.

At the oral argument, counsel for Rallo's requested permission to file amended plans and specifications which would meet the distance requirements of the applicable ordinance. I am persuaded, however, that such new or amended plans should properly be submitted to the local issuing authority as part of a new application, which would require compliance with all procedural requirements prior to consideration thereof.

Having carefully considered the entire record and the oral argument of these appeals, I concur with the recommendation and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of January, 1966,

ORDERED that the action of respondent Town Council of the Town of West Orange in granting the application of respondent Rallo's Bar, Inc. for person-to-person and place-to-place transfer be and the same is hereby reversed, without prejudice to the filing of a new application based upon such facts as will meet the distance requirements of the applicable ordinance.

JOSEPH P. LORDI,
DIRECTOR

4. ELECTION DAY - ELECTION FOR DELEGATES TO STATE CONSTITUTIONAL CONVENTION - STATE REGULATION NO. 20, RULE 2 NOT APPLICABLE.

February 21, 1966

NOTICE TO RETAIL LICENSEES:

Rule 2 of State Regulation No. 20 prohibits the retail sale, etc. of any alcoholic beverage while the polls are open for voting at specified elections, including "any special election pursuant to the Election Law (Title 19 of the Revised Statutes)."

On March 1, 1966 an election will be held for delegates to a State Constitutional Convention to revise and amend the provisions of the Constitution relating to the representation of the people in the State Legislature. The election is to be held pursuant to Pamphlet Law 1965, c. 43, as supplemented and amended. Although this is designated by the cited law as a special election, it will not be held pursuant to the Election Law (Title 19 of the Revised Statutes). Hence, Rule 2 of State Regulation No. 20 will not apply -- will not prohibit the retail sale, etc. of alcoholic beverages on licensed premises during the polling hours of the election.

JOSEPH P. LORDI,
DIRECTOR

5. APPELLATE DECISIONS - BERARDESCO & DELLO IACONO v. ASBURY PARK.

Ester Berardesco & Violanda)
 Dello Iacono, t/a Prospect Bar,)

Appellants,)

v.)

City Council of the City of)
 Asbury Park,)

Respondent.)

On Appeal

CONCLUSIONS
 and
 ORDER

 Anschelewitz, Barr & Ansell, Esqs., by Max M. Barr, Esq.,
 Attorneys for Appellants
 James M. Coleman, Jr., Esq., by Norman H. Mesnikoff, Esq.,
 Attorney for Respondent
 Stout & O'Hagan, Esqs., by D. Joseph Devito, Esq.,
 Attorneys for Objectors

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This is an appeal as from denial by respondent of an application filed by appellants for a place-to-place transfer of their plenary retail consumption license from 313 Prospect Avenue to premises 300 Prospect Avenue, Asbury Park.

Respondent City Council is composed of five members. At the conclusion of the hearing on September 28, 1965, two members voted to approve appellants' application, two voted to deny the requested transfer, and one member abstained from voting. Thus the action of respondent in essence constituted a denial of appellants' application for transfer. Pasqua and Vecchione v. Weehawken, Bulletin 1363, Item 1.

The members of respondent who had voted on the application for transfer did not appear at the hearing herein. No reasons were voiced by any member of respondent who voted on the transfer in question, but the answer filed by respondent stated:

"The reasons for denial by the members voting 'no' were that since the area was being upgraded by the Urban Renewal Project it would be inconsistent to transfer the license to premises across the street."

Appellants in their petition of appeal contended that there was no legal justification for the respondent's refusal to grant the transfer, and prayed that transfer of the license be approved.

Respondent's answer denies the aforesaid allegations contained in appellants' petition of appeal.

John C. Lumley, Executive Director of the Housing Authority of the City of Asbury Park, testified that the Housing Authority has authorized condemnation proceedings to obtain title to the property wherein appellants' premises is located at 313 Prospect Avenue and, if the present negotiations between appellants and the Housing Authority should fail, legal action will follow. Mr. Lumley further testified that the land whereon appel-

lants' present premises exist will be "part of the urban renewal program in part. There will be a park in that vicinity."

It appears from the evidence herein that appellants have operated the licensed premises since June 6, 1961, and have never been charged with a liquor violation. Some time ago appellants applied for a transfer to premises at 406 Prospect Avenue but that application was denied. The proposed premises are located at the corner of Prospect Avenue and Comstock Street, which is across the street from appellants' present premises, estimated by appellant Berardesco to be "about fifty or sixty feet." According to Robert B. Myers (the architect retained by appellants), he prepared plans to renovate the proposed premises which will cost "in the neighborhood of fifteen thousand dollars."

Seven persons, some living in the immediate area of appellants' licensed premises, and a number of whom are members of a fraternal organization which owns the property at 300 Prospect Avenue, testified on behalf of appellants. All stated that over the years they had many occasions to pass appellants' establishment and never observed any misconduct, either inside or outside thereof.

Three objectors testified in opposition to the transfer of the license in question.

Reverend Isaih G. Bell, pastor of St. Augustine's Episcopal Church, testified that the proposed site of the new church was a little less than four hundred-fifty feet from the appellants' proposed premises; that he is familiar with the neighborhood as, during the past two years, he passes appellants' place of business twice daily when taking his daughter to school; that on several occasions he heard profanity used by persons outside the appellants' premises; that he objects to a liquor license there at the proposed site because he is interested in improving the area.

Pearl M. Harris, residing "about six hundred feet" from appellants' premises, testified that she has seen intoxicated persons in front of the place, and presented a photograph, taken on October 5, 1963 at her direction by a professional photographer, which shows a man being ejected from appellants' premises. Mrs. Harris also related a few other incidents of misconduct outside the premises, and said such conditions have existed "about three or four years." When asked on cross examination whether she ever objected to the renewal of appellants' license, she answered in the negative.

Hazel Gelzer, who lives on Bangs Avenue about seventy-five feet from appellants' business, testified that at times she heard profane language being used by some patrons who came from the tavern. Furthermore, some of the persons she has seen seated in the cars drinking came from appellants' place of business.

Under the circumstances appearing herein, wherein the denial of the transfer resulted from a tie vote of the members of the Council, it would serve no useful purpose to remand the matter to the respondent Council for further action on its part. Thus it will be necessary to examine the record presented herein and consider the evidence adduced so that a recommendation may be made in conformity therewith. Three objectors appeared at the hearing herein and registered objections based on conditions they allege existed and now exist at the present time. If conditions in the area were as bad as the objectors claimed, it would seem apparent that closer supervision by the local police in this section of the City is warranted. However, in the absence of convincing evidence that appellants are responsible

for or substantially contribute to the unsatisfactory conditions, they should not be penalized. The photograph presented by Mrs. Harris had been taken several years ago and thus is too remote to be given serious consideration at this time. Moreover, the reason for the ejection of the person from appellants' liquor establishment is not clear.

It appears from the evidence herein that, since appellants have operated the liquor establishment, their conduct of the business has not been criticized and their only reason for wanting to transfer being that the property whereon the premises presently exists will be acquired by the local Housing Authority and thus in due course appellants must vacate. Appellants volunteered, if desired by respondent, to close the entrance at proposed premises from Prospect Avenue and use only the entrance around the corner on Comstock Street.

After careful examination of the facts in the case, there appears no valid reason to deprive the appellants of the requested transfer. The latter would neither aggravate the number of liquor licenses in the area nor would it be a detriment to the neighborhood. The general objections by residents of the area, that patrons might cause disturbances, appear conjectural. If the licensed premises is properly conducted, it should not be more objectionable than any other type of business. If the licensees fail to meet their responsibilities, the license would be subject to disciplinary proceedings which may result in suspension or revocation. The situation in the instant matter is comparable to that in Conn. v. Kearny, Bulletin 173, Item 1; Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Grower v. Hackensack, Bulletin 789, Item 1, and Costa v. Verona, Bulletin 501, Item 2. As was again restated in Lucian's Depot Bar, Inc. v. Red Bank, Bulletin 1445, Item 2:

"Thus, were appellant located in a different section of the municipality and seeking to transfer into the vicinity in question, or if, being within the area (as is the case), he were seeking to transfer to a site that would aggravate to any appreciable degree the existing concentration of licenses in that area, respondent would be justified in denying the transfer and, on appeal, I would sustain such denial. Neither of such situations, however, is present in this case. On the contrary, the facts herein indicate that the applicable ruling is that where no attack is made on the personal fitness of the applicant or the suitability of the premises, a refusal to transfer, whether from person to person or from place to place, cannot, in the absence of good independent cause, be sustained."

Under the circumstances, and for the reasons mentioned herein, it is recommended that an order be entered directing respondent to grant the place-to-place transfer requested in the application filed by appellants herein.

Conclusions and Order

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

Having carefully considered the record herein, including the transcript of the testimony, the exhibits, the memoranda filed by the attorneys for appellants and by the attorneys for the objectors, 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 18th day of January, 1966,

ORDERED that the action of respondent, in failing to grant appellants' application to transfer their license, is hereby reversed and respondent is directed to transfer the license in accordance with the application filed in this matter subject, of course, to completion of alterations as indicated in the plans and specifications submitted by the appellants herein.

JOSEPH P. LORDI,
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION AFTER DISMISSAL OF APPEAL TO APPELLATE DIVISION.

In the Matter of Disciplinary
Proceedings against

Central Liquor Co., Inc.
643-45 Market Street
Camden, New Jersey

AMENDED ORDER

Holder of Plenary Retail Distribution
License D-19, issued by the Municipal
Board of Alcoholic Beverage Control
of the City of Camden

Richman, Berry & Ferren, Esqs., by Grover C. Richman, Jr., Esq.,
Attorneys for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

On September 15, 1965, I entered Conclusions and Order herein suspending the license for thirty-five days for sale of alcoholic beverages to a minor. Re Central Liquor Co., Inc., Bulletin 1641, Item 3.

Prior to effectuation of the order of suspension, upon appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On January 19, 1966, the appeal was dismissed by consent. The suspension may now be reimposed.

Accordingly, it is, on this 20th day of January, 1966,

ORDERED that the thirty-five day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Distribution License D-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Central Liquor Co., Inc. for premises 643-45 Market Street, Camden, commencing at 9:00 a.m. Monday, January 24, 1966, and terminating at 9:00 a.m. Monday, February 28, 1966.

JOSEPH P. LORDI,
DIRECTOR

STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp.#270

In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-2,)
 Issued by the Common Council of)
 the City of Ventnor City to)

On Petition

O R D E R

Norman Kornblau and Pearl Kornblau)
 t/a Norm's Liquor Store)
 5117 Ventnor Avenue)
 Ventnor City, N. J.)

Edwin H. Helfant, Esq., by Sherman L. Kendis, Esq., Attorney for
 Petitioners.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of that Division that on December 29, 1965, Norman Kornblau, one of the licensees-petitioners, was fined \$50 in the Ventnor City Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on November 6, 1965, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' 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 disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensees because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after such disciplinary proceedings have been concluded. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Forgiione, Bulletin 1638, Item 6.

Accordingly, it is, on this 18th day of January, 1966,

ORDERED that the aforesaid automatic suspension of license D-2 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI,
 DIRECTOR

8. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) - LICENSE
SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

Triangle Inn, Inc.)
t/a Triangle Inn)
Livingston Ave. & U. S. Highway #1)
North Brunswick, N. J.)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption)
License C-9, issued by the Township)
Committee of the Township of North)
Brunswick)

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John J. Bergin, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 18 and September 24-25, 1965, it conducted the licensed place of business as a nuisance, viz., permitting apparent male and female homosexuals on the licensed premises, in violation of Rule 5 of State Regulation No. 20.

Reports of investigation disclose that on the dates in question, the licensed premises was patronized by small numbers of apparent male and female homosexuals.

Although the licensee has no previous record of suspension of license, the license of Penn Tavern, Inc. (of which Philip Davidofsky and Rose Davidofsky, respectively vice-president and secretary-treasurer of Triangle Inn, Inc., were then stockholders and officers) for premises 12 French Street, New Brunswick, was suspended by the municipal issuing authority for five days effective June 14, 1953 and for seven days effective March 9, 1960, both for sale to minors. In addition, the license of Philip Davidofsky, then held for premises on Franklin Boulevard, Franklin Township, Somerset County, was suspended by the municipal issuing authority for five days effective July 19, 1953, for permitting a brawl and disturbance on the licensed premises.

The prior record of suspensions of license for dissimilar violations occurring more than five years ago disregarded, on the basis of the facts appearing (simple congregation of a relatively small number of apparent homosexuals), the license will be suspended for forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days. Re Cambar, Inc., Bulletin 1620, Item 7.

Accordingly, it is, on this 2nd day of February, 1966,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of North Brunswick to Triangle Inn, Inc., t/a Triangle Inn, for premises Livingston Avenue and U. S. Highway #1, North Brunswick, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Monday, February 7, 1966, and terminating at 2:00 a.m. Monday, March 14, 1966.

JOSEPH P. LORDI,
DIRECTOR

9. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto.Susp. #271

In the Matter of a Petition to Lift)
 the Automatic Suspension of Plenary)
 Retail Distribution License D-16,)
 Issued by the Municipal Board of)
 Alcoholic Beverage Control of the)
 City of Clifton to)

On Petition

O R D E R

Walter Muraski & Joseph Ewossa)
 t/a Vernon Liquor Shop)
 293 Vernon Avenue)
 Clifton, N. J.)

Celentano, Razen and Salerno, Esqs., by Joseph J. Salerno, Esq.,
 Attorneys for Petitioners

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on December 21, 1965, Walter Muraski, one of the licensees-petitioners, was fined \$50 and \$5 costs in the Clifton Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on December 7, 1965, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioners' 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 disciplinary proceedings are presently pending before the municipal issuing authority against the licensees because of said sale of alcoholic beverages to the minor. A supplemental petition to lift the automatic suspension may be filed with me by petitioners after the disciplinary proceedings have been decided. In fairness to petitioners, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Stein's Cafe, Inc., Bulletin 1614, Item 7.

Accordingly, it is, on this 18th day of January, 1966,

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

JOSEPH P. LORDI,
 DIRECTOR

10. STATE LICENSES - NEW APPLICATIONS FILED.

Garden State Liquor Wholesalers, Inc.,
 1080 Garden State Rd., Union, N. J.

Application filed March 3, 1966 for place-to-place transfer of Plenary Wholesale License W-78 to include additional space.

Rocco N. Inneo, t/a Brookdale Beverage (Distributor)
 Highway #9, Madison Township, N. J.

Application filed March 4, 1966 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-82 from George L. Schrade, Inc., 178-180 South 12th St., Newark, N. J.

New Jersey State Library

Joseph P. Lordi
 Director