

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

BULLETIN 1761

November 16, 1967

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - BAY MOTEL CORP. v. UPPER.
2. STATE LICENSE - NEW APPLICATION FILED.

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1. APPELLATE DECISIONS - BAY MOTEL CORP. v. UPPER.

BAY MOTEL CORP.,)
Appellant,) ON APPEAL
v.) CONCLUSIONS
TOWNSHIP COMMITTEE OF THE) AND ORDER
TOWNSHIP OF UPPER,)
Respondent.

Evoy and Feinberg, Esqs., by Alexander Feinberg, Esq.,
Attorneys for Appellant.
Ronald L. Taht, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant challenges the action of respondent Township Committee of the Township of Upper (hereinafter Committee) whereby, on December 19, 1966, it denied appellant's application for person-to-person and place-to-place transfer of a plenary retail consumption license from James H. Twist, t/a Strathmere Inn, to appellant for premises on which it proposes to build a motel in accordance with plans and specifications duly filed with the Committee.

The assigned reasons upon which the Committee bottomed its determination were: (a) there are already sufficient establishments selling alcoholic beverages in the Marmora section; (b) the transfer will increase problems which the Township is not prepared to meet.

The petition of appeal alleges that the action of the Committee was arbitrary and unreasonable for reasons which may be summarized as follows: (a) the transfer would be in the best interests of the community because it would remove the license from a residential area where the present license "exists as a non-conforming use" to an undeveloped area of marshland located on the main highway, in an area zoned for commercial use; (b) said denial was based on "purely moral and religious grounds" and was not grounded on valid and substantial reasons; (c) the Committee's action was improperly motivated due to conflicts of interest on the part of several of the Committee members.

The answer admits the jurisdictional facts and denies the substantive allegations, except that it admits that Committeeman Edling is the owner of a fourteen unit motel located in the section of the community to which the transfer is sought.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony herein and cross-examine witnesses.

Before considering the facts and contentions raised in the pleadings, it would be appropriate, initially, to restate the basic principles which guide us in this action. 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 unreasonable, arbitrary or capricious, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Silver Sands Motel v. Point Pleasant Beach, Bulletin 1624, Item 1.

As the court pointed out in Bivona v. Hock, 5 N.J. Super. 118, 120:

"It seems to us that 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 explained 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."

The municipality has the original power to pass on an application for an alcoholic beverage license or the transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him. Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561, 563; Fanwood v. Rocco, 33 N.J. 404.

Thus the Director must determine whether or not respondent properly and reasonably exercised its discretion in denying appellant's application for a license. Discretion must be based on right judgment, governed by reason, fair and suitable in the circumstances. 75 C.J.S. 634, and cases therein cited. What is reasonable must, of course, be determined according to the context and circumstances of each particular case.

The term "abuse of discretion" is somewhat oblique for, as cautioned in Fanwood v. Rocco, 59 N.J. Super. 306, 315:

"...in a brief it usually obscures the issues and never illuminates them, while in an opinion it usually beclouds the real basis for the decision and misleads the reader."

Justice Case expresses it in, perhaps, simpler terms in Hager v. Weber, 7 N.J. 201, 214:

"...nothing else than that the court's ruling went far enough from the mark to become reversible error."

This report will address itself to the two substantive allegations which, in my opinion, are dispositive of this action: (1) did the denial of the said transfer serve the best interests of the community; (2) was the determination of the Committee motivated by a conflict of interests and extraneous considerations.

I

Appellant is the owner of approximately sixty-seven acres of vacant land located on Roosevelt Boulevard in the Marmora-Beesleys Point section of this community. This section is zoned for commercial use and there are no schools, churches or residences in the immediate area; the closest residence is more than one mile from the site.

Approximately fifteen acres of this site adjacent to the inland waterway have been designated as the location for the proposed motel which would include a bar, restaurant, marina and banquet facilities. The motel location has approximately seven hundred feet of frontage on Roosevelt Boulevard, and there is an access road from the bridge leading to Ocean City. The Garden State Parkway, located approximately nine-tenths of a mile from the site, acts as a separator from the residential zone of the Marmora section, which is located on the other side of the parkway.

The license sought to be transferred is located in a residential zone known as Strathmere; it is operated in a converted dwelling as a non-conforming use. Appellant proposes to build a modern motel containing one hundred sleeping units and a restaurant with a seating capacity of five hundred. The proposed site is located on an inland waterway which contains a marina across the street and another marina across the waterway.

The entire proposed motel complex has been leased (subject to the outcome of these proceedings) to the Dutch Inns of America, a well known, national motel chain syndicate which has made a complete and thorough study of the proposed site. According to its studies, based upon the brochure admitted into evidence, it is convinced that this motel can be operated successfully only if it had the privileges of a liquor license. In describing the proposed facility and its relation to the community, the brochure states as follows:

"It is the philosophy of Dutch Inns of America, Inc. to provide only the finest, first class facilities. There is a vast market in the middle income traveling public which demands a motor inn complex which is greatly expanded over the standards of motels in the past years. Through our studies, we feel that people want to stay at a full facility motor inn. When they arrive, they like to pull up as close to the door of their room as possible and have the privacy of entry and exit to their own room. A good restaurant on the premises is now a 'must' for the traveler wants everything at one location, a good meal at reasonable prices, a place to relax and enjoy themselves and have a drink in the cocktail lounge, take a swim in the pool with their family, allow the children to play in a supervised playground area on the

premises, take a relaxing sauna bath, or just stay in their soundproof room and watch color television."

And further in the same brochure, it was stated:

"The management of Dutch Inns of America, Inc. has conducted a feasibility study in the Upper Township area to determine the need for a first class, full facility motor inn of Dutch Inn standards. It is unusual to find such a site which naturally adapts itself to the facilities we are planning as that in Upper Township located near the bridge spanning the Inland Waterway on New Jersey Route 585. This garden-type setting overlooking a planned marina and planned development complex, including shopping center, service station, and many other services, is badly needed, for there is no full facility motor inn development within several miles which will offer complete services such as the proposed motor inn.

"The benefits to be derived from this project are many fold. The fact that the Dutch Inn will have a dining room, serving the finest cuisine, with a capacity of 500 seats will be an important combination to encourage people to come here as a central gathering point. Since Dutch Inns is dedicated to a very high caliber of operation and its facilities will be strictly first class, it is fully expected that it will cater to only the finest type of customers.

"The proposed operation would not be feasible unless all of the facilities planned are incorporated. The reason for this lies in the seasonal business available to the area. Facilities must be of major size to accommodate the deluge of visitors in the summertime. However, they must also be complete enough to encourage not only local residents but people from nearby metropolitan areas to journey to this area in the off season."

Allan Bergh (the municipal clerk) testified that this municipality, which consists of sixty-five square miles, presently has eight liquor licenses, of which seven are plenary retail consumption licenses, and one a plenary retail distribution license. There are three licenses presently in the Marmora section, one of which (the Tuckahoe Inn) is located approximately three to four miles from the proposed site.

Sam Beyel (who holds the plenary retail distribution license for a package store about five hundred feet from the proposed site) testified that he has no objection to the proposed transfer; that, indeed, such transfer would be in the best interests of the community. "The way I look at it, we're a prosperous community. Let's put it that way. We have no industry other than the Atlantic City Electric Plant, which has a--which is an eighty-million-dollar plant there." And further: "We need a new school and different things, and the way it was explained to me at that meeting there would be about \$5,000 in ratables coming in with no children to go to school, anything like that, no roads to maintain, different things like that, no fire protection because they were putting in sprinkler systems and everything what they had in these plans. So I thought it would be good for the community." He added, "I think it's nice to look at something instead of meadow lands. I've been living on the meadow for the

last fourteen years." He concluded that since the only place where alcoholic beverages with meals could be obtained is the Tuckahoe Inn, located about three or four miles from the proposed site, the transfer herein would be advantageous to the community.

James Twist (the holder of a plenary retail consumption license, who operates a restaurant and tavern--the proposed transferor) testified that his property had suffered considerable damage because of erosion and storm damage, and he desired to have this transfer approved. He noted that on a previous application for a new license, the county liquor dealers association, of which he is a member, objected, but that the said association was now in favor of the proposed transfer. Finally, he noted that two of the licensees in the Marmora section had expressed approval of the said transfer; and he personally felt that such transfer would be in the best interests of the township.

Appellant produced Fred Blank, Jr., the real estate salesman who negotiated the lease of this property. He similarly endorsed the proposed transfer and set forth his reasons as follows:

"I think it would enhance it, because the Dutch Inn is a nicely designed edifice. We are dealing with a piece of land now that's just salt meadow; has been since God created it. It would be, in my opinion, a valuable ratable for the Township, since it will not be in any heavy expenses on their school system and that the Township presently enjoys a tax bonanza from a newly constructed electric company plant, which they get for use tax, which some day may not be all theirs."

Blank further testified that some of the Committeemen were apprehensive that patrons consuming alcoholic beverages might be observed by persons driving on the highway. It was to obviate this apprehension that a basic plan of the motel was changed so that "it [would] place the swimming pool in such a position that if drinks were served at tables around the swimming pool it could not be observed from the highway." Following those conversations with members of the Committee, the architect was instructed by appellant to make these basic changes.

In further support of its petition, appellant produced Joseph Hyland, a licensed engineer in this State who also serves as official engineer for the City of Ocean City. He had testified before the Committee in support of this application, with specific attention to water and sewer facilities and the general suitability of the grounds for the structures. In his opinion, this site could be adequately equipped with a sewer disposal system. He also stated that traffic would not be adversely affected or markedly increased by the operation of this facility with a liquor license. He expressed it in these words:

"Well, I feel the tourists and vacationing public are going to be there with or without this restaurant. The heavy daily peak population in Ocean City is a hundred thousand people, and a good percentage of those people are traveling over this road. Whether or not this particular structure is here or not, I don't think it's going to have that big an effect on the traffic count on that road."

He added that there would be ample parking facilities and that he new of no other problems which might adversely affect the community.

John Holland, a community planner with an impressive experience background and qualifications, served as director of the county planning board from 1953 to 1962, and was a consultant to the Upper Township planning board during the development of the present zoning ordinance. He is a taxpayer and property owner in this community and appeared to be thoroughly familiar with the area in question. It was his opinion that this site was particularly suited for the proposed facility because (a) it would be located in a commercial zone; (b) the highway accommodates an even traffic flow so that there would be no adverse effects with respect thereto; (c) the one facility rather than "strip business" (meaning a number of smaller enterprises) would eliminate individual driveways "in and out all along that roadway interfering with the movement of traffic;" (d) there would be no deleterious effect with its operation of a liquor license because serving of alcoholic beverages would be incidental to the principal use of the motel-marina. Thus, he concluded that the use "that's proposed is absolutely a logical use of that piece of property, probably the best type of use that they could permit there." And he did not believe that the Committee could anticipate any problem which would operate to the detriment of the community in the grant of this application.

I then asked whether, in his opinion, there was a prospect of a population explosion in this Township. He replied:

"Upper Township, the area around Marmora especially, I would say, will experience this, too. Strathmere, I doubt it, unless there's a lot done to correct the problems they have with erosion there."

And further:

"this is a growing community. Especially now, I would say--now, these men here probably can know more about what's actually going on there than I do, but since they have gotten this power company this has become a very attractive place for people to build their homes, because the tax rate, as I said, temporarily dropped."

On behalf of the Committee, Committeeman Leonard Migliaccio testified that he voted to deny the application because he felt there were enough licenses in the area to take care of the needs of the community and "I think it would probably cause a traffic problem." The Township was not a resort community but, rather, a small community which did not have much prospect for future growth. At the meeting at which this application was considered, there were about twenty-five or thirty persons present, the majority of whom he felt were opposed to the application. He voted to deny the application for the additional reason that he felt the residents of the area were opposed to such transfer "and I intend to respect the people of that area."

On cross examination, he expressed the feeling that traffic would be increased because of the large number of persons driving in from Ocean City. He conceived that the

community would have a small increase in population during the next five or ten years, but it would not be substantial.

Committeeman Michael Kruk testified that he voted to deny this application because he felt there were enough licenses in this area and "the people of the area objected to it." He explained that at the hearing below, about six or seven persons spoke in opposition. He took into consideration the fact that this community has about 3,000 permanent residents, of which about 1,200 or 1,500 persons reside in the Marmora-Beesleys Point area. He noted that there were three taverns and one liquor store; the two nearest ones were about a half-mile and the Tuckahoe Inn about three miles from the site. It was his feeling that this community was mostly a residential community which attracted few transients.

On cross examination, he admitted that Roosevelt Boulevard was zoned "commercial" for the purpose of inducing commercial enterprises to come into the community, and that the purpose was to attract transients to the business area. He also admitted that he had expressed the opinion to a representative of appellant that he was actually in favor of the transfer and was prepared to vote in favor of the application, but that he was "scared when three or four church people showed up" at the meeting. Finally, he admitted that he felt, and still feels, that the motel itself would be an asset to the community, but he did not approve of the introduction of the liquor license to the proposed site. On this point he was closely questioned by counsel for appellant about a conversation which took place before the meeting. Counsel asked:

"Q ...We were talking about a transfer for a liquor license, is that correct?

A Yes.

Q And you knew that, didn't you?

A Yes."

I then asked him the following:

"The Hearer: Well, do I understand that regardless of your own conviction with respect to your vote on the application that you are guided by what you consider to be the important popular sentiment with respect to the application?

"The Witness: That's right."

He explained that while this motel would be an asset so far as transients were concerned, would increase tax ratables, and would provide employment of local personnel, it would not be of much benefit to the community itself.

Committeeman Rudolph Edling testified that he similarly voted to deny the application because he believed (1) this facility would create a traffic problem and (2) the residents were opposed to it. On cross examination, he admitted that he owns a fourteen-room motel in the Marmora section but that, although he was in favor of the motel being built, he was nevertheless opposed to the transfer of a liquor license.

Two clergymen testified in opposition to this application, both at the hearing before the Committee and at this plenary de novo hearing on appeal. Both clergymen were conscientiously opposed to any liquor facility because the sale of alcoholic beverages is contrary to the doctrine of their faith.

William Trout (a resident of this area) testified in opposition to this application because he felt that the facility would cater primarily to transients and would create a traffic hazard.

Wayne Burkeitt (another resident, who lives about three and one-half miles from the site) also was opposed to this transfer. He was asked:

"Q Are you opposed generally to the sale of alcoholic beverages, period?

A Yes.

Q You do oppose the sale of alcoholic beverages under any circumstances?

A Yes."

I have set forth in considerable detail the testimony reflected in the record herein in order to develop a proper perspective with respect to the Committee's determination. From my evaluation and analysis of the testimony, I am persuaded that the proposed transfer would be in the best interests of the community. Conversely, therefore, I feel that the denial of the application was unreasonable and arbitrary.

The Committee clearly felt that a motel, as contemplated by appellant, if constructed on this site at a cost of well over one million dollars, with suitable restaurant, recreational and marina facilities, would be an asset to the community. The members agreed that the ratables would be increased and that marsh meadowland would be transformed into a developing and productive business area. Since their only objection is to the sale of alcoholic beverages at these premises, I find this reason insubstantial in view of the fact that the application is not made for the grant of a new license but for the transfer of an existing license from a residential to a commercial zone, in a presently undeveloped section of the Township.

It is well known that the motel industry is one of the largest and fastest growing industries in the country. A motel, by definition, is a commercial structure catering to automobile tourists. Its traditional function is to provide not only lodging, but food and drink and other amenities for the comfort of travelers using the said motel. It is entirely unrealistic to operate on the parochial and static principle that the sole consideration in granting or denying an application for a liquor license to a motel is the benefit that will accrue to local residents. Every community has a responsibility not only to its residents but also to transients and persons from other communities patronizing the establishment. It is inconceivable that in zoning this area as a commercial area, the Committee intended to limit its facilities solely for the benefit of its residents.

This community, like all others in the State, will be affected by a general population explosion, with an expected

increase in New Jersey of five or six million persons within the next ten years. It is quite apparent, and the Committee does not disagree, that a motel such as contemplated would be an asset to the Township and an instrument in its growth. The Garden State Parkway has an exit on Roosevelt Boulevard which leads to Ocean City, a neighboring summer resort, and it can be expected that this section will greatly benefit from the influx of transients.

I am particularly influenced by the testimony of Holland (the city planner) who, in a well-reasoned discussion of the traffic situation, expressed the feeling that the proposed motel would not increase the traffic problem. Roosevelt Boulevard is a well constructed and wide highway, with side roads and adequate accesses. Any business located on this boulevard will attract traffic if it is to survive and prosper, but I do not believe any unusual traffic problem will be created by the introduction of a liquor license in the operation of this motel. Additionally, it should be noted that ample parking facilities are provided on this sixty-seven acre tract. Similarly, the motel complex will be operated by an experienced lessee in a high class manner so that police problems will be minimal. Furthermore, we are assured that this area is well policed by the New Jersey State Police.

It is assumed that the licensee will operate its business in a decent and law-abiding manner. Violations of the Alcoholic Beverage Law or municipal ordinances pertaining thereto will, of course, subject its license to possible suspension or revocation. Cf. Monmouth County Retail Liquor Stores Association et als. v. Middletown et al., Bulletin 1572, Item 1.

The other liquor licensees in this area, the nearest of whose premises is located about nine-tenths of a mile from the proposed site, do not object to the grant of this application. The only other licensee which operates a restaurant, but no lodging facilities, is the Tuckahoe Inn, about three or four miles from these premises. It must be emphasized that the Committee is not opposed to the operation of a motel and marina at this site, but is opposed only to the sale of intoxicating beverages. As explained in Silver Sands Motel, supra:

"It should also be observed that the motel already exists; and many of the objections with respect to parking, noise and possible property depreciation are objections raised to the operation of the motel and restaurant. Whether or not the license is ultimately granted will have no effect upon the continued operation of the present premises. I conceive, therefore, that those objections are insubstantial where they relate merely to the introduction of a liquor license to the present operation."

Although in the matter sub judice the motel does not presently exist, it is difficult to understand how a motel would be beneficial but would be a detriment if the transfer of this license were granted. Since it is abundantly clear, on the basis of the realities of the situation and common experience, that this motel could not be operated successfully without a liquor license and, indeed, would not be constructed if a license is not granted, I believe it is unreasonable to deny this application in view of the factual complex herein presented.

The attorney for the Committee cites Fanwood v. Rocco, supra (59 N.J. Super. 306), in support of the doctrine that the

municipal issuing authority is in the best position to judge whether or not a transfer of a license to a particular area would be in the public interest. The factual setting in the case sub judice is clearly distinguishable, however, from Fanwood. In Fanwood, a transfer was sought of a plenary retail distribution license to an area of the Borough in which no tavern or package store "had ever been permitted." Fanwood is a residential community whose boundaries form a rectangle roughly a mile square. It had two taverns and one package store located on the outskirts of the Borough, very close to its borders. Rocco sought a transfer of his package store to a point in the exact geographic center of the Borough, described by witnesses as "a place where teenagers congregate." It was also a block away from a church. A majority of the residents of the Borough objected to the transfer.

In the matter sub judice, the proposed site is a considerable distance from the residential area; the problem of teenagers or children congregating near or coming in contact with this facility is not present; nor is the site near any schools or churches. I, therefore, find that the factual complex in Fanwood is dissimilar and significantly different from that in this matter.

I also wish to observe that, of the six or seven persons who objected to the grant of this application, two were ministers who were conscientiously opposed to the sale of alcoholic beverages under any circumstances. The other objectors were members of these churches whose doctrinal precepts, which they supported, required opposition to such sale. Significantly, it should be mentioned that, subsequent to the action by the Committee and before the hearing on this appeal, a petition expressing opposition to this application was circulated and signed by members of two churches whose doctrines oppose the sale of alcoholic beverages.

Petitions are always influential as a medium for presenting the views of a group. However, the mere counting of noses cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which they are signed as friendly accommodation without considered thought of the contents or of arguments on the other side. The weight to be given a petition must, in large measure, depend on what it states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1. The manner and the place in which this petition was signed undermine its qualitative effect and the weight which should be accorded thereto.

Additionally, I have the feeling that the Committee did not personally feel strongly against the grant of this application but was influenced by extraneous factors. So, for example, Committeeman Kruk testified that prior to the meeting, he was advised that the other Committeemen seemed to be inclined to support the application. As he expressed it: "Well, if they're in favor of it, I'll go along with it... But at the hearing it was--it is my opinion that if you're going to have a public hearing for anything you must go by the voice of the people. And this is why at the hearing is where I changed my mind, because I found that there were several church people and different ones in the area felt that they didn't want this establishment there.

And this is why I changed my opinion of whether to have it or not to have it." I then asked the following:

"The Hearer: Well, do I understand that regardless of your own conviction with respect to your vote on the application that you are guided by what you consider to be the important popular sentiment with respect to the application?"

"The Witness: That's right."

Finally, counsel for the Committee points out that a prior application filed by another corporation for the issuance of a new license for a motel to be built at this same location was denied several years ago. Tara Bay Club v. Upper, Bulletin 1627, Item 1. Therefore, "while perhaps the principles of res judicata should not be strictly applied in the present case, certainly this prior decision should be given great weight in determining the case at bar."

The present application differs substantially from the prior application in these respects: (a) the prior application was one for the creation of a new license (as differentiated from a transfer herein sought) which was vigorously opposed by some eighty-five to ninety residents including the local tavern association (in the present instance, only six or seven persons appeared in opposition and the local tavern association supported the transfer); (b) it is apparent that local sentiment has undergone a significant change since the only persons who really opposed this application were members of a church with doctrinal commitments against the sale of alcoholic beverages under any circumstances. Cf. Lubliner v. Paterson, 33 N.J. 428. If the present application were one for a new plenary retail consumption license, the various arguments raised, including the populational argument, would be persuasive. However, as pointed out in Blanck v. Magnolia, 38 N.J. 484, "The test in the establishment and issuance of liquor licenses is whether the public good requires it."

My canvass of the entire record and the arguments of counsel compel the conclusion that approval of the application for transfer of the said license would be in the best interests of the community and that, conversely, denial thereof was against the logic and sum of the presented facts. Cf. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502; Millie & Paul's Corp. v. Hampton, Bulletin 1758, Item 1.

II

Although the above is dispositive of this matter, I consider it imperative to comment briefly on the second substantive allegation of appellant's petition, because it pertains and is relevant to the very fundamentals of effective and impartial alcoholic beverage control.

Appellant charges that in two situations, the Committee was improperly motivated in reaching its determination herein.

(a) The first situation relates to the admitted ownership of a fourteen-room motel by Committeeman Edling who voted to deny the said application. This motel is located on Roosevelt Boulevard in the Marmora-Beesleys Point section, approximately nine-tenths of a mile from the site of the motel proposed to be constructed by appellant. Although Edling's motel does not have a liquor license, appellant contends that his ownership thereof

constitutes a conflict of interest. He reasons that Edling must have been influenced by his apprehension that a large, modern motel so near his own facility might affect his business. Edling denies that this entered into his consideration when he voted to deny the transfer. In fact, he insists that he favors the construction of appellant's motel provided it would not have a liquor license. The attorney for the Committee, in a memorandum submitted, forthrightly acknowledges:

"Perhaps it would have been better for Mr. Edling to disqualify himself prior to the hearing before the Committee on this matter. However, there is no evidence to indicate that Mr. Edling's ownership of this motel in any way affected his judgment or the judgment of the Committee in regard to this application for transfer."

Where an interest is so remote that it cannot be logically conceived to have an adverse effect on the action of a member of the Committee, it will not be deemed prejudicial or disqualifying. However, the ownership of a competitive enterprise of the same nature does bring into focus and raise a serious question of a possible conflict of interest. As the court pointed out in Aldom v. Borough of Roseland, 42 N.J. Super. 495, 502:

"The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule: No man can serve two masters whose interests conflict. Basically the question is whether the officer, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes to the prejudice of those for whom the law authorizes him to act as a public official. And in the determination of the issue, too much refinement should not be engaged in by the courts in an effort to uphold the municipal action on the ground that his interest is so little or so indirect. Such an approach gives recognition to the moral philosophy that next in importance to the duty of the officer to render a righteous judgment is that of doing it in such a manner as will beget no suspicion of the pureness and integrity of his action."

Or, as the Supreme Court stated in Pyatt v. Mayor and Council of Dunellen, 9 N.J. 549, 557:

"The infection of the concurrence of the interested person spreads, so that the action of the whole body is avoidable."

Cf. Zell v. Borough of Roseland, 42 N.J. Super. 75.

(b) The second situation presented in appellant's challenge is the admission by Committeeman Kruk that he was influenced by the fact that approval of the transfer would harm him politically. Kruk admitted that if he voted for the grant of this application, he would be "killed politically." He also asserted that he was in favor of the grant of this application before the Committee's hearing thereon, and was advised by

Committeeman Kensil that the other members of the Committee were in favor of it at that time. However, when he arrived at the meeting, "I changed my mind, because I found that there were several church people and different ones in the area felt that they didn't want this establishment there. And this is why I changed my opinion of whether to have it or not to have it."

As was pointed out in Hackensack Motel Corporation v. Little Ferry, Bulletin 1648, Item 1:

"The grant of (or the refusal to grant) a liquor license involves action judicial in nature. Dufford v. Nolan, 46 N.J.L. 87. The standards are no less exact in the case of judicial actions. The duty of the judge is to discover objective truth. If the judge has any personal favoritism or bias or friendship or partiality, his action becomes distorted. Cf. Cardozo, Nature of the Judicial Process, 173."

Cf. S & L Associates v. Washington Township et al., 61 N.J. Super. 312.

Perhaps Caesar's dictum might be helpful in this context: "What touches us ourself shall be last served." Public officials, acting in a quasi-judicial capacity, must act in such manner as to reflect a genuine regard for the public interest and welfare. Acting in their own interest, such as in this case, must be discouraged for, if such practice is permitted, the public will no longer have confidence in the impartial administration of the Alcoholic Beverage Law in the State of New Jersey. The two situations presented hereinabove might well arouse a sense of scepticism on the part of the public as to the impartiality and good faith of the Committee's action herein.

Considering all the facts and circumstances, I conclude that appellant has established, by a fair preponderance of the evidence, that the action of respondent in denying appellant's application for transfer was unreasonable, erroneous, and an abuse of its discretion.

I find that appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15 and it is, therefore recommended that the action of respondent Committee be reversed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, written exceptions to the Hearer's report and argument in support thereof were filed by the attorney for the respondent, and answers to the said exceptions were filed by the attorneys for the appellant.

One of the exceptions challenges the Hearer's conclusions that the transfer of the subject license from a residential to a commercial section of this community would be in the best interests of the community. He argues that "the transfer of this license from premises which are operated as a non-conforming use will not be of benefit to the community, since there is nothing to prevent the continued use of these premises for a commercial enterprise..... A commercial enterprise continuing to operate from this building will cause a continuance of the parking and other problems which now exist." And further, "Strathmere is a resort community located within the Township

and the transfer of this license from that village will leave Strathmere with no restaurant which can serve alcoholic beverage."

This Division has looked with favor (subject, of course, to the facts in each particular case) to the transfer of liquor licensed from residential areas to commercial areas. Cf. Filadelphia and Everly v. Parsippany-Troy Hills et al., Bulletin 1404, Item 4; Henderson v. Teaneck et al., Bulletin 1588, Item 1. Maliken v. Neptune City, Bulletin 915, Item 2; Witty's Liquors, Inc. v. Rahway, Bulletin 1261, Item 1; Cimaroza v. Maywood, Bulletin 1075, Item 9; Protos v. Newark et al., Bulletin 809, Item 5.

As the Hearer delineated in his report, Strathmere, where the license is presently located, is a residential section of this Township which has a population of thirty-five families as winter residents and approximately one thousand persons during the summer season. The license is located as a non-conforming use in a converted dwelling, with insufficient parking facilities and, as counsel for the respondent notes, a continuance of other problems which now exist. According to the testimony of the proposed transferor, this area has sustained a tremendous loss of ratables since the 1962 storm wherein two hundred ninety-four homes and other structures were destroyed. While respondent's attorney represented that a substantial sum of money has been spent recently to reconstruct the bulkhead in this area, the fact is that there has been additional recent erosion in that entire area. Furthermore, the transfer of this license from that area has apparently not met any resistance on the part of any of its residents because no resident therein has voiced an objection to this transfer either at the hearing before the Committee or at this plenary de novo hearing. See Hudson Bergen County Retail Liquor Stores Association v. Rutherford et al., Bulletin 931, Item 3.

I agree with the Hearer that the transfer of this property to the Marmora-Beesleys Point section, which has been specifically zoned for commercial purposes by the Township, would be in the best interests of the community. This area is completely separated from the residential area by the Garden State Parkway, is not near any schools or churches, and appears to be ideally suited for this enterprise. Since the nearest liquor licensed premises is at least a half-mile away, I do not consider that there is an undue concentration of such facilities therein.

The fact that the Township in its wisdom zoned this area for commercial use indicates that it was desirous of having this meadowland developed to attract business not only from local residents but from non-residents and tourists as well. The future of this community is clearly identified with such far-sighted approach. If there is to be commercial development, it must follow as a logical corollary that traffic will be attracted and will therefore increase. This is true regardless of whether a motel with a liquor license is constructed or whether a series of other businesses is built on this site. One cannot expect to have the benefit of a commercial area without an increase in traffic as a concomitant thereof.

The fact is that the Township has approved the plans for the construction of a motel. It is difficult to conceive that the introduction of a liquor license will so materially increase the traffic pattern as to make the same objectionable and act

adversely to the interests of the community. Indeed, the experts who have testified all agree that there will be no such material increase.

Counsel for the respondent argues that there is no police force available which could adequately police these premises or the traffic into or out of these premises. As was noted by the Hearer and as was set forth hereinabove, any commercial enterprise or a series of commercial enterprises in this area would require a certain measure of police protection, but there is nothing in the testimony to show that this will require more than that which would be necessitated by any other business or businesses which would be constructed therein. It must also be presumed that appellant's premises will be conducted in a law-abiding manner.

Respondent's counsel asserts that "the only real benefit to Upper Township would be the increased tax revenue resulting from the addition of a new tax ratable." However, he reasons that "The Township at present is in sound financial condition with a low tax rate and little need for increased revenues" because of a large income which it receives from a gross receipts tax paid by the Atlantic City Electric Company, a large generating plant which has recently been constructed in the Township. This is quite a remarkable argument which the residents of this community would be interested to note. While it is pleasant to record that at least one community in the State is no longer in need of additional tax ratables, it is difficult, as a practical matter, to accept that premise especially in view of the erosion conditions which exist in the Strathmere section. The residents will surely agree that there is room for development of communal facilities and services which additional tax ratables would produce. While, of course, our determination does not turn upon the effect on the tax ratables, I do not consider this argument of substantial merit.

I agree with the Hearer that the introduction of this license to this area would represent a fair distribution of licenses among the residents of the Township and would serve not only the needs of the local population but also those of the transient population. The proposed new site is located on Roosevelt Boulevard, which is a main highway between Ocean City and the Garden State Parkway and Route 9. As noted hereinabove, I feel that the motel, and the marina which will be part of the motel, would serve the best interests of this developing community. There has been nothing to indicate that any unusual problems will arise by reason of this transfer.

I have examined the other exceptions and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully examined the entire record herein, including the transcript of the testimony, the exhibits, the articulate memoranda in summation by counsel for the appellant and respondent, the Hearer's report, the written exceptions filed thereto and the answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein. Hence I shall enter an order as recommended.

Accordingly, it is, on this 15th day of September 1967,

ORDERED that the action of the respondent be and the same is hereby reversed; and it is further

ORDERED that the respondent approve appellant's application and transfer the said license upon completion of the premises in accordance with the plans submitted with appellant's application.

2. STATE LICENSE - NEW APPLICATION FILED

Sassone Importers & Distributors, Inc.
337 Fifth Street
Newark, New Jersey

Application filed November 10, 1967
for person-to-person transfer of
Plenary Wholesale License W-60 from
Dodd Importers & Distributors, Inc.



Joseph P. Longi
Director