

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

BULLETIN 1775

January 29, 1968

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STATE OF NEW JERSEY
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. DISCIPLINARY PROCEEDINGS - PROCUREMENT FOR PROSTITUTION -
INDECENT MATTER (MOTION PICTURE FILMS) - LICENSE
SUSPENDED FOR 300 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

The Bird Cage, Inc.)
200 Hwy. #17)
East Rutherford, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption
License C-18, issued by the Mayor and
Council of the Borough of East
Rutherford.)

Charles L. Bertini, 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 on August 9, 11 and 15, 1967, it (1) permitted procurement for prostitution and (2) sold several reels of indecent motion picture films, both in violation of Rule 5 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for two hundred ten days (Re Sansone, Bulletin 1742, Item 1) and on the second charge for ninety days (Re Sal-Ruby Corporation, Bulletin 1522, Item 7), or a total of three hundred days, with remission of five days for the plea entered, leaving a net suspension of two hundred ninety-five days.

Accordingly, it is, on this 13th day of December 1967,

ORDERED that Plenary Retail Consumption License C-18, issued by the Mayor and Council of the Borough of East Rutherford to The Bird Cage, Inc. for premises 200 Highway #17, East Rutherford, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1968, commencing at 2:00 a.m. Wednesday, December 20, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Thursday, October 10, 1968.

JOSEPH P. LORDI,
DIRECTOR.

2. APPELLATE DECISIONS - STRATFORD INN, INC. v. AVON-BY-
THE-SEA.

Stratford Inn, Inc., t/a)
 Stratford Inn,)
)
 Appellant,)
 v.)
 Board of Commissioners of)
 the Borough of Avon-by-the-)
 Sea,)

On Appeal

CONCLUSIONS and ORDER

Respondent.)

 Joseph N. Dempsey, Esq., Attorney for Appellant
 Healy & Weinstein, Esqs., by Daniel J. Healy, Esq.,
 Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Commissioners of the Borough of Avon-by-the-Sea (hereinafter Board) whereby on May 31, 1967, by a vote of 2 to 0 (one member abstaining), it denied appellant's application for renewal of its seasonal retail consumption license for the period May 1 to November 1, 1967, for premises northwest corner Garfield and Second Avenues, Avon-by-the-Sea.

In its petition of appeal appellant alleges that the Board's action was erroneous because the Board "concerned itself primarily with conduct of residents and visitors to the community in areas over which licensee had no control and which were stimulated by no illegal or improper management or conduct of the licensee."

The Board's answer, supplemented by an amendment to the answer, sets forth that the action was based upon valid reasons which may be briefly summarized as follows:

- (a) During the licensing periods 1965 and 1966 more than twenty complaints were received by the Police Department of incidents occurring in and about the licensed premises, including brawls on the premises, a case of indecent exposure, sale to minors, and breach of ordinances;
- (b) At the hearing on the application for renewal seven or eight letters were read and oral complaints were made "relating to illegal conduct on the licensed premises, including sale of liquor to minors and persons who are intoxicated;"
- (c) Disturbance to neighbors because of noise and illegal and immoral acts committed on surrounding property by appellant's patrons;
- (d) The action was in the public interest.

Upon the filing of the notice of appeal, an order was entered by the Director extending the 1966 license until further order of the Director.

The appeal was heard de novo with full opportunity for counsel to present testimony under oath and cross-examine witnesses. Rule 6 of State Regulation No. 15;

Farrell v. Englewood, Bulletin 1489, Item 2.

The burden of proof in all these cases which involve discretionary action rests upon appellant, and it must show manifest error or that the local issuing authority clearly abused its discretion. Downey v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277.

Renewal of a license, just as in the issuance of a new license, will depend upon the sound reasons advanced by the applicant to justify such action. Matteo v. Gloucester Township, Bulletin 1591, Item 1. It is well established that there is no inherent right to the renewal of a license. Zicherman v. Driscoll, 133 N.J.L. 586; Bumball v. Burnett, 115 N.J.L. 254. No one has a right to demand a license. A license is a special privilege granted to the few, denied to the many. Meehan v. Jersey City, 73 N.J.L. 382. However, it is equally well established that an application for renewal of a license may not be denied capriciously, but must be based on reasonable grounds. Matteo v. Gloucester, *supra*; B. & L. Tavern v. Bayonne, Bulletin 1459, Item 1; *aff'd* Bayonne v. B. & L. Tavern et al., 42 N.J. 131. Thus the crucial issue in this appeal is whether the evidence herein justifies the action of the Board in refusing to renew appellant's license.

Appellant produced Catherine G. Gately (its president) who gave the following account: The corporation is the owner and operator of a seventy-room hotel in which the licensed premises are located. It has been operated since 1946 by her family. Her husband was in active control and management of the premises until he became seriously ill in June 1966. From that date until he died in October 1966 she was in full charge and continues to manage the said business.

Since this is a summer seasonal business, the greatest flow of customers (which often reaches 250 patrons a day) occurs on Wednesday, Friday, Saturday and Sunday. It caters to a younger crowd than the other licensees in the community, and on those evenings a juke box and band entertain the clientele. Because of complaints of noise, the interior of the barroom was thoroughly insulated during the past year, windows are kept closed, and the bandstand was moved to the rear of the premises. To control the patronage, particularly with respect to minors, "checkers" are stationed at the door to secure identification and proof of age.

The witness admitted that the Director suspended appellant's license for sale to minors which occurred during the previous licensing period (in 1965); there is no adjudicated record of any Alcoholic Beverage Law violation during the 1966 licensing year. Complaints were made against appellant for alleged violation of an ordinance relating to the attire of patrons, and on one occasion she was fined in the municipal court for permitting patrons in bathing suits on the premises after 6 p.m. The ordinance was held to be inapplicable to "walking shorts" and the court dismissed those complaints against appellant.

On cross examination Mrs. Gately admitted that several complaints were made by patrons because certain

personal belongings had been stolen. There was also a complaint of a fight which took place between two chambermaids in the annex building adjoining the hotel. However, she could not recall any specific complaints made with reference to noise emanating from the premises. She insisted that during the time she has operated and managed the licensed premises there have been no instances called to her attention of noise or any inappropriate behavior.

Matthew J. Thees testified that he lives about a block-and-a-half from the premises and frequents these premises. He noted that, although appellant caters to a young crowd, the noise is not excessive but quite normal.

John H. Murday, who was appointed Chief of Police of Avon-by-the-Sea as of July 1, 1967, was a captain before that time and supervised the records of the Police Department. He testified with reference to various complaints received by the police from 1963 through the 1966 seasonal licensing period. The complaints included, among others, the following: (1) on June 20, 1965, alleged after-hours service, no action taken; (2) on July 18, 1965, assault on the outside of the premises committed upon a police officer; (3) on September 11, 1965, alleged sale to a minor, no action taken; (4) Mrs. Gately pleaded guilty to a noise complaint in municipal court on September 10, 1965. The Chief stated that he felt there was "room for improvement down there" and that the police were required to carefully patrol the area every week-end.

On cross examination Chief Murday admitted that a number of the episodes which resulted in complaints to the police occurred in the general vicinity of appellant's premises. He was unable to state whether these incidents occurred directly in front of the premises; nor did the police officers' reports regarding noise indicate other than that the noise emanated from "in the area" of the premises. With specific reference to the sale to a minor, the Chief admitted that the report indicated that the female minor had falsified her age by producing false documents. Finally, the Chief stated that in his opinion appellant's premises should have "more supervision at the door" and that, if a special police officer were employed by appellant, that would be a satisfactory improvement.

Lloyd F. Tasse, Jr. (a local police officer) testified with reference to the incident relating to an alleged indecent exposure which occurred on July 3, 1965. (The offender was subsequently arrested in Spring Lake Heights, and pleaded guilty to that offense.) He also stated that he had received some noise complaints. He observed that on a number of occasions the checker was not on duty and he felt that the premises required constant supervision.

Describing the nature of the patronage, he said that "it is a young crowd that frequents the place, and they are a little noisier than the older and more mature people. I think our biggest problem is basically with the noise of the band and people leaving the area at night when they break up and go out of the bar when it closes at two a.m." He was then asked:

"Q And on the basis of your reports, there has been substantially less concern by the neighbors over noise emanating from the Stratford Inn in '66 than in '65, isn't that so?"

A I would say that is so.

Q So there has been an improvement since Mrs. Gately took over the management?

A Presumably so, yes."

And further:

"Q And you have observed a marked improvement?

A I would say so, as far as the band, but as far as the crowd, it's still the same type of crowd, a young noisy bunch."

The witness added that in his opinion a special police officer assigned to duty would help considerably in maintaining order.

Mayor Joseph H. Clements, who has been a resident of this community for the past five years and was elected to office in May 1967, testified that he voted to deny appellant's application on the basis of both his investigation of the police records and complaints which were personally made to him by residents. He also took into consideration a copy of an article that appeared in the Asbury Park Press twelve years ago (in 1955) which led him to believe that "this wrangling" between appellant and "the people of Avon" had been carried on for the past ten or twelve years.

I gathered from the Mayor's testimony that he was primarily concerned with the type of patronage at appellant's premises. He stated that these licensed premises "catered to a college crowd of youths, and I would say that ninety, ninety-five per cent of them are excellent people." However, the other five per cent consisted of "beatniks" who have in his opinion an objectionable appearance and dress. He felt that this type of patronage should be discouraged and "if for one year the Stratford Inn was closed, perhaps this type of clientele would find another place to go."

On cross examination the Mayor agreed with the Chief of Police that the employment of a special police officer on week-ends would be a definite improvement. He further conceded that, during the past licensing season, the operation of the business has improved.

In assessing the entire record I find it significant that the Board has renewed appellant's license for the last twenty years. It is fair to assume that during this period it has not felt that the conduct of appellant's business was such as to require a denial of its applications. It is also important in this context to further note that there has been no adjudicated record of liquor law violation during the 1966 licensing period although oral and unsubstantiated complaints were made of alleged violations in and about the licensed premises.

In Monesson v. Lakewood, Bulletin 657, Item 1, Commissioner Driscoll reversed a municipality's refusal to renew a plenary retail consumption license, noting:

"As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority.

Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence

"If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted."

In Salmanowitz v. Hightstown, Bulletin 807, Item 2, the Borough's refusal to renew a license was reversed. In that case, too, there were charges of disorderly conditions inside and outside the licensed premises. Commissioner Hock stated the applicable rule in these words:

"Where, as here, a license has been renewed from year to year, with no adjudicated record of any offenses during the current licensing year, common fairness dictates that the investment of a licensee in his business should not be jeopardized except on grounds which are attributable to some malfeasance or misconduct on his part."

In Vasto v. Atlantic Highlands, Bulletin 622, Item 4, Commissioner Driscoll laid down the rule:

"Where a license has been renewed from year to year, and where no disciplinary proceedings have been instituted for alleged misconduct during the current license year, and the licensee has been thereby encouraged to make a substantial investment in the business, common fairness requires that the refusal to renew be supported by valid reasons."

It has been the long established policy of this Division to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local issuing authority. Common fairness to the licensee has been the basis for this policy. If undesirable conditions develop in the future, the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired. In this connection it should also be pointed out that the license suspension for sale to minors occurred in the 1965 licensing period, which was prior to the current licensing period, although the penalty imposed actually became effective in 1966.

I believe Mayor Clements was strongly motivated by his personal distaste for the "college crowd of youths" who patronized this establishment. He characterized them as "beatniks or whatniks" and is opposed to their patronizing any establishment in this community. It is fair, however, to argue that his attitude is discriminatory and that any well-run licensed business should be permitted to serve this segment of our society as long as they are of statutory maturity. The fact that other licensees in the community do not encourage this type of patronage is a total non sequitur. So long as patrons are kept within

the discipline of a well-ordered establishment, such patronage should not be indiscriminately and peremptorily barred from licensed premises.

I am also persuaded by the testimony of the police Chief, which was corroborated by both the Mayor and the local police officer, that there has been a substantial and significant improvement in the operation during the 1966 summer season. Appellant must be impressed with the fact that a licensee is obligated to keep its place of business and its patronage under full control and that it is responsible for conditions both outside and inside its premises. Galasso v. Bloomfield, Bulletin 1387, Item 1. However, where it appears that the conditions on the outside result from other factors which are not within the control of the licensee, such evidence would not be sufficient to warrant denial of the renewal. Freeland v. Roselle, Bulletin 352, Item 5.

No municipality can insulate itself - nor should it - from law-abiding young adults who seek recreational enjoyment in liquor licensed premises. Obviously, appellant cannot be held accountable for that irresponsible element that drives sports cars carelessly and at excessive speeds. But appellant is obligated to curb excessive noises which occur outside the licensed premises particularly at the closing hour, and at other times, to the annoyance of neighboring property owners.

The testimony would indicate that the conduct of the patronage, both inside and outside the premises, can be more fully controlled by employing a special police officer on Wednesday, Friday, Saturday and Sunday evenings when most of the business takes place at these premises. Counsel has represented in oral argument and in his memorandum submitted in summation that appellant is agreeable to such arrangement and would willingly accept such condition.

Under all of the circumstances herein, I recommend that appellant be given one more opportunity to demonstrate its worthiness to hold a license, provided that the renewal be granted with the aforementioned condition. Appellant should be pointedly warned that, if unsatisfactory conditions result from the further operation of its premises, the Board may institute disciplinary proceedings at any time and also deny renewal for the next licensing period.

For the reasons aforesaid, it is recommended that an order be entered reversing the action of the Board so that appellant may be given this one opportunity to demonstrate its worthiness to hold a license, subject to the imposed condition that a special police officer shall be forthwith employed by appellant on the licensed premises on Wednesdays, Fridays, Saturdays and Sundays during the said licensing period.

Conclusions and Order

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

Having carefully examined the entire record herein,

I concur in the recommended findings and conclusions of the Hearer and adopt them as my findings and conclusions herein, except (1) to point out that the phrase "revocation proceedings", as used in the Hearer's statement that the Division equates a refusal to renew an annual license with revocation proceedings, should not be interpreted in the same strict literal sense applicable to disciplinary proceedings instituted against licensees pursuant to R.S. 33:1-31, and (2) to state that I find Mayor Clements' testimony concerning "beatniks" evinces opposition to objectionable conduct by this type of patron of the appellant, rather than a "discriminatory attitude" toward their personal appearance or attire.

In arriving at my decision, I am particularly influenced by the lack of adequate warning to appellant by the respondent of its dissatisfaction with the operation of the licensed premises prior to the definitive action of license renewal denial, and the conceded recent marked improvement of the conduct of the licensed business and its expected further improvement by reason of the employment of a special police officer as a condition to continuance of this licensed business. Bayonne v. B & L Tavern, Inc., 42 N.J. 131 (1964). Hence, I shall enter an order as recommended.

Accordingly, it is, on this 5th day of December, 1967,

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

ORDERED that respondent approve appellant's application for renewal of its seasonal retail consumption license for the seasonal period May 1 to November 1, 1967; and it is further

ORDERED that any renewal of appellant's license for all or part of the seasonal period May 1 to November 1, 1968 shall be subject to the special condition that a special police officer shall be employed by appellant on the licensed premises on Wednesday, Friday, Saturday and Sunday evenings, from 8:00 P.M. to closing.

JOSEPH P. LORDI,
DIRECTOR.

3. APPELLATE DECISIONS - HEVEN, INC. v. JACKSON.

Heven, Inc., t/a Brookwood)
Bar and Liquors,)

Appellant,)

v.)

On Appeal)

Township Committee of the)
Township of Jackson,)

Respondent.)

CONSLUSIONS and ORDER

-----)
Wilentz, Goldman & Spitzer, Esqs., by Francis X. Journick,
Esq., Attorneys for Appellant

Doherty and Grossman, Esqs., by Richard A. Grossman, Esq.,
Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of the Township Committee of the Township of Jackson (hereinafter Committee) whereby on August 1, 1967 it denied the application of the appellant Heven, Inc., t/a Brookwood Bar and Liquors, for a person-to-person and place-to-place transfer of a plenary retail consumption license from Richard Vanderhenne and Sophie Vanderhenne, t/a Five Acres Tavern, to appellant and from premises Cassville and Ridgeway Road, Jackson Township, to Brook Plaza Shopping Center (Store No. 3), County Line Road and New Prospect Road, Jackson, Ocean County.

The motion to deny was carried by a four-to-one vote of the Committee members; no statement setting forth the assigned reasons was adopted as required by Rule 10 of State Regulation No. 6, nor do the relevant minutes of the proceedings before the Committee summarize the views of those present except that they record the motion and the vote thereon.

In its petition of appeal appellant alleges that the action of the Committee was erroneous for reasons which may be summarized as follows: (a) no written objections were filed with the Committee and the action was taken hereon after considering oral objections "in violation of State Regulation No. 6, Rules 8 through 10;" (b) by considering such oral objections "appellant was deprived of an opportunity to be heard;" (c) the Committee's action was "based on incompetent evidence, was not accompanied by a statement of reasons and was otherwise so arbitrary and oppressive as to constitute an abuse of respondent's discretion."

The Committee's answer admits the jurisdictional allegations of the petition and defends that the proposed premises to which the license would be transferred were located "too near to existing built up residential areas and that problems arising from the congregation of children in the shopping center" would be aggravated by the said transfer. It further asserts that the appellant was afforded an opportunity to be heard and its decision was based upon objections by residents of the area and its personal knowledge of the area by members of the Committee.

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

Jackson Township has a geographical area of approximately one hundred square miles containing a population of approximately 17,000 persons. Most of the Township residents live in housing developments which are primarily served by two shopping centers. These centers are located within one and one-half miles of each other. About one and one-half years ago the shopping center on the proposed site was constructed, and it consists of a luncheonette, "children's wear, a ladies shop, a beauty parlor, a bakery, a jeweler, a drug store, a supermarket, a cleaning store, a small variety store . . . a clothing outfit."

Harry Nydick (the president of the corporate licensee) gave the following account: This shopping center is located near the Brookwood Housing Development which accommodates approximately thirty-five hundred families. He is the

principal officer of a corporate liquor licensee presently in operation in another shopping center similarly situated, and has encountered no difficulty with young people; nor has he ever been cited in any disciplinary proceedings either locally or with this Division. He appeared at the hearing before the Committee and was afforded an opportunity to testify. No written objections to appellant's application were filed with the Committee although several residents appeared and stated that they objected to the transfer because they were "primarily afraid of children congregating in the shopping center." The consideration of the application was deferred from the meeting of July 18, 1967 to a subsequent meeting on August 1, 1967, at which time the Committee voted to deny the said transfer application.

John C. Kiebler (the Committee clerk) produced the minutes which, as noted hereinabove, reflect only the vote taken but do not set forth any of the reasons assigned or advanced at the meeting either by persons appearing thereat or by the Committee members. He stated that there was a tape recording of the meeting (which was not offered) and his recollection was that the gravamen of the objection to this transfer was "with reference to congregation of juveniles." However, one of the objectors stated that he "wouldn't mind it so much if it was a package store and not a bar."

Bernard Boyrin (an experienced realtor who was responsible for renting the stores at this shopping center) testified that the present location of this license is about eight or nine miles from the shopping center in a relatively rural section of the community, whereas the proposed site is located in the "hub of the area" near a housing development containing three thousand new homes.

The nearest package liquor store is located about one and one-half miles west of the premises, and the nearest plenary retail consumption license is located about five miles from this shopping center. In his opinion this transfer would serve the best interests and convenience of the residents and would fulfill a need to the community. He stated that he had spoken to many of the residents in the immediate area, all of whom were in favor of having this transfer effected. With reference to the problem of juveniles, he noted that about eight or nine months ago the owner of the luncheonette in the shopping center had complained about teenagers congregating in front of his store but that, since that time, no complaints had been made and that problem no longer exists.

Byron Kotzas (a realtor and liquor licensee) testified that he had operated similar licenses in shopping centers located on the periphery of residential areas in this State and he experienced no problem with young people or with the congregation of young adults. He described the populational growth and development of this community and explained that this was formerly a chicken farm area which had grown tremendously during the past five years. The shopping centers in this community, as in other similar communities, were established at the perimeter of the residential area to serve the needs of the residents who moved there. In his opinion, this transfer would "definitely answer the need of the local resident" since there are "no immediate facilities for the consumption or purchase of alcoholic beverages" near the proposed site. He further

explained that Jackson Township is primarily a residential community with the exception of the two shopping centers, and the fact that these shopping centers have been constructed during the past two or three years shows "there is a need to servicing the need" of residents within that area.

Herbert Wishnick (a principal officer of the corporate owner of the shopping center) testified that the other tenants of the shopping center were enthusiastically in favor of the introduction of this facility and felt that they would benefit from the said transfer.

With reference to the incident relating to the congregation of young people at the luncheonette, he asserted that this was an isolated incident which occurred about nine months ago involving loitering of some juveniles, but that that has been remedied and there have been no recurrences since then.

No witnesses were produced on behalf of the Committee. The attorney for the Committee stated that one of the members of the Committee indicated that he intended to appear and testify; however, he did not appear and no explanation for his failure to appear was given.

I

Appellant raises certain objections to the proceedings before the Committee. It argues that, since no written objections were filed with the Committee in opposition to its application, the Committee improperly considered oral objections in violation of State Regulation No. 6. The attorney for the appellant has misread the thrust of Rules 8 through 10 of State Regulation No. 6. The burden of these rules is that, where written objections are filed, the local issuing authority must "afford a hearing to all parties" (Rule 8). However, there is no restriction on its discretionary right to hold such hearing if it desires to do so; nor is there any limitation on the right of anyone to object orally at any meeting held pursuant to these rules. Furthermore, Rule 10 of the said regulation provides that no hearing need be held if the local issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to grant the transfer applied for. However, Rule 10 further provides that "In every action adverse to an applicant or objector, the issuing authority shall state the reasons therefor."

It is difficult to perceive how the appellant was prejudiced by the action of the Committee in holding a hearing at which oral objections, as well as supportive statements on behalf of the appellant, were presented. The failure by the Committee to comply with that part of Rule 10 of State Regulation No. 6, requiring a statement of reasons, does not invalidate the hearing below. The appellant has been given ample opportunity to be heard, and these contentions are lacking in merit. Furthermore, the appellant has been granted full opportunity at this de novo hearing to produce testimony and cross-examine witnesses. Thus any infirmity arising by reason of the alleged denial of a fair, impartial and unprejudiced hearing before the Committee has been cured. Cino v. Driscoll, 130 N.J.L. 535 (Sup.Ct. 1943).

II

We shall now consider the crucial issue in this

appeal, namely, whether the evidence herein justifies the action of the Committee in refusing to approve the appellant's application for transfer.

In analyzing and evaluating the facts and contentions raised herein, it would be helpful to restate the principles which guide us in these matters. 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.

"[T]he 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 transfer of 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."

The testimony on behalf of the appellant establishes that the proposed transfer is sought to a shopping center located at the periphery of a large and recently developed housing complex; that the nearest "C" license is about four miles distant from that site, and the nearest "D" license is about one and one-half miles distant; that the consensus of the witnesses and the area residents supports appellant's assertion of need and convenience for the said license at this proposed site; that the public interest will best be served by favorable action thereon, and that no problems involving juveniles or young people may be reasonably anticipated.

As noted hereinabove, there is no showing in the record of the basis for the Committee's action since it has failed to set forth a statement of its reasons as required by Rule 10 of State Regulation No. 6, nor has the Committee produced any witnesses or its own members to supply the obvious omissions in the minutes of the meetings before the Committee. One is able to glean the rationalism of the Committee only through the testimony of the Committee clerk. While he did not directly testify as to any expression on behalf of the Committee members, he noted that the basic objection on behalf of several objectors was that they anticipated that there might be a problem involving the congregation of juveniles at the licensed premises.

This reason was set forth as well in the answer filed by the Committee. The answer, of course, is merely a pleading and does not constitute evidence in the cause. It seems unarguable that the very nature of a shopping center in this type of community is to afford the opportunity for one-stop all-purpose shopping on behalf of the residents. The contention of the Committee (which was set forth in the answer) that the "new location would be located too near to existing built up residential areas" does violence to modern concepts of sound community planning. This reasoning is as fatuous as it is unrealistic. The pattern of shopping centers in growing communities throughout this State has been to locate in the perimeter of built-up residential areas in order to afford the services indigenous to this type of facility. Further, it has been held, with traditional uniformity, that general objections to the transfer of a license to a business street filed by residents of side streets which are residential are not in themselves sufficient reason for denying a transfer. Pistilli v. Bernardsville, Bulletin 1030, Item 2; Tompkins v. Seaside Heights, *supra*. This principle has even greater force where the site has been appropriately zoned for the operation of a shopping center by the municipality. Moreover, the evidence indicates substantial approval of such transfer. No objections were presented by any resident at this hearing.

The attorney for the Committee further argues in his answer that "problems arising from the congregation of children in the shopping center ... would be compounded by the location of a licensed premises at such location." There is not a scintilla of evidence to support this contention in the record herein. Nor has this been the experience in the other shopping centers in this State which have become invested with liquor licenses. This Division has had occasion to consider the grant of transfers of liquor licenses to numerous shopping centers throughout the State and this Division has not found substantial support to the contention that, in a well ordered establishment, the problem of congregation of juveniles has developed.

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. In this connection it is significant to note that the appellant's principal officer emphasized that the primary operation at his facility will be geared to the sale of goods for off-the-premises consumption; that he intends to limit his hours to 10 p.m. closing hour on weekdays, as required of plenary retail distribution licensees.

Counsel for the Committee equates the situation presented herein with that of Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960), affirmed 33 N.J. 404 (1960).

I find that the facts and circumstances differ substantially from those of Fanwood. In Fanwood the Mayor and six councilmen appeared at the hearing on appeal and subjected themselves to cross examination. They stated that the application was for a transfer of a plenary retail distribution license from a location near the border of the municipality to the center of the borough, in which section no liquor license had previously been permitted. They asserted that, as a matter of municipal policy, they were opposed to the transfer of that liquor license to that particular area. Furthermore, a church was the principal objector to the grant of the transfer, and the testimony indicated overwhelming objections on the part of local residents.

In the instant matter, however, no member of the Committee appeared to offer testimony or to submit to cross examination. Also, as pointed out hereinabove, the record suggests that whereas in Fanwood the town fathers recognized and honored existing local sentiment which opposed that transfer, the local sentiment in the matter sub judice has expressed a consensus in favor of such transfer. Further, the shopping center is not near any churches or schools, nor does it present any particular traffic problem; and the record indicates that this transfer would provide a substantial convenience to the area residents. And, additionally, there is no concentration of taverns or similar facilities, the nearest "C" license being at least four miles from the proposed site.

As pointed out in Blanck v. Magnolia, 38 N.J. 484:

"The test in the establishment and issuance and transfer of liquor licenses is whether the public good requires it."

Finally, there is nothing in the record to establish that the Committee considered the public welfare, or based its action upon such considerations of public need and convenience.

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.

I conclude that the Committee has not exercised a rational discretion and that its action in denying appellant's application for transfer was unreasonable, erroneous and an abuse of its discretion. I further 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

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

Having carefully considered the entire record, including the transcript, the exhibits and the Hearer's report, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is, on this 7th day of December, 1967,

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

ORDERED that respondent transfer the said license in accordance with appellant's application.

JOSEPH P. LORDI,
DIRECTOR.

- 4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - GAMBLING (WAGERING) - FALSE STATEMENT IN LICENSE APPLICATION - PRIOR SIMILAR RECORD - PRIOR RECORD OF SUSPENSION FOR DISSIMILAR VIOLATION DISREGARDED BECAUSE SUSPENSION SUBJECT TO PENDING APPEAL - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Dominick Suppa and Luke Suppa)
t/a Suppa's Tavern)
115 John Street)
Harrison, N. J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-67, issued by the Mayor and Council of the Town of Harrison.)

Samuel Raffaello, Esq., Attorney for Licensees
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead nolo contendere to charges alleging that on August 19, 1967, they (1) sold six cans and a container of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20, and (2) permitted the playing of a card game for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20, and (3) in their current application for license failed to disclose their record of prior suspensions of license, in violation of R.S. 33:1-25.

Licensees have a previous record of suspension of license then held for premises 89½ Seventh Avenue, Newark, by the municipal issuing authority for ten days effective January 5, 1959 and twenty-five days effective March 12, 1962, both for sale in violation of State Regulation No. 38, and for fifteen days effective January 9, 1967, for sale to a minor (non-disclosure of which being the subject of the third charge) and for the premises herein for thirty days effective December 15, 1967, for permitting a brawl on the licensed premises, which suspension is presently the subject of a pending appeal to this Division.

The prior record of suspensions of license for dissimilar violations in 1959 and 1962 occurring more than five years ago and the record of suspension in December 1967 which is the subject of the pending appeal disregarded for penalty purposes (Re Alaburda, Bulletin 1488, Item 8) but considering the record of suspension in January 1967 for similar violation within the past five years, the license will be suspended on the first charge for twenty-five days (Re Kurland, Bulletin 1766, Item 4), on the second charge for fifteen days (Re Chaled, Inc., Bulletin 1758, Item 3) and on the third charge for ten days (Re Midtown Tavern, Inc., Bulletin 1766, Item 8), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

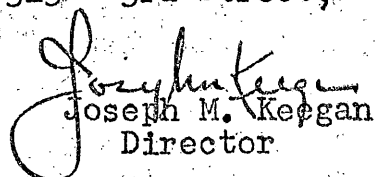
Accordingly, it is, on this 12th day of December, 1967,

ORDERED that Plenary Retail Consumption License C-67, issued by the Mayor and Council of the Town of Harrison to Dominick Suppa and Luke Suppa, t/a Suppa's Tavern, for premises 115 John Street, Harrison, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Monday, December 18, 1967, and terminating at 2:00 a.m. Thursday, February 1, 1968.

JOSEPH P. LORDI,
DIRECTOR.

5. STATE LICENSES - NEW APPLICATION FILED.

L. Fatato, Inc., 249-253 Kearney Avenue, Jersey City, N.J. Application filed January 25, 1968 for place-to-place transfer of Limited Wholesale License WL-9 from 314-320 - 2nd Street and 307-313 - 3rd Street, Brooklyn, New York.


Joseph M. Keegan
Director