

STATE OF NEW JERSEY  
Department of Law and Public Safety  
Division of Alcoholic Beverage Control  
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2081

January 30, 1973

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2081

January 30, 1973

1. APPELLATE DECISIONS - SCHAFFENER-HAMILTON CORPORATION v. HAMILTON TOWNSHIP (MERCER COUNTY).

Schaffener-Hamilton Corporation, )

Appellant, )

v. )

On Appeal

Township Committee of the Township )  
of Hamilton (Mercer County), )

CONCLUSIONS and ORDER

Respondent. )

-----  
Frank V. Walsh, Jr., Esq., Attorney for Appellant  
Donald M. Ducko, Esq., Attorney for Respondent  
Harvey L. Stern, Esq., by Irwin H. Weinstein, Esq., Attorney for  
Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Hamilton (hereinafter Committee) whereby it denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail consumption license from M & P Liquor, Inc. to appellant and from premises 1137 Nottingham Way to 2113 Hamilton Avenue, Hamilton.

Appellant alleges that the action of respondent was erroneous in that:

- "A. The decisions of three of the five voting members of the Issuing Authority were arbitrary and capricious and not supported by the evidence adduced at the public hearings.
- "B. And the reasons cited in the Issuing Authority's resolution denying Appellant's application are palpably insufficient in fact and law to support said denial."

The Committee in its answer justified its action by relying upon the reasons stated in its resolution, as follows:

- "1. Such transfers would not be in the best interest of the Township of Hamilton nor its residents.
- "2. Such transfers would not be in the best interest of the public good, in general.
- "3. Such transfers, while meeting the minimum proximity requirement would in the determination of said Board,

place a licensed premises in too proximate a location to a Junior High School for the public good."

The appeal was heard de novo in accordance with Rule 6 of State Regulation No. 15, with full opportunity afforded counsel to present testimony and cross-examine witnesses.

Prior to taking oral testimony several photographs showing the area of the proposed location including the school, a petition in favor of the proposed transfer containing 1,203 signatures and a petition opposed thereto containing 254 names were received in evidence.

The testimony and the exhibits establish that the proposed site is located on a moderately heavily traveled highway (Hamilton Avenue) between Klockner Road and Cypress Lane, with off-street parking for fifty-two cars. The Nottingham Junior High School and athletic field are located directly across the street from the proposed site and to the north thereof. The nearest exit or entrance to the school is well in excess of 200 feet from proposed site if measured in a straight line, and greatly in excess of 200 feet if measured in accordance with the method delineated by the applicable statute. See N.J.S.A. 33: 1-76.

In behalf of appellant, Richard Weiss (an architect) testified that the conversion and remodeling of the Eet Gud bakery premises into a tavern with a restaurant facility would be a "refreshing" addition to the neighborhood. If additional spaces for parking were to be required, there is a sufficient on-site area therefor. There are three existing entrance and exit driveways.

Joseph Schaffener (a 50% stockholder of the corporate appellant) testified that he and his family reside in the rear part of the present bakery premises which he proposes to convert to a liquor outlet. Concerning the petition favoring the establishment of the proposed liquor outlet, he asserted that he obtained signatures at his bakery premises and by house-to-house canvas. All of the signatories reside within the Township, most of whom reside within a radius of three-quarters of a mile of the proposed location.

David C. Goodwin (a Township committeeman at the time the hearings relative to the proposed transfer were held) testified that it was his opinion that the main thrust of the opposition to the transfer was that it would place the license in too close proximity to the junior high school; that students would be allowed to enter the establishment, and that students would come in contact with inebriated persons. He voted in favor of the transfer. He disagreed with the reasons expressed in the resolution denying the grant of the transfer. He asserted that there were other liquor establishments closer to schools (including the present location of the subject licensed premises) than the proposed location.

John K. Rafferty (a member of the Township Committee) testified that he voted in favor of the proposed transfer because the premises were presently located in close proximity to a school and in a volatile area where a near-riot occurred two years prior to the hearings before the Committee. He asserted that there was no proof presented to sustain the reasons stated in the resolution disapproving the transfer. The heaviest traffic that would be engendered by bar patronage would be in the late afternoons and on weekends, at times when the school would be closed. It was his opinion that the grant of the transfer would not adversely affect students attending school.

On cross examination the witness stated that the subject transfer was the subject of an exhaustive presentation, was conscientiously considered by the Committee members, and it was not an easy decision for the Committee members to make. It was his opinion that the licensee would operate the premises in a manner that would not be objectionable in that the bar would not be the main feature in the operation of the premises.

Thomas J. Warwick (Township Clerk for the past five years) testified that many of the signatories to the petition opposing the proposed transfer were not residents of the Township and that the majority thereof did not reside within a radius of a half-mile of the proposed location and school. Furthermore, "not a majority but a goodly percentage of the taverns in the Township are in proximity to schools." Practically all the licensees (except for the subject proposed transferor) operated a "very, very good operation." The majority of the signatories favoring the transfer reside within a half-mile of the proposed premises. The present location of the licensed premises is closer to a school than the proposed location.

On cross examination the witness insisted that some of the petitioners favoring the transfer resided miles from the affected area. Of the signatories to the petition opposing the transfer who did not reside in the Township, many were teachers or administrators at the junior high school.

In behalf of respondent, Frederick J. Smitter (a Township committeeman) testified that, after participating in a series of discussions, he voted in opposition to the transfer for the following stated reasons:

"Basically because the proximity of the proposed transfer in relationship to the school, I felt that it wasn't conducive to the type of atmosphere that should be prevalent in an educational setting and I thought the environment wasn't conducive either. And to go on further -- am I permitted ... I have heard testimony as to the fact that there are presently in Hamilton Township bars close, as far as distance is concerned, to various schools in the Township, and I don't feel that that is the way it should be. However, they are there and I feel that, as a committeeman and as a responsible person, if there is an opportunity to prohibit this type of transfer now or to place an establishment that isn't near a school now, I think it's our duty to do so."

It was his opinion that the public good would be best served by denial of the application for transfer.

On cross examination the witness asserted that he would not under any circumstances vote in favor of transferring any license in close proximity to a school regardless of the fact that it was not within the statutory prohibition. It would not affect his thinking if he were to be informed that the majority of the approximately 1,100 students were bussed or that less than ninety students walked along Hamilton Avenue to get to the school. He added that he does not permit petitions to sway his thinking on the issues in controversy.

Dr. Ralph W. Osborne testified that, as superintendent of schools for the Township, he is directly concerned with the operation of the Nottingham Junior High School. Its students attend grades seven to nine. Their ages range from twelve to sixteen. Classrooms, playgrounds, an entrance and an exit to the school are clearly visible from the front of the proposed premises.

The school Board, upon learning of the subject application, placed it on the agenda for consideration at its meeting of January 17 and it went on record as being opposed to the establishment of a liquor establishment in that area. The Board communicated its unanimous expression, which lacked the formality of a resolution, to the Committee. The witness expressed personal opposition to the proposed transfer because "I don't believe that a liquor tavern or liquor store should be located next to or adjacent to a school building since part of our educational program in every state that I have been in has been to teach the harmful effects of alcoholic beverages, and it's inconsistent to be teaching the harmful effects and have a liquor store or a tavern established next door."

It was the witness' opinion that the mere presence of a liquor establishment, although well-operated, would have a detrimental effect upon the students.

Ruth E. Parker, who had been the vice principal of the Nottingham Junior High School from 1957 to 1969, and since 1969 has been its principal, testified that its student body for the past school year numbered 1,180 students. She asserted that, although in her opinion the grant of the proposed transfer would not be "detrimental", it would not be in the "best interest" of the students. She was instrumental in obtaining signatures of teachers and administrators on the petition opposing the transfer.

The witness feared that some individual of statutory maturity might purchase alcoholic beverages and allow students to consume such beverages. Further, it would not be in the best interests of the students because of the evening performances and sports events which are held at the school.

Marie A. Prekop (the P.T.A. president of the Nottingham Junior High School) testified that its Executive Board, upon learning of the proposed transfer, circulated a petition in opposition thereof and presented it to the Committee. Her opposition to the proposed transfer was also articulated to the Committee. She felt that the transfer would have an adverse effect upon the students particularly because an individual who may lawfully purchase alcoholic beverages at the proposed location might distribute the beverages to students attending the extra-curricular activities conducted at the school.

Upon reviewing the factual complex herein, I am persuaded that the Committee's action in denying the application for the transfer was primarily grounded upon the proposed location's proximity to the school. The reasons expressed in the resolution denying the transfer were to the effect that the transfer would not be in the best interest of the Township, nor of its residents, nor of the public good.

In resolving this matter I am guided by the basic principle that a transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny a transfer in its exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946). As the court said in Fanwood v. Rocco, 59 N.J. Super. 306, 320 (App. Div. 1960), aff'd 33 N.J. 404 (1960):

"... No person is entitled to [the transfer of a license] as a matter of law ...."

and

"... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial ...."

In this connection it may be well to quote further from Fanwood v. Rocco, supra:

"The primary purpose of the act is to promote temperance (R.S. 33:1-39) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Board of Com'rs of City of Hoboken [135 N.J.L. 502 (E. & A. 1947)]. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent.

"The Legislature has entrusted the municipal issuing authorities the initial authority and charged them with the duty to approve or disapprove place-to-place transfers. The action of the Board in either approving or denying the application for such transfer may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.'" Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, 135 N.J.L. 502 (1947)."

As was stated in Ward v. Scott, 16 N.J. 16, 23 (1954):

"... Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for .... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

In the recent case of Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record ...."

Appellant produced a petition favoring the proposed transfer signed by approximately five times the number of individuals who signed a petition opposing the transfer. However, the majority of the members of the Committee decided otherwise.

Petitions are always influential and persuasive. However, it must be recognized that the mere counting of noses cannot serve as a substitute for the considered determination

of the municipal 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 petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must in large measure depend upon what the petition states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of law, and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

The Committee obviously took into consideration the petition as well as other factors in reaching its ultimate determination as set forth in its resolution.

Furthermore, I am mindful of the holding of the Appellate Division in Fanwood v. Rocco, supra, at p. 323, wherein the court succinctly stated:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for the municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

It is noteworthy that the Supreme Court in Fanwood v. Rocco, 33 N.J. at p. 415, expressed its sentiment, as follows:

"The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

In the subject case it is apparent, and I find that the Committee honored the sentiments of the neighbors who voiced their opposition to the transfer. Absent improper motivation, which has neither been alleged nor evidenced, the action of the local issuing authority, based upon proper and bona fide use of its lawful discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n Inc. v. Hoboken, supra.

After considering all the evidence herein, including transcript of the testimony, the exhibits and the summation of counsel, I conclude that appellant has failed to sustain the burden of establishing that the action of the Committee was unreasonable, erroneous, or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming the action of the Committee and dismissing the appeal.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for appellant pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits, the Hearer's report and the exceptions to the Hearer's report which I find have either been answered in the said Hearer's report or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.



They contend that the action of the Council was "arbitrary and unreasonable and was not based upon sufficient cause."

The Council in its answer sets forth a statement of reasons for its action in denying the said application, as follows:

- "1. Asbury Avenue, proposed location for the transfer, is a heavily traveled road and the proposed use would create an increased traffic hazard.
2. There is a package store, The Oasis Bar, located one block away at First Avenue and Langford Street.
3. Many children pass the proposed location going to and from the Asbury Park High School.
4. There is a playground on the same block as the proposed location, namely on Sewell Avenue, almost immediately behind the proposed location.
5. Business people and residents of the area complained of many empty wine and liquor bottles resulting from the operation of the package store. It is their feeling that an additional package store would result in an increase in loitering.
6. This location is a high crime area and the proposed use would increase such crime.
7. While it is true that the proposed location is in a commercial area, there are a number of residences on the same block and across the street as well."

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

Albert R. Brown, one of the appellants, testified essentially to the facts set forth in the petition of appeal. He stated that he chose this location because it wasn't near a school or residential section. He asserted that although he has a "C" license he actually has been operating his license as "strictly a package store." Although he admitted that there is a playground near the premises, he has never seen any children play there. He admitted that there are many taverns and package stores within the immediate area, but that Asbury Park is saturated with taverns and package stores so that there is no section which does not have available tavern and package store outlets.

Finally, he explained that he was forced out of business as a result of the riots in 1970 and has been unable to re-establish his business at his present location since that time. Furthermore, he said the residents in the vicinity of his present premises objected to his re-establishing the business at those premises.

John Narayouski, the owner of the premises to which the license is proposed to be transferred, testified that that area is essentially a commercial area containing a variety of businesses, and there are few children living in the nearby residences. While some children going to the nearby high school pass these premises, the majority of them travel on Comstock Street, located about a block away from the premises.

On cross examination, he admitted that while there has been a general increase in crime in the entire city, he did not know whether the incidence of crime had actually increased in that immediate area. However, he did agree that there were a substantial number of break-ins in nearby business establishments.

Mayor John F. Mattice testified that he saw nothing objectionable to the transfer of this license because it was operated as a package store, which presented less problems than would a tavern.

On cross examination, the Mayor stated that there are now sixty-five liquor licenses catering to a population of approximately 18,000 persons. The population substantially increases during the summer months.

He was Mayor during 1970 when the riots occurred in Asbury Park and all liquor licensed establishments were ordered closed for a period of four days. He felt that because the appellants were dislodged from their present premises and they were operating a package liquor store, there should be no serious objection to the said transfer.

Leighton Green, testifying on behalf of the Council gave the following account: He is employed at a neighboring electrical supply company which is located diagonally across from the proposed transfer site and has so been employed for the past twenty-four years. The area has been subject to many burglaries and other crimes and the residents are afraid to venture out at night. He also stated that there is a critical parking problem which would be aggravated by the addition of this facility. In his opinion there is no need for another liquor facility in this area because there are presently outlets more than adequate to meet the needs of the residents therein.

Leonard Wickes, Jr., a rooming house operator, testified that the playground near the proposed site caters to many children. These children would be required to walk past the premises and would be endangered by the patrons at these premises. He noted that his wife complained that she was "frightened due to purse snatchings" and recalled that, as recently as the day before this hearing, a person was held up at knife point and robbed. He also stated that there was an elderly persons' project in the immediate vicinity and these people were afraid to walk in the area because of the high incidence of crime. Finally, he maintained that the parking problem was critical and would be aggravated by the said transfer.

Joseph Verrilli, the owner of a tavern located about two hundred feet from the proposed site, objected to the transfer because of the high incidence of crime: "holdups, burglaries, muggings, abuse-abuse." He noted that there were seven liquor licenses in operation within a three-block area of the proposed transfer site, and that the area was thus adequately supplied with liquor licenses. He presented a petition signed by fourteen businessmen residents objecting to the proposed transfer. He also stated that a petition signed by approximately one hundred seventy-five residents was presented to the Council at the hearing opposing the proposed transfer.

Finally, he noted that although the appellants represent that they intend to operate a package liquor store, the fact that they have a plenary retail consumption license with the "Broad Package Privilege" permits them at any time in the future to operate a tavern.

Other witnesses appeared at the hearing on behalf of the Council and were permitted to state their names and addresses and that they would, if permitted to testify, corroborate the testimony of the witnesses produced on behalf of the Council that the proposed site is in a high crime area; that there were numerous crimes committed within recent weeks; that the parking problem is critical; and that there is a general feeling of insecurity on the part of residents because of the high incidence of crime.

The decisive issues to be resolved, in my view, are whether the proposed site to which this license was proposed to be transferred was sufficiently serviced by existing liquor outlets; whether there was public need and necessity for such transfer; and whether the Council acted reasonably in determining that there was no need or necessity for said transfer. The determination as to whether or not a license should be transferred to a particular location is a matter confided to the sound discretion of the issuing authority, and its action will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Magnolia, 38 N.J. 484; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598.

It has been consistently held by this Division and the courts that the transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Zicherman v. Driscoll, 133 N.J.L. 586 (1946); Andrew C. Kless Enterprises, Inc. v. East Orange, Bulletin 1588, Item 2. See also Biscamp v. Twp. Committee of the Township of Teaneck, 5 N.J. Super. 172 (App. Div. 1949), where the issuing authority was upheld in denying the transfer of a liquor license because it was of the opinion that no need existed for a liquor license in that location of the municipality.

As the court stated in Fanwood v. Rocco, 59 N.J. Super. 306, 320:

"...No person is entitled to either [transfer of a license] as a matter of law.... If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial...."

Said the court further in Fanwood, at p.323:

"...The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

And, further, the court added:

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent. Cf. Cummins v. Board of Adjustment of Borough of Leonia, 39 N.J. Super. 452 (App. Div. 1956), certification denied 21 N.J. 550 (1956)."

The situation in this case is significantly similar to that presented in Lyons Farms Tavern, Inc. v. Mun. Bd. Alc. Bev., Newark and Newark Beth Israel Hospital, 55 N.J. 292 (1970). In that case the applicant sought a place-to-place transfer of its plenary retail consumption license so as to include a 750-square foot addition to its present building. Its plan was to extend the length of the building from 60 feet to 90 feet and to lengthen the bar so that it would run almost the entire length of the old and the new building.

The court held that the local board did not act arbitrarily in denying the application on objections by persons in that locality that enlargement would attract more business to locality of residences, hospital and school and in light of incident of crime in the locality, though granting application would not have increased the number of licenses presently existing in the area, and there had been no complaint of violation of rules and regulations over the years of applicant's operation; and the local board's determination would be upheld.

It should be noted that the distinction in this case from that of Lyons Farms is that the proposed transfer would introduce a new facility to the proposed area. In Lyons Farms, the court noted that Newark (like Asbury Park) also suffered from riots and stated at p.304:

"We are living in a parlous period and applications such as this must be reviewed in the ambience of the times. It would not do to apply the same test in populous Newark as would be utilized in a rural or suburban community. Time, place and circumstances make such an approach unrealistic."

Said the court at p.304:

"Crime and violence in the streets of cities, including Newark, have increased substantially in recent years making people reluctant to be abroad at night."

The court noted that, as in the instant matter, there were many objections by residents of the area to this proposed transfer. The basis for the objections was the presence of a childrens' playground and a church, as well as the high incidence of crime.

The court then quoted Fanwood v. Rocco, supra at p.413, to the effect that the views of substantial numbers of persons in the locality who are hostile to appellants' request for transfer should not be ignored. The court spoke of the wise stipulation of the Legislature for recognition of local sentiments in the administration of the alcoholic beverage law. It made mention of the "inherently far reaching dangers" of the liquor business and the need for strict regulation of it. Added the court in Lyons Farms at p.306:

"Service of the public interest in licensing, in transferring of licenses and in controlling this exceptional business requires an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality, whether they be residents, commercial operators,

or representatives of a nearby church, school or hospital. When their views are hostile to a licensee's request for enlargement of his existing business, and the views are reasonably associated with dangers to the public health, safety, morals and general welfare commonly recognized as incidents of the sale and consumption of alcohol, the local regulatory body does not act arbitrarily in honoring them."

And the court added this significant statement, at p.303:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

See also Rothman v. Hamilton Township, Bulletin 1091, Item 2; West Milford Bar and Liquors, Inc. v. West Milford, Bulletin 1851, Item 2.

Of course, there is a compassionate appreciation of the hardship situation which confronts the appellants. They were the victims of a riot which caused them substantial financial hardship, and in fact, the loss of their business at their present premises. It is unfortunate that in a municipality already burdened with outstanding licenses beyond the statutory saturation point, the appellants find difficulty in re-establishing and relocating their facility at a suitable location.

However, the fact is that, according to the testimony heard there are at least seven other licensed premises within the immediate area; thus, this is clearly not a suitable location compatible with the public interest. The good operating record of the appellants, although commendable, cannot be deemed either a decisive or influential determinant. It is a well established principle that, in a conflict between licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N.J. Super. 165 (App. Div. 1961).

Evidently, these factors were conscientiously and circumspectly evaluated by the Council in reaching its ultimate determination. Absent improper motivation not asserted here, the action of the local issuing authority, based upon proper and bona fide use of its discretion, must be affirmed. Hudson Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947).

After considering all of the evidence herein, including the transcript of the testimony, the exhibits and the summation of counsel, I conclude that there was adequate and reasonable basis for the Council's determination considered in light of the relevant time, place and circumstances to warrant its decision denying the appellants' application.

Therefore, I find that the appellants have failed to sustain the burden of establishing that the action of the Council was arbitrary and erroneous. Rule 6 of State Regulation No. 15.

Hence, I recommend that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report with supportive argument were submitted by the attorney for the appellants pursuant to Rule 14 of State Regulation No. 15. No answers to the said exceptions were filed on behalf of the respondent.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the written exceptions with respect thereto which I find have either been fully considered by the Hearer or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 28th day of November, 1972

ORDERED that the action of the respondent City Council of the City of Asbury Park be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

Robert E. Bower,  
Director

- 3. DISCIPLINARY PROCEEDINGS - HOLDER OF UNLIMITED SOLICITOR'S PERMIT - INTEREST IN AND EMPLOYMENT BY RETAILER LICENSEE - PERMIT SUSPENDED FOR 20 DAYS.

In the Matter of Disciplinary Proceedings against  
Regis J. Connors  
960 Townley Avenue  
Union, N.J.

Holder of Unlimited Solicitor's Permit No. 253 (for the 1971-72 license period and Unlimited Solicitor's Permit No. 1450 for the 1972-73 license period), issued by the Director of the Division of Alcoholic Beverage Control.

CONCLUSIONS  
and  
ORDER

-----)  
Arthur J. Timins, Esq., Attorney for Permittee  
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Charges against Regis J. Connors, the holder of an unlimited solicitor's permit for employment by J. & J. Distributing Company, a plenary wholesale licensee, were preferred as follows:

- "1. From June 25, 1970, until the present time, you, the holder of an unlimited solicitor's permit for employment by J. & J. Distributing Company, a plenary wholesale licensee, were, at the same time, interested, directly or indirectly, in a retail license and in the business conducted thereunder, viz., in a seasonal retail consumption license issued to Norwood at Avon, Inc., t/a Norwood at Avon Inn, Second and Norwood Avenues, Avon-by-the-Sea, New Jersey; in violation of Rule 7 of State Regulation No. 14.
- "2. From June 25, 1970, until the present time, you, the holder of an unlimited solicitor's permit for employment by J. & J. Distributing Company, a plenary wholesale licensee, were at the same time employed by or connected in a business capacity with a retail licensee, Norwood at Avon, Inc., holder of seasonal retail consumption license for premises Second and Norwood Avenues, Avon-by-the-Sea, New Jersey; in violation of Rule 7 of State Regulation No. 14."

An appearance was entered in permittee's behalf by Arthur J. Timins, a member of the New Jersey bar. Previous to October 3, 1972, this matter had been scheduled for hearing on June 20, July 21, August 4, August 18 and September 29, 1972. On each occasion the hearing was adjourned at the request of the permittee's attorney. Finally, the hearing on the charges was peremptorily scheduled for hearing at the Division offices on Tuesday, October 3, 1972 at 11:00 a.m.

The proofs indicate that on October 3, Timins presented himself at the reception desk of the Division offices shortly after 10:00 a.m. and inquired of the receptionist relative to the hearing. The receptionist requested that he proceed to second floor and wait in the hearing room. Shortly prior to 11:00 a.m. Timins approached the receptionist again and informed her that he wanted to confer with Mr. Dennis Brew, a legal assistant employed by the Division. Upon contacting Brew, the receptionist sent Timins in to see Brew. Shortly thereafter, upon his return to reception room, Timins sat down, wrote a note, handed it to the receptionist and departed.

In part, the note read that the matter was scheduled for 10:00 a.m. that he had been present with his clients and since it was now 11:00 a.m. and no one else was present, he was leaving. Brew testified that, at Timins request, he conferred with him at approximately 10:50 a.m. Timins informed Brew that he was ready for the hearing and he did not see any prosecution witnesses. Thereupon, Brew informed Timins that the prosecution would be ready in a "few minutes". Timins then departed. A copy of a letter dated September 21, 1972 addressed to Timins notifying him that the subject hearing had been peremptorily set down for Tuesday, October 3, 1972, at 11:00 a.m. and the note left by Timins were received in evidence. (Emphasis added.)

The Division attorney stated for the record that, upon reading the note at approximately 11:00 a.m., he called Timins' office and informed his secretary to have him return the call as soon as possible. Not hearing from him, the Division attorney again called Timins' office at approximately 11:50 a.m. and was informed by his secretary that she had not heard from him yet. The Division attorney informed the secretary that the hearing was re-scheduled for 2:00 p.m. that day; that Timins should be present; and that if Timins did not appear the hearing would be moved for trial.

At approximately 2:15 p.m. the prosecutor received a telephone call from Timins informing him that the permittee was "on the road"; that the permittee's wife was unavailable at home and that he, himself, would not attend the hearing. The Division attorney informed Timins that he would proceed with the hearing nonetheless. It was then noted for the record that two of the corporate officers of Norwood-at-Avon, Inc., accompanied by their attorney had been in attendance at the Division offices since prior to 10:00 a.m.

The hearing was moved at 2:50 p.m. at which time the Division file was received in evidence.

In substantiation of the charges the file reflects that seasonal license CS-3 for premises at Second & Norwood Avenues, Avon-by-the-Sea was transferred to Norwood-at-Avon, Inc., in June 1970. All applications filed by Norwood-at-Avon, Inc., list Marion Connors, wife of the permittee, as one of the corporate stockholders and a principal officer thereof.

It appears that the sum of \$10,000. was invested by Connors for the stockholdings in the corporate licensee. Three checks totalling \$10,000. were issued by Regis Connors payable to the order of the closing attorney. Of this amount, the sum of \$7,445.22 was obtained by Regis Connors through the sale of stock held in his name.

An annual report filed by the corporate licensee in the office of the Secretary of State on March 23, 1971 reveals that Regis Connors is listed as one of the directors thereof. Checks of Norwood payable to "cash" or "Reggie Connors" were cashed by Connors. A signature card for the Norwood Inn account (the trade name utilized by the corporate licensee in carrying on its business) at the Belmar-Wall National Bank, lists Regis Connors as the corporate Treasurer. Numerous bills for supplies and receipts from renting rooms bore the signature of Regis Connors.

I conclude that the Division has established the truth of the charges by a fair preponderance of the evidence, indeed by substantial evidence, and recommend that the permittee be found guilty as charged.

Solicitor-Permittee has no prior adjudicated record of suspension of his permit. I further recommend that his Unlimited Solicitor's Permit No. 1450 be suspended for twenty days. (Re Sagotsky, Bulletin 2037, Item 4.) However, as the unlawful situation has not to date been corrected, it is further recommended the permit will be suspended for the balance of its term, viz., until midnight May 31, 1973 with leave granted to the permittee to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty days from the commencement of the suspension herein.

#### Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 29th day of November 1972,

ORDERED that Unlimited Solicitor's Permit No. 1450, issued by the Director of the Division of Alcoholic Beverage Control to Regis J. Connors, 960 Townley Avenue, Union, be and the same is hereby suspended for the balance of its term expiring midnight May 31, 1973, effective 7 a.m. Tuesday, January 2, 1973, with leave for the permittee to apply to the Director by verified petition for lifting of the suspension whenever the unlawful situation has been corrected, but such lifting shall not be granted in any event sooner than twenty (20) days from the commencement of the suspension herein.

*Robert E. Bower*  
Robert E. Bower,  
Director.