Mr. Gossweiler

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

April 7, 1960.

BULLETIN 1333

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1100 Raymond Blvd. Newark 2, N. J.

April 7, 1960.

BULLETIN 1333

1. APPELLATE DECISIONS - D'ALESSANDRO v. PARSIPPANY-TROY HILLS.

Vito D'Alessandro, t/a Troy Hills Liquor Store, Appellant, v. Township Committee of the Township of Parsippany-Troy Hills, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

John H. Grossman, Esq., Attorney for Appellant.
Frank C. Scerbo, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it denied an application filed by appellant to transfer his plenary retail distribution license from premises on U.S. Route No. 46, about 2600 feet east of Beverwyck Road, to a store in the Morris Hills Shopping Plaza, located at the intersection of U.S. Route No. 46 and Route 202, Parsippany-Troy Hills. The distance between the two premises is more than two miles.

"The resolution denying the application was adopted by the unanimous vote of the four members who attended the meeting (the fifth member being absent) and stated that the application was denied for the following reasons:

1. This Council has recently awarded two plenary retail distribution licenses in the general area where this licensee desires to transfer to and it is felt that the said licenses previously awarded will adequately and properly take care of the needs and conveniences of that area at this time.

2. The present location of this licensee is in an area serving the needs and conveniences thereof and to permit this transfer would be to leave that area without such service.

"The petition of appeal alleges, in substance, that the action of respondent was without basis in fact, arbitrary and an abuse of discretion; that minors, who attend a drive-in theater opposite the present premises, create disturbances, and that a liquor store at the shopping center will best serve the needs and convenience of the shoppers.

"For a proper understanding of the first reason set forth in respondent's resolution herein, it is necessary to refer to two cases entitled Morris County Tavern Owner's Association v. Parsippany-Troy Hills et al., decided by the Director on November 23, 1959, Bulletin 1318, Item 1. From these cases it appears that on April 22, 1959, respondent granted two new plenary retail distribution licenses -- one to

Salvatore and Lucille DiLavore for 137 Parsippany Road, and one to Arthur F. Everly and Agnes Filadelfia for premises on U.S. Route No. 46, 500 feet east of Cherry Hill Road. The latter premises are about a mile west of the premises to which appellant seeks to transfer his license. In the cited cases the Director affirmed respondent's action and dismissed the appeals.

"At the hearing herein appellant testified that he has arranged to lease a store in the Morris Hills Shopping Plaza. He further testified that his present premises are opposite a drive-in theater which now operates on a year-round basis and that minors attending the theater frequently attempt to buy liquor in his premises and create disturbances when he refuses to sell to them. Appellant alleges that on several occasions the local police have failed to answer calls, but Mayor Freyler testified that appellant never complained to him and stated that he would look into the matter, which seems to concern principally a local police problem.

"On behalf of respondent, Mayor Freyler and Committeeman Jenkins testified, in substance, that the application was denied because of the close proximity of the other licenses (three plenary retail distribution licenses, including the licenses issued on April 22, 1959) within a radius of one mile of Morris Hills Shopping Plaza, and because the transfer would deny the people of the entire easterly end of the township (where appellant's premises are now located) the convenience of having a package goods store in that section of the township.

"A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Biscamp & Hess v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949) where, as in the instant case, the issuing authority denied a transfer of a liquor license because it was of the opinion that there was no need or necessity for a liquor outlet in a particular location of a community. The Director's function on appeal is merely to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action irrespective of his personal views on the subject. Kafalowski v. Trenton, Bulletin 155, Item 8; Krogh's Restaurant, Inc. et als. v. Sparta et al., Bulletin 1258, Item 1; Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1.

"After reviewing the testimony, the exhibits herein and the briefs presented, I find that there is sufficient evidence to support respondent's findings that the area to which appellant seeks to transfer his license has sufficient liquor establishments to meet the needs and serve the conveniences of the persons residing in that section of the municipality. I further find that respondent's action was neither arbitrary nor unreasonable. I conclude that appellant has failed to establish that respondent's action was erroneous, and I recommend that an order be entered affirming respondent's action and dismissing the appeal herein."

Pursuant to the provisions of Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed by the attorney for appellant and written answering argument was filed by the attorney for respondent.

After carefully considering the evidence, exhibits, briefs filed with the Hearer, the Hearer's Report and written arguments thereto, I concur in the conclusions of the Hearer and adopt them as my

conclusions herein. I shall enter an order affirming respondent's action. Cf. Borough of Fanwood v. Rocco and Division of Alcoholic Beverage Control, decided by the Appellate Division of the Superior Court on January 26, 1960, Bulletin 1324, Item 1.

Accordingly, it is, on this 29th day of February 1960,

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

WILLIAM HOWE DAVIS
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Richard Schweitzer
t/a Dick Schweitzer's
515 Midland Avenue
Garfield, N. J.

Holder of Plenary Retail Consumption License C-9, issued by the Mayor and Council of the City of Garfield.

CONCLUSIONS AND ORDER

Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that he possessed on his licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On January 6, 1960, an ABC agent tested the defendant's open stock of alcoholic beverages and seized a quart bottle of "Seagram's Seven Crown American Blended Whiskey 86 Proof" for further tests by the Division chemist. Subsequent analysis by the chemist disclosed that the contents of said bottle when compared with an analysis of the genuine product were considerably higher in solids.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days. Re Pachucki and Czaya, Bulletin 1315, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 25th day of February, 1960

ORDERED that Plenary Retail Consumption License C-9 issued by the Mayor and Council of the City of Garfield to Richard Schweitzer, t/a Dick Schweitzer's, for premises 515 Midland Avenue, Garfield, be and the same is hereby suspended for five (5) days, commencing at 3:00 a.m., Monday, March 7, 1960 and terminating at 3:00 a.m., Saturday, March 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

3. APPELLATE DECISIONS - HANNIBALL ET AL. v. SUSSEX AND HARRISON.

Herman L. Hanniball and Sussex Inn, a New Jersey Corporation, Appellants, v. Borough Council of the Borough of Sussex, and Anna Mae Harrison, t/a Harrison House and Harrison Tavern, Respondents.	)))))	ON APPEAL CONCLUSIONS AND ORDER

James F. McGovern, Jr., Esq., Attorneys for Appellants.
William J. McGovern, Esq., Attorney for Respondent Borough Council of the Borough of Sussex.
Dolan & Dolan, Esqs., by Robert H. Lee, Esq., Attorneys for Respondent Anna Mae Harrison.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the respondent Borough Council's actio on June 22, 1959 whereby its members unanimously granted the application of respondent Anna Mae Harrison for a place-to-place transfer of her plenary retail consumption license for the 1958-59 licensing period, from premises designated as 20 Munson Street to premises designated as 15 Mill Street in the Borough of Sussex.

"It appears from the evidence presented that there are presently four plenary retail consumption licenses in the municipality, three located in close proximity to each other in its business area and the fourth, the license here involved, formerly operated as a hotel and barroom, has been transferred from a residential area to the business section. The distance between the old and new locations is about a quarter of a mile.

"At the meeting at which the application was considered appellant, by counsel, entered objections to the transfer in the form of a letter which stated that such transfer would not serve public need or necessity, would contravene the pertinent section of the New Jersey Statute and State Regulations, and that passing of children attending public schools nearby would be opposed to the letter and principle of the law.

"At such meeting counsel for the applicant presented various sketches of the area and the proposed alterations to the premises, referred to the small size of the community, the number and location of the other licensed premises, the area of concentration and population, the difference in service to be offered at the new premises from that of the other licensed premises, the character and reputation of the respondent licensee and the type of establishment which was operated by such licensee in the past.

"Thereupon, counsel for the objector stated that he stipulated that the proposed location was not in violation of the New Jersey Statutes but that applicant had not shown any need or necessity for the proposed transfer and, hence, the objector would rest without offering any evidence to show lack of need or necessity. The meeting was then recessed and reconvened shortly thereafter, at which time Mayor Wilson announced that decision on the application was reserved in order to give the respondent Council an opportunity to visit the site, examine the general locale, and inspect the proposed premises and that its decision would be announced at a special meeting to be held on June 22, 1959.

"On June 22, 1959, the Borough Council adopted a resolution which sets forth a resume of what transpired at the first meeting, and that the members of the Council met on June 21st for the purpose of discussing the matters presented and to examine the premises to which the license was proposed to be transferred and the general locale and made the following findings of fact:

(1) That the area from which the license is requested to be transferred is a highly residential area and the transfer of this license from said area will be of great benefit to the development and structure of this particular area as well as tending to increase land values.

(2) That the area to which the license is proposed to be transferred is an area actually commercialized, industrialized and that to which additional commercial and industrial development will be attracted.

(3) That additional expansion of building for residential purposes will tend to take place in the area to which proposed transfer is requested.

(4) That the proposed licensed premises are separated from the front entrance way of the objector's place of business by more than a block although the rear of the applicant's premises are across the street.

(5) That the distance separating the proposed premises of transfer is not in violation of the statutes regulating distances of liquor outlets from schools or churches.

and unanimously granted the application for transfer.

"At the appeal hearing appellant, one of the other three licensees in such business area, whose premises are in close proximity to the proposed new premises, stated the reason for his objection to the transfer is that the area is amply saturated with taverns at the present time; that the transferred license originally was located in an area which was serviced by a railroad, since discontinued; that three taverns are sufficient in the business area and four taverns are absolutely not necessary; that if the respondent licensee's patronage at the original location has vanished, and the operation there has been discontinued, and her license should be preserved, it should be moved to a location other than the business area.

"Three members of respondent Council testified and the Mayor and the three other members of the Council were present and available as witnesses, although not called upon to testify. It appears that all of the Council members inspected the premises and locale as a group and had the benefit of the opinion of the police, fire and health authorities of the municipality and discussed 'what it would mean that all liquor licenses would then be in the same area, because this is all one business area' and came to the conclusion that it would not result in too many licenses in the particular area.

"One of the councilmen testified that:

> 'At one time Mrs. Harrison, up there known as Harrison House, had the Rotary and Kiwanis. Since the time she has closed down there is not an eating place in the Borough of Sussex for any organization to meet, and they have to travel around seven miles once a week in order to have a Rotary club meeting. ...It doesn't speak well of the town not to have an eating place, especially on a Sunday. I live there in the Borough of Sussex thirty-six years.

> The Sussex Inn has been a landmark as far as the Borough of Sussex is concerned for years. And this is the first time in the history that I can remember that this Sussex Inn has closed their dining room all summer long. I am not talking about the winter, but all summer long. Anybody that has traveled to a State park, the highest point in the State of New Jersey, coming through the Borough of Sussex, there is no place to stop and eat and to have a cordial drink.'

"Another councilman testified that they do not have a license in town that is not a hotel or establishment for the renting of rooms and that the one in question would be a little different, something that they do not have presently.

"A real estate agent located in the municipality who was formerly the Borough Clerk, stated that the proposed location would be in the center of where the proposed expansion or contemplated expansion is going to take place; that it will be a nice cocktail lounge and bar where you can get a good meal--that on different occasions he had to go out of town for that purpose with clients and that the Rotary and Kiwanis Clubs both left town (presumably on account of the absence of a satisfactory gathering place).

"The applicable general principle is that the number of licensed premises to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Miles et al v. Paterson & Stefonich, Bulletin 1306, Item 2. Also see Kahn's Liquor Shop of Caldwell and Sunrise Market, Inc., Bulletin 1228, Item 1. More specifically, a local issuing authority may reasonably prefer that its liquor licensed premises should be concentrated in its business area rather than permit such an establishment in a residential area. Elberon Grocers and Liquor Store, Inc. v. Ocean Township, Bulletin 1136, Item 4.

"The decision of the respondent Council to grant the transfer in question for reasons clearly articulated and expressed (Lubliner, et al v. Paterson, et al, --- N. J. Super. --- (App. Div. 1960)) is based upon evidence which appears to establish reasonable cause for its action. In my judgment the appellant has failed to sustain the burden of establishing that respondent Council's action was erroneous and, hence, I recommend affirmance of its action and dismissal of the appeal. Hudson-Bergen County Retail Liquor Stores Association et als. v. Hoboken and Terminello, Bulletin 1242, Item 1. Rule 6 of State Regulation No. 15."

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

Having carefully considered the facts and circumstances herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 1st day of March, 1960,

ORDERED that the action of respondent Borough Council of the Borough of Sussex be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
DIRECTOR

4. APPELLATE DECISIONS - MAURER & RAVIN v. NEWARK.

Myron P. Maurer & Julius Ravin, t/a The Key Club, Appellants, v. Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Maurer & Maurer, Esq., by Myron P. Maurer, Esq., Attorneys for Appellants.
Vincent P. Torppey, Esq., by Harry A. Pine, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on September 29, 1959, it suspended appellants' license for a period of ten days, commencing October 5, 1959, after finding them guilty on a charge alleging that they permitted an act of violence in and upon their licensed premises; in violation of Rule 5 of State Regulation No. 20.

"Upon the filing of the appeal, the Director entered an order on October 1, 1959 staying respondent's order of suspension until further order herein. R.S. 33:1-31.

"Appellants, in their petition of appeal, allege that respondent's action was erroneous in that it was against the weight of the evidence.

"Respondent, in its answer, alleges that its finding of guilt was supported by the factual testimony adduced at the hearing before it.

"The appeal was presented upon the stenographic transcript of the proceedings before respondent Board, pursuant to Rule 8 of State Regulation No. 15.

"It appears from the transcript that respondent called as its witnesses Detective James Santa Maria, Patrolman Floyd Bishop, Miss Geraldine Smith and Charles Langston, appellants' bartender.

"The detective testified that he and his partner visited appellants' licensed premises on March 5, 1959 'to investigate a shooting and stabbing that occurred there on February 29th (sic) at approximately 2:00 a.m. in the morning', and questioned Mr. Dawkins, the manager; that Dawkins stated that he didn't know too much about the incident; that all that he knew was that he saw the bartender leave the tavern, go outside and come back with his shoulder bleeding. He further testified that Dawkins said that he did not see the bartender leave with a revolver on him. On cross-examination, the detective testified that as a result of his investigation, he didn't advise his superior that a charge should be preferred against the Key Club because he felt that it was not guilty of any violation.

"The patrolman testified that on February 23, 1959 he was assigned to radio car duty and 'passed by' appellants' premises and 'I found a woman on the sidewalk bleeding, bleeding from her hip' and 'I called for the emergency and detective bureau'. He identified Miss Smith as the woman to whom he referred.

"Miss Smith testified that she went into the Key Club on February 23, 1959 'I spoke to Charlie, the bartender. We had a slight misunderstanding....It was 2:00 o'clock and the bar was about to close. He pushed me out of the door...I cuts him....I went across the street...I heard someone holler "Run, Gerry" and when I turned around he had a gun in his hand'. Miss Smith was questioned by members of respondent Board and testified that she had known Charles Langston for about three years 'I used to go with him'; that she cut him with a paring knife she had found in a taxi cab; that the cutting took place 'outside the tavern' and that she was completely across the street when she was shot. On cross-examination, Miss Smith testified that while she was in the tavern, there was no argument of any kind; that 'he didn't turn me loose until we gets outside on the sidewalk' and that it was then she took the knife out of her pocket and cut him.

"Charles Langston was called as a witness by respondent over the objections of appellants' attorney and testified that he is the bartender to whom Miss Smith referred. He was then questioned by the chairman of respondent Board, and testified further that he has been a bartender for about eight years; that he was about forty feet from the tavern when Miss Smith cut him; that 'after I got cut I flew off the handle' and that he 'wasn't thinking' when he re-entered the tavern and got a gun.

"Appellants' attorney contends herein as he did below that because the bartender stands in the place of the licensee and because the bartender, over the attorney's objection, was permitted to testify as a witness for respondent, such testimony 'should be entirely removed from the case and disregarded'. It appears, however, that appellants' contention is not in accord with legal concepts. See 98 C.J.S. § 324, page 25, and cases cited, including Grady v. Public Service Ry., 80 N.J.L. 471, at page 472. In any event, the testimony of the bartender and that of Miss Smith clearly establish that the acts of violence occurred outside of and at some distance from the licensed premises.

"Considering the facts and circumstances herein, I cannot find that the licensees allowed, permitted and suffered a brawl, act of violence or disturbance in and upon their licensed premises within the contemplation of the rule. Cf. Fuer v. Newark, Bulletin 1073, Item 3. I conclude, therefore, that respondent's action in finding appellants guilty of the charge should be reversed and I recommend that an order be entered accordingly."

No exceptions to the Hearer's Report were filed with me within the time limited by Rule 14 of State Regulation No. 15. However, pursuant to said rule and regulation, I, on my own motion, decided to hear oral argument by the attorneys representing the respective parties hereto.

The evidence herein clearly establishes that appellants' bartender escorted an obnoxious female from the licensed premises and, while outside of the same, she drew a knife and stabbed him in the shoulder; that he returned to the premises, procured a gun and left intending to use the weapon, as he did later, upon his assailant, whom he located across the street. Do those facts constitute acts of violence committed in and upon the licensed premises as charged by respondent? I think not. No more than does an act of violence committed against a person off the licensed premises in furtherance of threats made against that person after he had left the premises constitute an assault in and upon the licensed premises.

Having carefully considered the record herein, including the transcript of the testimony, the Hearer's Report and the oral arguments of the attorneys, I concur in the findings and conclusion of the Hearer and adopt his recommendation.

Accordingly, it is. on this 2nd day of March, 1960,

ORDERED that the action of respondent Board be and the same is hereby reversed.

WILLIAM HOWE DAVIS
DIRECTOR

5. APPELLATE DECISIONS - PESKA v. TRENTON AND HOUMAN

Harry Peska, Eugene Schvimmer and Anthony Kall, Jr., Appellants,	On Appeal
v.	CONCLUSIONS and ORDER
Board of Commissioners of the City of Trenton, and Ann C. Houman, t/a Ann's, Respondents.	

Henry F. Gill, Esq., Attorney for Appellants
John A. Brieger, Esq., Attorney for Respondent Board of Commissioners
Robert W. Wolfe, Esq., Attorney for Respondent Ann C. Houman

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"On October 15, 1959, respondent Board of Commissioners, by a four-to-one vote, adopted the following resolution:

'Resolved by the Board of Commissioners of the City of Trenton, New Jersey, that alcoholic beverage license for the period from October 15, 1959, to midnight, June 30, 1960, be and the same is hereby granted to the following applicant, subject to and in accordance with the provisions of R.S. 33:1-12.18; that the City Clerk be and he is hereby authorized and directed to sign, issue and deliver such license on behalf of this Board.

Plenary Retail Consumption

Applicant	Premises
Ann C. Houman t/a Ann's	151 East Front Street (formerly at 188 Jefferson St.)'

"Appellants appealed from said action. In their petition of appeal they allege that the action of the Board of Commissioners (hereafter Board) was erroneous because (1) the issuance of said license is contrary to the provisions of an ordinance adopted June 23, 1936, as amended and supplemented, and (2) respondent Ann C. Houman (hereafter Houman) failed to show that the issuing of said license was warranted by public need and necessity.

"Appellants Peska and Schvimmer hold a plenary retail consumption license for 133 East Front Street, Trenton. Appellant Kall holds a similar license for 150 East Front Street, Trenton. Both of said premises are within 500 feet of 151 East Front Street, Trenton.

"As to (1): The evidence herein establishes the following facts: For more than twenty years prior to June 30, 1959, respondent Houman held a plenary retail consumption license for 188 Jefferson Street, Trenton. These premises, which were owned by her, were taken for public use in the latter part of the year 1958 as part of the 'Coalport Redevelopment Project.' Prior to said time she had applied for a transfer of the license she then held to 990 East State Street,

and said application was denied by the then members of the Board on March 20, 1958. After her premises had been taken, she applied, on November 25, 1958, for a transfer of the license she then held to premises to be erected at 240 Coates Street, but on December 18, 1958, she withdrew said application. On December 23, 1958, she filed a second application for the transfer of her license to 990 East State Street, and said application was denied by a three-to-two vote of the then members of the Board on February 19, 1959. Thus, when the last renewal of her license expired on June 30, 1959, she had no premises for which she could seek a further renewal of her license.

"Ordinarily no one can obtain a new plenary retail consumption license at the present time in the City of Trenton because the existing number of such licenses (279) far exceeds one for each one thousand of its population as shown by the last preceding Federal census. R.S. 33:1-12.14. However, R.S. 33:1-12.18 provides that the limitation set forth in the aforesaid section shall not be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the application renewal period if the State commissioner (now director) shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control. Respondent Houman applied to the Director and obtained such a written determination from the Director on September 22, 1959, copy of which was forwarded to respondent Board. Her application for the license which is the subject of this appeal was filed with the Board on September 21, 1959, which was within sixty days following the expiration of the license renewal period on July 30, 1959.

"Section 46 of Ordinance No. 41 (adopted June 23, 1936) limits the number of plenary retail consumption licenses in Trenton to 250. However, the last paragraph of said Section was amended on July 17, 1958, to read as follows:

> 'Nothing herein shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period, if the State Director shall determine in writing pursuant to R.S. 33:1-12.18 that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.'

"It is clear that there is nothing in the Alcoholic Beverage Law or in Section 46 of the ordinance adopted June 23, 1936, as amended July 17, 1958, which prevented the issuance of a new license to respondent Houman.

"The pertinent portions of Section 51 of said Ordinance No. 41, as amended May 8, 1958, provide:

> 'No retail alcoholic beverage license shall be granted for premises within five hundred (500) feet of other alcoholic beverage licensed premises; provided, however, that nothing in this section shall prevent renewal or person-to-person transfer of licenses existing at the time this ordinance is adopted; *** and provided further that nothing in this section shall be deemed to apply with respect to place-to-place transfer of a license the premises for which are being taken for turnpike, highway or road purposes, or for purposes of any federal, state, county or municipal project.***'

"Admittedly, the Houman premises at 188 Jefferson Street have been taken 'for purposes of any federal, state, county or municipal project.' Appellants concede that, had respondent Houman

applied during the 1958-59 licensing year for a transfer to premises within 500 feet of their premises, Section 51 would not have prohibited the granting of her application. Technically, her application for the license which is the subject of this appeal may not be designated as an application for renewal as defined in R.S. 33:1-96. However, for all practical purposes, and considering her repeated attempts to transfer, said application should be considered as an application for a place-to-place transfer of the license she held for many years. Certainly she never abandoned her license. The language of R.S. 33:1-12.18 and the language of the amendment dated July 17, 1958, to Section 46 of Ordinance No. 41 disclose a legislative intent to construe her last application as an application for a place-to-place transfer of the license she previously held rather than an application for a new license within the usual meaning of that term. So construed, there is nothing in Section 51 of said ordinance No. 41, as amended, which prevented the issuance of the license to her for premises within 500 feet of other alcoholic beverage licensed premises.

"As to (2): Written objections to the Houman application having been filed by appellants and Rev. Alford R. Naus, Pastor of Lutheran Church of The Saviour, a public hearing was held by respondent Board on October 8, 1959. At said hearing the attorney for appellants argued against the granting of the application and presented a petition containing the names of thirty-nine objectors. The operator of a leather goods store stated that, in his opinion, there were sufficient taverns in the area. Mrs. Houman stated that she had properly conducted her business in the Coalport area; that 151 East Front Street was in a business area; that it had been a tavern for twenty-four years, and that she had been out of business eleven months. The attorney for appellants asked her what public need or convenience would be served, and she refused to answer. Mr. Zuccarello and Mr. Maguire spoke in favor of granting the application. The Board adjourned the matter until October 15.

"At its meeting on October 15 the Board adopted the resolution granting the license. Commissioners Gray, Rieker and Waldron and Mayor Holland voted in favor of, and Commissioner Connolly voted against, the resolution. Commissioner Gray stated that he voted in favor 'for the purposes of justice, equity and fair competition.' Mayor Holland stated 'We have an application for a transfer to a street from which in the last year, two violators have been eliminated. We are replacing violators with a licensee who has a perfect record.' Commissioner Connolly stated that 'I have consistently held, as is known to all, that taverns should be separated by 500 feet.'

"At the hearing held herein the five members of respondent Board testified. There is nothing in their testimony which is in any way inconsistent with the statements made by some of them at the meeting held on October 15. Reverend Alford Naus testified that he was authorized to appear by the Board of Trustees of the church; that 'it seems to us that with the numerous taverns on Front Street the community is quite adequately served' and that the church is in close proximity to the proposed licensed premises. He alleged that the church is within 200 feetof said premises, but I am satisfied from other evidence that the distance, properly measured, is in excess of 200 feet. City Clerk Mariarz presented a list of all retail licenses in Trenton. He testified that a plenary retail consumption license had been issued for 151 East Front Street in each year from 1934 to June 30, 1958; that the Board denied renewal for the 1958-59 licensing year of a license for said premises then held by Storky's Inc. and that operation under an extension of the license previously held terminated on January 19, 1959, after the Director affirmed said denial. (See Bulletin 1263, Item 1.)

"The number of licenses which should be permitted in any area is a matter to be decided primarily in the sound discretion of the local issuing authority. Triangle Corporation et al. v. Camden et al., Bulletin 1276, Item 1. There is no evidence whatsoever that any member of

the Board was improperly motivated. In fact, all members were properly advised that the granting or denial of the application rested in their discretion, and they carefully considered the case. The premises known as 151 East Front Street are in a business district and had been licensed for nearly twenty-five years. After considering the evidence, exhibits and briefs herein, I conclude that appellants have not sustained the burden of proof in establishing that the action of the Board whereby it granted the license was erroneous. It is recommended, therefore, that an order be entered affirming the action of respondent Board and dismissing the appeal."

Pursuant to Rule 14, State Regulation No. 15, a brief, in objection to the Hearer's Report, was filed by the attorney for the appellants setting forth the contention that the hardship exception in the City's distance-between-premises ordinance (Section 51 of Ordinance No. 41, as amended May 8, 1958) runs expressly in favor of place-to-place transfers and not in favor of a "new"license such as that granted respondent Houman. In support of this contention the brief cites and quotes from Court decisions expressing the well-established general principle that the intention of the legislative body is to be sought primarily in the text of the legislation; and, where the words of the statute (or ordinance) are clear and their meaning and application plain, there is no room for judicial construction.

I concur in the Hearer's findings and conclusions and adopt his recommendation.

The cases cited by the appellants' attorney I find to be not in point. Here we have two ordinances -- the numerical limitation ordinance, as amended July 17, 1958, and the distance-between-premises ordinance, as amended May 8, 1958. In the sense that the exceptions effected by the amendments are "hardship" exceptions, they are in pari materia. Equally as well established in law as the principle against judicial construction where the words of a statute (or ordinance) are clear is the principle that statutes (and ordinances) which relate to the same subject matter and are not inconsistent with each other should be construed to harmonize with each other and be consistent with their general object and scope even though they were passed at different times and contain no reference to each other.

No one is entitled to an alcoholic beverage license or license transfer as a matter of law. My granting of relief under R.S. 33:1-12.18 did not require the respondent Board's granting of respondent Houman's application for a new license, but the "hardship" amendment in the ordinance of July 17, 1958, is in direct keeping with the "hardship" exception in R.S. 33:1-12.18. Closely related is the "hardship" exception in the ordinance amendment of May 8, 1958, as to which amendment the respondent Board construed the words "place-to-place transfer" to have the intendment and meaning of applying to "new" licenses under Section 46 of Ordinance No. 41, as amended, and under R.S. 33:1-12.13. I find respondent Board's construction to be sound and reasonable. Such construction, while waiving the distance-between-premises stricture, did not make mandatory the grant of the new license; but, as applied to the circumstances and background of the instant case, an opposite construction might well have rendered the ordinance unreasonable. The manifest purpose of the two ordinance amendments was to permit relief in bona fide "hardship" cases. To permit such relief (to waive the distance ordinance) with respect to place-to-place transfers but flatly to prohibit such relief in a case such as this (in which the City took over the premises and in which respondent Houman, despite good faith and extreme effort, was unable to move by June 30, 1959) would appear unconscionable.

Accordingly, it is, on this 3rd day of March 1960,

ORDERED that the action of the respondent Board of Commissioners be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Ruth S. Carson t/a "Carson's Al-Mar Tavern" e/s Black Horse Pike McKee City, Hamilton Township (Atlantic County) PO RD 1, Pleasantville, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-40, issued by the Township Committee of Hamilton Township.	)	

Defendant-licensee, Pro se.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant pleaded non vult to a charge that she possessed on her licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On January 7, 1960 an ABC agent tested the defendant's open bottles of alcoholic beverages and seized a quart bottle labeled "Seagram's Seven Crown American Blended Whiskey 86.0 Proof" for further tests by the Division's chemist. An examination of the file and the chemist's report indicate that the said bottle had been refilled with a different brand of whiskey.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days (Re Pachucki and Czaya, Bulletin 1315, Item 3). Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 25th day of February, 1960,

ORDERED that Plenary Retail Consumption license C-40, issued by the Township Committee of Hamilton Township to Ruth S. Carson, t/a "Carson's Al-Mar Tavern", for premises on e/s Black Horse Pike, McKee City, Hamilton Township, be and the same is hereby suspended for five (5) days, commencing at 4:00 a.m., Monday, March 7, 1960, and terminating at 4:00 a.m., Saturday, March 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - CONDUCTING BUSINESS AS A NUISANCE (FEMALE IMPERSONATORS ON PREMISES) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 75 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
David Sherman, Inc. t/a 1025 Bar and Grille 1025 Atlantic Ave. and rear of 1023 Atlantic Avenue Atlantic City, New Jersey	)	CONCLUSIONS
	)	AND
Holder of Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Atlantic City.	)	ORDER
	)	

Edwin H. Helfant, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On January 16, 17, 29 and 30, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered thereon persons, males impersonating females and females impersonating males, who appeared to be homosexuals; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On Saturday, January 30, 1960 at about 12:25 A.M., you sold and delivered and allowed, permitted and suffered the sale and delivery of alcoholic beverages, viz., eight 7-ounce bottles of Schlitz beer, at retail, in their original containers for consumption off your licensed premises and at about 12:35 A.M. on said date, allowed, permitted and suffered the removal of said alcoholic beverages in their original containers from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

ABC agents at the defendant's licensed premises in the late evening hours of January 16 and the early morning hours of January 17, observed at least eight female patrons and a waitress who, by their attire, speech, actions and general demeanor, appeared to be lesbians. The agents discussed these apparent lesbians with the bartender and commented upon the fact that there were a large number of them in the community and asked the bartender whether many of them came to these licensed premises, to which the bartender replied that all came there after the other establishments closed -- that it, the premises in question, is a regular hangout for them. These agents were again at the premises at about the same hours of January 29-30, at which time they observed at least ten males and eight females who, by their attire, speech, actions and general demeanor, appeared to be homosexuals and lesbians. The waitress who appeared to be a lesbian was also there.

On both occasions Frank Marchese, president of the corporate-licensee, acted as bartender until about midnight, at which time Thomas R. Hughes took over those duties. On this occasion the agents again had a discussion with the bartender concerning the presence of these persons in the licensed premises, the agents remarking that the male apparent homosexuals appeared to outnumber the apparent lesbians, to which the bartender replied that they get all kinds; that you never know who will walk in next but that they try to hold them down the best they can. Some of the patrons in question engaged in conduct of a degree not sufficient to warrant a disciplinary charge for permitting lewd and obscene conduct on licensed premises.

At about 12:35 a.m., two of the apparent homosexuals left the premises with eight "nip" bottles of beer which the bartender had placed in a bag and left on the floor near the bar, where it was picked up by one of the apparent homosexuals. One of the agents followed this person when he left the premises, apprehended him and brought him back to the premises with the beer. Thereupon the agents disclosed their identity to the bartender. The purchaser acknowledged the sale of the beer in question, stating that the purchase price was charged to his "credit account". The bartender verbally admitted that he sold the beer to this person and stated that the homosexuals and lesbians had been frequenting the premises since September 1959. During the course of this conversation, Marchese entered the premises, admitted that the homosexuals and lesbians frequented the premises and stated: "I know what they are, I didn't want them here but what could I do?" and stated further: "I know the place has become a 'gay bar' and that's what I didn't want to happen."

Defendant has no previous adjudicated record. Counsel for the licensee, in his letter, urges in alleged mitigation that Frank Marchese, its president, was compelled to cease supervision of his licensed business by reason of illness in October 1959, after which the undesirable element began to frequent the premises, and that he returned to active management about the end of January 1960, whereupon he discouraged this type of business to the extent that it no longer exists. These circumstances, even if accepted at face value, do not warrant the imposition of less than the minimum penalty imposed for violations of this nature. I shall suspend the defendant's license for a period of sixty days on Charge 1 (Re Thorn, Bulletin 1242, Item 3) and for fifteen days on Charge 2 (Re Saleeby, Bulletin 1323, Item 4), making a total suspension of seventy-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of seventy days.

Accordingly, it is, on this 3rd day of March, 1960,

ORDERED that Plenary Retail Consumption License C-130, issued by the Board of Commissioners of the City of Atlantic City to David Sherman, Inc., t/a 1025 Bar and Grille, for premises 1025 Atlantic Ave. and rear of 1023 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for seventy (70) days, commencing at 7:00 a.m., Tuesday, March 8, 1960, and terminating at 7:00 a.m., Tuesday, May 17, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

8. MORAL TURPITUDE - COMMERCIALIZED GAMBLING - NUMEROUS CONVICTIONS - APPLICANT HELD TO BE INELIGIBLE TO ENGAGE IN ALCOHOLIC BEVERAGE BUSINESS.

In the Matter of an Application for Rehearing on Eligibility No. 688.) ON PETITION

ORDER

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Nicholas T. Fernicola, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

It appears that on December 3, 1959, a Division attorney assigned to investigate applicant's background, having considered the fingerprint returns and other pertinent information relating to applicant, recommended that he be declared ineligible to hold a liquor license or to be employed in any capacity by a liquor licensee in this State and that on December 11, 1959 I approved the aforesaid recommendation and so advised applicant.

It further appears that applicant has a long history of gambling convictions, the last conviction in May 1959 being so serious in nature as to warrant the imposition of a twelve-month sentence albeit it was suspended and he was placed on probation for three years and fined $200.

It further appears that applicant's last conviction establishes that he has not conducted himself in a law-abiding manner for the past five years as required by R.S. 33:1-31.2.

Accordingly, it is, on this 25th day of February, 1960,

ORDERED that applicant's petition for a rehearing as to his eligibility to engage in the alcoholic beverage business in this State be and the same is hereby dismissed.

William Howe Davis
Director