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

BULLETIN 2132 February 14, 1974

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STATE OF NEW JERSEY
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BULLETIN 2132 February 14, 1974

1. NOTICE OF ADOPTED RULE CHANGE - AMENDMENT TO STATE REGULATION NO. 13 - PERMITS TO BE ISSUED FIRST OFFENDERS - CHANGING DISQUALIFICATION PROCEDURES.

COMMENTS ON ADOPTED RULE CHANGE:

Since its adoption in 1933, Title 33 of the Laws of the State of New Jersey has prohibited employment in the alcoholic beverage industry by any person who has been convicted of a crime involving moral turpitude unless such person has had disqualification removed by Director of the Division of Alcoholic Beverage Control pursuant to N.J.S.A. 33:1-31.2 which requires passage of a five-year period from date of conviction before petition for removal could be entertained by the Director.

During this five-year waiting period, and until such time as Order of Removal by Director, persons so disqualified were prohibited from performing any task beneficial to a holder of a liquor license, including such duties as maintenance, cook, etc.

In his State of the State Message in January 1973, the then Governor, William T. Cahill, expressed his intention to effect a change in law so as to aid persons, previously convicted of crimes, in their rehabilitation by opening to such persons opportunities for employment in certain industries. During this past year officials of this Division worked ardently with the Governor's Counsel in laying groundwork for amendment to N.J.S.A. 33:1-26 to authorize Director, in his discretion and pursuant to Division Rules and Regulations, to issue employment permits to persons previously disqualified from holding employment in the alcoholic beverage industry because of conviction of crime involving moral turpitude.

On December 4, 1973, joint efforts were rewarded when Governor signed into law amendment to N.J.S.A. 33:1-26 as hereinabove set forth.

On February 1, 1974, Director Bower adopted amendment to State Regulation No. 13 which cleared the way for permits to be issued by Division to qualifying individuals.

In an attempt to aid such individuals in their rehabilitation through gainful employment and yet maintain the close supervision necessary in order to preserve, protect and promote the general health, safety and welfare of the citizens of this State, the Director of Alcoholic Beverage Control has determined to limit such permits, at the present time, to those persons convicted of crimes as a first offender. In determining whether or not to issue permit to applicant the Director will examine each application as to crime convicted of and the facts surrounding commission of crime.

A spokesman for the Division reports that the Division has commenced processing some one hundred requests for permits. All requests must be in form of an application filed with the Division. Applications are available at Division offices located at 25 Commerce Drive, Cranford. Interested parties are instructed to contact Division to schedule appointment for interview.

ROBERT E. BOWER
DIRECTOR

DATED: February 1, 1974

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION.

In the Matter of Disciplinary Proceedings against

Ancorp National Services Inc.,
t/a Savarin
Pennsylvania R.R. Station
(Raymond Plaza West)
Newark, N.J.,

Holder of Plenary Retail Consumption License C-609, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

O R D E R

DENYING PETITION FOR RECONSIDERATION AND REIMPOSING SUSPENSION

- -

Goldman, Goldman & Caprio, Esqs., by Nicholas E. Caprio, Esq., Attorneys for Licensee

BY THE DIRECTOR:

On October 3, 1972 Conclusions and Order were entered herein suspending the subject license for ninety days, after the licensee was found guilty of permitting the making and accepting of bets on a "football lottery" on the licensed premises on December 15, 1971, in violation of Rule 7 of State Regulation No. 20. In the Conclusions it was determined that such gambling was done openly and with the participation of one of the licensee's employees. Re Ancorp National Services Inc., Bulletin 2073, Item 5.

Prior to the effectuation of the said suspension, upon appeal to the Appellate Division of the Superior Court, the suspension was stayed. On May 22, 1973 the Court affirmed my action. Re Ancorp National Services Inc., Sup. Ct. (App. Div. 1973), Docket A-334-72, not officially reported, recorded in Bulletin 2107, Item 2.

Appellant's Petition for Certification to the Supreme Court was denied on October 2, 1973, and on October 12, 1973 a supplemental order was entered herein reimposing the suspension to commence on October 24, 1973.

However, on October 24, 1973 a temporary injunction was entered by Honorable Edward J. Ryan, Referee in Bankruptcy, based upon a complaint and *ex parte* motion filed by the licensee in Proceedings for an Arrangement, under Chapter XI of the Bankruptcy Act. On November 7, 1973 on the return date of the motion by this Division to vacate the temporary injunction to dismiss the complaint, the said temporary injunction was vacated, "effective immediately" and a complaint filed with respect thereto

was dismissed. Re Ancorp National Services Inc., United States District Court, Southern District of New York Docket No. 73-B-231. Accordingly, the suspension may now be reimposed.

The last aforesaid order was entered with the consent of the licensee upon the understanding that the Division would not reimpose the suspension until it considered the petition requesting a deferral of the suspension. The licensee has now filed a "Verified Petition for Clemency" in which it seeks: (1) a modification of the suspension heretofore imposed; and (2) a deferral of the said license suspension for an indefinite period, until the reorganization proceedings in which it is presently involved under Chapter XI of the Bankruptcy Act have been terminated.

I have carefully considered the said petition and have determined to deny the same for the following reasons: (1) The license was suspended for ninety (90) days, after being found guilty of the aforementioned charge. It was clearly established that the licensee's employee had full knowledge and actively participated. Such knowledge and unauthorized activity made the licensee fully responsible for the activities carried on in the licensed premises. F. & A. Distributing Co. v. Division of Alcoholic Beverage Control, N. J. 34, 37 (1961). The matter of the extent of the penalty was argued by the licensee in both the appeal to the Appellate Division and in its Petition for Certification to the New Jersey Supreme Court. Both tribunals, after considering licensee's contentions, rejected the same. Furthermore, the ninety (90) days suspension is in accordance with Division policy in matters involving commercialized gambling, In re Arnone, Bulletin 1971, Item 3, and is the minimum sentence absent prior record, precedentially imposed by this Division in such cases. Cf. Re Falinski, Bulletin 2062, Item 5; Re Casale, Bulletin 2045, Item 4; Re Club 40, a Corp., Bulletin 2061, Item 6.

The licensee, however, argues that since there has now been a complete corporate reorganization as a result of proceedings filed in March 1973 under Chapter XI of the Bankruptcy Act, that the suspension heretofore imposed should be modified. I find that contention lacking in merit because the suspension imposed is upon the same licensee even though it has reorganized.

In re Agostino, Bulletin 382, Item 1, the Receiver in bankruptcy contended that a revocation of a license which the receiver then held should be set aside because the license was no longer the licensee's but was the receiver's for the benefit of the bankrupt estate; and that to revoke the license would not penalize the licensee, but would be taking the license away from the receiver, and thus injure the creditors. The then-Commissioner Burnett held that "The Alcoholic Beverage Law puts all creditors

on notice that, when extending credit, they take the risk of dealing with a debtor who will abide by the rules, and that they not look to the license as a reachable asset."

Thus, he held that creditors have no standing to complain of the revocation of the license.

In the instant matter, we are not dealing with a receiver or trustee in bankruptcy who is a separate party, but instead, we are dealing with the same licensee who has merely had a change in management.

(2) The licensee seeks a deferral of the commencement of the suspension indefinitely and until sometime after the termination of the Chapter XI proceedings. They indicate that in the event that the suggested arrangement is acceptable to the creditors and the Court, the licensee "may be out of Chapter XI by the Spring of 1974."

It further argues that a suspension through March 1974 would be unduly harsh because the period between November through March have always been the best months. I find these arguments to lack substance and do not warrant such deferral. There is no assurance that the Chapter XI proceedings will be terminated in the time suggested by the licensee; in fact, if difficulties are encountered, these proceedings may continue for a long period thereafter.

The licensee has not presented any specific figures and other documentary evidence to establish that the next four months are the "best months". Furthermore, this operation is only one of many facilities operated by the licensee and as the licensee itself states it would "be ludicrous to suggest that this one operation is the lynch pin of Ancorp's success....".

I have determined, in the exercise of my discretion that the reasons set forth in the said petition are insufficient to warrant either a modification or a deferral of the said suspension as requested by the licensee. I shall, therefore, reimpose the said suspension.

Accordingly, it is, on this 19th day of November 1973,

ORDERED that the ninety (90) days suspension heretofore imposed and stayed be reinstated against Plenary Retail Consumption License C-609, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Ancorp National Services Inc., t/a Savarin, for premises Pennsylvania R.R. Station (Raymond Plaza West), Newark, commencing 2:00 a.m. on Tuesday, December 4, 1973 and terminating 2:00 a.m. on Monday, March 4, 1974.

Robert E. Bower
Director

3. APPELLATE DECISIONS - SHOP-RITE OF HUNTERDON COUNTY, INC. v. RARITAN TOWNSHIP ET AL.

Shop-Rite of Hunterdon County, Inc.,
Appellant,
v.
Township Committee of the Township of Raritan (Hunterdon County) and Robert A. Yard,
Respondents.

On Appeal
CONCLUSIONS and ORDER

Lee B. Roth, Esq. and Daniel E. Knee, Esq., Attorneys for Appellant
Jefferson, Jefferson & Vaida, Esqs., by Richard G. Jefferson, Esq., Attorneys for Respondent Township
Herr & Fisher, Esqs., by Edmund R. Bernhard, Esq., Attorneys for Respondent Yard

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action by respondent Township Committee of the Township of Raritan (hereinafter Township) which on March 26, 1973 granted a plenary retail distribution license to respondent Robert A. Yard (hereinafter Yard), which action constituted in effect a denial of appellant's application for such license.

Appellant advanced numerous contentions challenging the validity of the grant of license to Yard which, for reasons set forth below, will not be listed herein. Concurrent with denial of those contentions, the respondents joined in motion to suppress the appeal as having been filed out of time. A hearing was thus held on the motion, with full opportunity to the parties to introduce evidence and to cross-examine witnesses as might be presented in support of the motion, pursuant to Rule 6 of State Regulation No. 15. In lieu thereof, the following chronology of the relevant events was stipulated. Oral argument of counsel, together with memoranda filed, revolved about the overriding single issue: Was the petition filed by appellant within the statutory and regulatory time limitations.

The action of the Township, which is the subject of this appeal, took place on March 26, 1973. The appeal therefrom was filed with this Division on May 18, 1973. Respondents contend that, as more than thirty days elapsed from the date of the municipal action to the date of filing of the appeal, the appeal is

thus out of time and the Director has no jurisdiction to entertain the matter. Appellant contends that the running time of thirty days begins from the date of notice by the Township of the denial of appellant's application served upon or mailed to it. As no such denial was ever mailed or served upon it, appellant contends that its time limitation has not yet begun to toll.

The applicable statute, N.J.S.A. 33:1-22, provides in pertinent part:

> "If the other issuing authority shall refuse to issue any license ... the applicant shall be notified forthwith of such refusal by a notice served personally upon the applicant, or sent to him by registered mail addressed to him at the address stated in the application. Such applicant may within thirty days after the date of service or of mailing of such notice, appeal to the commissioner [now Director] from the action of the issuing authority...."

The said statute further provides:

> "... If the other issuing authority shall issue a license ... any taxpayer or other aggrieved person opposing the issuance of such license may, within thirty days after the issuance of such license, appeal to the commissioner [now Director] from the action of the issuing authority...."

This appeal arose out of the following factual background: On June 26, 1972, respondent Township adopted an ordinance (72-6) increasing the number of available plenary retail distribution licenses by one. On June 7, 1972, an application for such license was filed by respondent Yard, and on June 20, 1972, appellant filed its application. Some eighteen other applicants also filed similar applications. Eventually, on March 26, 1973, the Township adopted the resolution complained of, granting the license, with conditions attached, to respondent Yard. The methods used by the Township in its selection of Yard as the successful applicant, and which is the principal subject of this appeal, have not been factually explored in the present hearing. Only the overriding issue of timeliness of appeal, as hereinabove set forth, is now considered.

It is factually conceded or uncontroverted that, prior to its determinations, the Township was in communication by certified mail with each of the applicants, apprizing each of both the requirements which the Township would consider and the dates of the hearings. It was further admitted that appellant and its counsel were present and participated in the hearings of the Township leading to the grant of license to Yard. It was likewise conceded that none of the applicants who were unsuccessful received a notice "rejecting their application" other than the return of their deposits, submitted by regular mail.

Respondents rely on the principles as set forth in Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393 (App.Div. 1963) which held that the Director of this Division is without jurisdiction to entertain an appeal filed out of time. The factual distinction between that case and the instant matter was simply that Hess Oil Corp. was an objector, not an applicant, and, as the statute specifies that an objector is limited to thirty days from the action complained of in which to appeal to the Director, an appeal filed beyond that time vests no jurisdiction in the Director to adjudicate the matter. The present appellant claims a status as an applicant to whom the statute gives a thirty-day period beginning from the time service is made upon him of a notice of rejection of his application.

The applicable statute (N.J.S.A. 33:1-22) must be read in its entirety pari materia. The distinction between an applicant and an objector in the statute arose from the legislative recognition that an applicant is identifiable, whereas an objector is not necessarily known. To protect the rights of each, it places upon the objector a duty to be aware of the action of the issuing authority and appeal from its action within the thirty-day period. The simplicity of requiring service of notice of rejection of application of applicant, either personally or by registered mail, gives to applicant that measure of security to obviate maintaining constant surveillance of the authority's action by being in constant attendance at the authority's meetings. There is therefore an unquestionable and mandatory duty on the part of the issuing authority to notice an applicant for a license of its refusal to do so.

Respondents contend that the statute reference to "If the other issuing authority shall refuse to issue any license" (N.J.S.A. 33:1-22) removes appellant from the category of an applicant in that a license was issued to Yard. This argument circumvents the obvious overriding purpose of the statute. Certainly a license was issued to Yard, but, as there was but one license available, the issuance of such license and acceptance of Yard's application carry with it a concurrent rejection of all other applications. Hence that rejection was a refusal to issue a license to appellant and the other applicants, all of whom are clothed in the protection of the statute.

However, the statute requires notice served personally or by registered mail of such refusal. Within the factual framework, a notice by registered (or certified) mail was sent to appellant by the Township Clerk that on March 26, 1973, action would be taken on the applications filed. Appellant and counsel, as indicated, were then present. Thereafter, about April 11, 1973, appellant's deposit check was returned to it by the Township Clerk. That appellant had actual notice of the grant of license to another and the inferential refusal of issuance to it is beyond contradiction.

Thus the issue is further distilled to the resulting

question: Did the notice by certified mail to appellant of the date of the meeting when a grant of license would be made, together with appellant's presence and later receipt of the deposit returned, constitute such notice as is mandated by the statute?

It has been long held that "whatever puts a party on inquiry amounts in judgment of law to notice, provided inquiry becomes a duty, and would lead to the knowledge of the requisite facts, by the exercise of ordinary diligence and understanding." O'Dowd v. U.S. Fidelity & Guaranty Co., 117 N.J.L. 444, 451; Commercial Credit Corp. v. Coover, 101 N.J.L. 530; Barrett Co. v. Globe Indemnity Co., 10 N.J. Misc. 534; Bergenfield Printing Co. v. Intertype Corp., 104 N.J. Eq. 212.

The apparent and obvious purpose of the statute is to limit the time from which local actions may be appealed to the Director to thirty days. Notice of its action is required to be constructive as applied to an objector and legal as to an applicant. "Legal Notice" is defined as "Such notice as is adequate in point of law; such notice as the law requires to be given for the specific purpose or in the particular case." Black's Law Dictionary, Revised Fourth Editon, 1968. The applicable statute requires notice by personal service or by certified mail. The content of the notice is not set forth, but such notice must convey to the applicant such information upon which it can be unquestionably determined that the application has been refused.

The notice to appellant by certified mail of the hearing date, the presence of appellant and counsel at the hearing, and the subsequent return of deposit constituted a functional performance of the Township's duty under the statute of providing notice from which appellant was privileged to appeal within a thirty-day period. Appellant not doing so, the Director is barred from entertaining the matter under the mandate of the Appellate Division of the Superior Court in Hess Oil & Chem. Corp. v. Doremus Sport Club, supra.

It is accordingly recommended that the motion of respondents to dismiss the appeal as being without time be granted; that the action of respondent Township be affirmed and the appeal be dismissed.

Conclusions and Order

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

Having carefully considered the entire record herein, including transcript of testimony, exhibit, the Hearer's report, and the exceptions filed thereto which I find have either been fully considered and resolved by the Hearer or to be without merit, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of November 1973,

ORDERED that the motion of respondents to dismiss the appeal as being filed without the time limited therefor be and the same is hereby granted, the action of respondent Township be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Robert E. Bower,
Director.

4. APPELLATE DECISIONS - SEAMARK, INC. v. WILDWOOD.

Seamark, Inc., Appellant, v. Board of Commissioners of the City of Wildwood, Respondent.	On Appeal CONCLUSIONS and ORDER

Rubins and LaManna, Esqs., by Stephen S. Rubins, Esq., Attorneys for Appellant
Anthony J. Fulginiti, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of respondent Board of Commissioners, acting in its capacity as the Municipal Board of Alcoholic Beverage Control (hereinafter Board) which denied appellant's application for person-to-person and place-to-place transfer of a plenary retail consumption license from Louise Lockley to appellant and from premises 314 W. Lincoln Avenue to 5301 Ocean Avenue, Wildwood.

Appellant alleges that the action of the Board was erroneous in that (a) the transfer would not be violative of Ordinance 5-7.1 and (b) that the said ordinance is unconstitutional.

The Board in its answer defended its action on the basis of a legal opinion rendered by its acting attorney to the effect that the grant of the transfer would be violative of the aforesaid ordinance.

The appeal was heard de novo in accordance with Rules 6 and 8 of State Regulation No. 15, at which time the parties stipulated that the facts relevant to a determination of this matter are contained in four joint exhibits which were received in evidence. This was supplemented at the hearing held herein by the admission of additional joint exhibits and oral argument by the attorneys for the respective parties. Counsel also submitted written memoranda in summation.

The joint exhibits hereinabove referred to are as follows:

Exhibit J-1 - Stipulation that the factual complex is set forth in the exhibits;

" J-2 - Application for the transfer;

" J-3 - Commercial floor plan showing the proposed location of the licensed premises in the building wherein the proposed licensed premises are to be contained, together with the floor plan of the proposed licensed premises;

" J-4 - The subject Ordinance 5-7.1;

" J-5 - Opinion of the Board's Acting Solicitor;

" J-6 - The Board's resolution denying transfer based upon the Acting Solicitor's opinion that the transfer would be violative of said ordinance.

Additionally, four photographs depicting the building wherein the proposed licensed premises are to be contained, which were offered by appellant, were received in evidence (Exhibits A-1 through A-4).

Parenthetically, it should be noted that no written or oral objections were filed at the hearing before the Board.

The ordinance in question in its pertinent part reads as follows:

> "5-7.1 Boardwalk. No plenary retail distribution license or plenary retail consumption license shall be granted for any location on the boardwalk or within 100 feet of any walk or passageway, publicly or privately owned, connecting the boardwalk with the sidewalk, ground or street...."

It is undisputed that the location of the proposed licensed premises (which, according to the plans, would contain a restaurant and a cocktail lounge) is in the north tower of a twin-tower eight-story condominium building. The easterly side of both buildings abuts the boardwalk. The easterly wall of the proposed licensed premises (which is the wall closest to the boardwalk) is a solid wall and permits no ingress or egress to the proposed licensed premises. This wall is located slightly in excess of one hundred feet of the boardwalk.

The proposed licensed premises would be located in a large rectangular-shaped room lying to the west of aforesaid solid wall and, therefore, more distant to the boardwalk. The Acting City Solicitor contended that "Applicant's building is located on the Boardwalk and accordingly a transfer to this location is prohibited by the terms of the Ordinance, notwithstanding the 100 feet provision of the same ordinance." The resolution adopted by the Board in denying the transfer was based upon the Acting Solicitor's opinion that the transfer would be violative of the quoted ordinance.

In Wright v. Vogt, 7 N.J. 1, p. 2 (Sup.Ct. 1951), the court held that the "Purpose of construction of ordinances and municipal by-laws is discovery and effectuation of local legislative intent" and "Generally, construction of ordinances and municipal by-laws is governed by same rules applicable to interpretation of statutes." And, further, "Ordinances are to receive reasonable construction and application to serve apparent legislative purpose, and aim is to ascertain sense in which terms were employed by legislative body."

It is reasonable to assume that the municipality considered the sale of alcoholic beverages at any place located on or immediately abutting the boardwalk undesirable and that it was the intent of the municipality to proscribe the sale thereof from any location on the boardwalk or within one hundred feet of any walk or passageway connecting the boardwalk. A municipality in its reasonable exercise of its discretionary power may decline to issue liquor licenses at specific locations. Fanwood v. Rocco, 33 N.J. 404 (1960).

In the instant matter it is apparent that, although the building in which the premises are located abuts the boardwalk, it is not the entire building that is sought to be licensed; nor is there a direct access to the boardwalk; nor does it appear that the entrance to the proposed licensed premises is within one hundred feet of any walk or passageway connecting with the boardwalk. It appears that the sole access to the proposed premises is from a lobby located in the rear of the building wherein the proposed licensed premises are to be contained. Furthermore, the sole access to this lobby is from Ocean Avenue, a public street (at the rear of the said building) which runs parallel to the boardwalk and unquestionably not within one hundred feet of the boardwalk or of any walk or passageway having direct access to the boardwalk.

Appellant's challenge of the constitutionality of the ordinance is without merit. The Division lacks jurisdiction to entertain a challenge to the validity of an ordinance. An ordinance must be accepted in this Division as valid on its face. Suits to challenge the validity of an ordinance must be brought in a court of competent jurisdiction. Blanck v. Magnolia, 73 N.J. Super. 306 (App.Div. 1962), reversed on other grounds 38 N.J. 484 (1962); Gach v. Irvington, Bulletin 2058, Item 1.

Accordingly, I find the action of the Board to be unreasonable and an abuse of discretion in denying the transfer in question. Under the circumstances, I conclude that appellant has sustained its burden, pursuant to Rule 6 of State Regulation No. 15, of establishing that the action of the Board was erroneous and should be reversed.

It is accordingly recommended that an order be entered reversing the action of the Board, and directing it to grant the person-to-person and place-to-place transfer of appellant's license in accordance with the application filed therefor, expressly subject to the completion of the proposed premises in accordance with plans to be approved by the Board, and upon compliance with municipal and statutory requirements.

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 herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 27th day of November 1973,

ORDERED that the action of the respondent Board of Commissioners of the City of Wildwood be and the same is hereby reversed, and respondent be and is hereby directed to grant the said transfer in accordance with the application filed therefor.

Robert E. Bower
Director

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against Albert R. Brown & Helen Mae Brown 406-408 High Street Burlington, N. J., Holders of Plenary Retail Consumption License C-5, issued by the Common Council of the City of Burlington.	CONCLUSIONS and ORDER

Worth, Garber & Kasten, Esqs., by Herbert L. Worth, Esq., Attorneys for Licensee
Carl A. Wyhopen, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensees pleaded not guilty to the following charge:

"On Wednesday, June 6, 1973, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages directly or indirectly to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises in violation of Rule 1 of State Regulation No. 20."

By stipulation of counsel, the written reports of ABC agents B and T (who were assigned to investigate the subject charge) were admitted into evidence in lieu of oral testimony.

In sum, the agents set forth in their reports that they entered the licensed premises on the night of June 6, 1973, to investigate alleged sales to minors and intoxicated persons. The agents' attention was drawn to a male (identified as William Wetzel) who was seated at a nearby stool. He was consuming a glass of beer. He appeared to be intoxicated; he almost fell off the stool several times. On his way to the men's room he stumbled and bumped into bar stools several times. Upon emerging therefrom, he again bumped into bar stools and stopped to conduct an imaginary band. Upon returning to his seat he began singing and talking to himself. His words were slurred. Wetzel ordered, paid for, was served and partially consumed another glass of beer. At this time the agents identified themselves to Regina Ptaszenski (the barmaid) and informed her that Wetzel was apparently intoxicated.

The co-licensee Helen Mae Brown, who was summoned to the licensed premises, was informed of the violation by the agents. She stated that Wetzel had been "flagged" on a previous occasion and that he should not have been served.

In behalf of the licensees, Regina Ptaszenski, employed as a barmaid at the licensed premises for the past two years, testified that she had been acquainted with Wetzel for approximately seven years. In describing Wetzel's usual manner of walk or gait she asserted that "He used to walk like he was staggering" and "he swayed more or less back and forth."

Wetzel patronized the licensed premises regularly. At first, he would be quiet. Later he would talk to himself, he would sing and he would use his hands as though "to catch some birds." He would be sober. People referred to Wetzel as "a crazy old man."

Wetzel was never served "too much" to drink. He would be "flagged" on occasions because his singing would annoy patrons.

To the best of her recollection she served him two glasses of beer on June 6. On that evening she was busy; she did not hear him talking to himself or singing; nor did she observe him annoying other patrons. She denied informing the agents that she had flagged Wetzel because of intoxication. She had flagged him on a prior occasion because his singing was annoying other patrons.

Upon being questioned on cross examination as to how she would be able to determine whether Wetzel was intoxicated, the barmaid replied "I don't know. I really don't know."

Albert R. Brown (a co-licensee) testified that he has known Wetzel for approximately fifteen to eighteen years. He has patronized the licensed premises approximately once every two or three weeks during the past two years. He characterized Wetzel as being "eccentric" and as being known as the "crazy old man." To a person who would not have been acquainted with him, Wetzel would probably appear intoxicated. Wetzel talks to himself and annoys people with his singing. In his opinion, he would be sober. He has never observed his gait.

It was stipulated that the testimony of the co-licensee Helen Mae Brown would be corroborative of the testimony adduced from the previous witness.

The medical report of H. Edward Yaskin, M.D., a neuropsychiatrist with impressive credentials, who had examined Wetzel on August 14, 1973, was admitted into evidence. The pertinent part of the doctor's erudite neuropsychiatric report reads as follows:

"Of course, I can make no specific statement as to the amount of alcohol consumption this man had on the day in question, when his behavior was observed by the agent of the State Agency. However, on the basis of the statements made by Mr. Wetzel and his wife, and on the basis of my neurologic findings, he might very well have demonstrated incoordination in getting about, in view of the chronic limp re the left leg, and of the chronic presence of a left sciatic syndrome. Furthermore, in view of the wife's statement, re the effect of small amounts of beer on him, it is also conceivable that without being really intoxicated, his inhibitions may have been lowered to the point where he would be talkative and even indulge in singing. We are dealing with an emotionally unstable, eccentric individual."

It should be noted, however, that the psychiatrist did not testify, so that he could not be cross-examined with respect to the said report and, as the report forthrightly states, the doctor did not examine Wetzel on the date charged herein.

It is apparent that the primal point of inquiry presented herein is factual.

In evaluating the testimony and its legal impact, we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956); Freud v. Davis, 64 N.J. Super. 242 (App.Div. 1960).

The Legislature has lodged in the Director the responsibility for insuring "fair, impartial, stringent and comprehensive administration" of the Alcoholic Beverage Law. R.S. 33:1-23. As the court commented in Butler Oak Tavern v. Division of Alcoholic Beverage Control, supra, at p. 385:

"The statute as a whole is intended to be remedial of abuses inherent in liquor traffic, R.S. 33:1-73, and the discretion of the Director is sufficiently broad to accomplish the purpose intended."

The licensees are charged with having sold, served and delivered and with allowing, permitting or suffering the sale, service and delivery of alcoholic beverages to a person actually or apparently intoxicated and with having allowed, permitted and suffered the consumption of alcoholic beverages by such persons in violation of Rule 1 of State Regulation No. 20. (Emphasis added.) The rule is clearly in furtherance of that objective.

It is noteworthy that in Division of Alcoholic Beverage Control v. Zane, 99 N.J. Super. 196, 201 (App.Div. 1968), the court stated:

"... The term 'apparently' refers to the observable manifestations or symptoms of excessive indulgence in alcoholic beverages. It portrays a person so far under the influence of alcoholic beverages that his conduct and demeanor have departed from the normal pattern of behavior. To require proof that the patron is 'actually intoxicated' may well place an undue burden upon the Director in carrying out the legislative mandate. Nor does this language place the tavern keeper or his employees in any dilemma by being compelled to make a doubtful decision. They may always make suitable inquiries when a person appears to be intoxicated to verify either that he is intoxicated or has reached a point where he ought not to be served alcoholic beverages."

It is my view that the detailed description of Wetzel's deportment as observed by the agents and related above clearly established the observable manifestations of apparent intoxication. I conclude that the Division has proved its case by a fair preponderance of the credible evidence. I therefore recommend that the licensees be found guilty of the charge.

Licensees have no chargeable prior record of suspension of license. I further recommend that the license be suspended for thirty days.

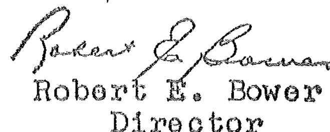
Conclusions and Order

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 the transcript of the testimony, the exhibits, the argument of counsel and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 28th day of November 1973,

ORDERED that Plenary Retail Consumption License C-5, issued by the Common Council of the City of Burlington to Albert R. Brown & Helen Mae Brown for premises 406-408 High Street, Burlington be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. on Wednesday, January 2, 1974 and terminating at 2:00 a.m. on Friday, February 1, 1974.



Robert E. Bower
Director