Ambrose

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

BULLETIN 1849

April 18, 1969

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ITEM

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

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1. APPELLATE DECISIONS - ALLSOP v. WILDWOOD and SCHIPANI AND RICCI.

ELISE ALLSOP, t/a RIO GRANDE LIQUOR STORE, Appellant, v. Board of Commissioners of the City of Wildwood, Joseph & Raffaela Schipani and Domenic S. Ricci, Respondents.	On Appeal CONCLUSIONS and ORDER

Perskie and Perskie, Esqs., by Marvin D. Perskie, Esq., Attorneys for Appellant
Charles Henry James, Esq., Attorney for Respondent Board of Commissioners
Cafiero and Balliette, Esqs., by James S. Cafiero, Esq., Attorneys for Respondents Joseph & Raffaela Schipani and Domenic S. Ricci

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Board of Commissioners of the City of Wildwood (hereinafter Board) on October 3, 1968, whereby it granted by two-to-one vote an application to transfer a plenary retail consumption license (with broad package privilege) from respondent Domenic S. Ricci to Joseph and Raffaela Schipani (hereinafter Schipani) and from premises 4401-03 Park Blvd. to premises 200 W. Rio Grande Avenue, and simultaneously granted an application to transfer a plenary retail consumption license (without broad package privilege) from Joseph Schipani to Domenic S. Ricci and from premises 200 W. Rio Grande Avenue to premises 4401-03 Park Blvd., Wildwood. In effect, Ricci and the Schipanis exchanged licenses but not premises."

The principal objection appears to be directed to the transfer of the license with broad package privilege to Schipani.

Appellant in her petition of appeal contends that the action of respondent Board was erroneous and should be reversed because the transfer to Schipani was "contrary to public need and interest, is discriminatory and will create and add additional public hazards of traffic congestion to the public safety and welfare, will create a fire fighting hazard, and will otherwise over-populate and over-saturate the Rio Grande Avenue area in Wildwood, New Jersey with liquor licenses, and will obstruct safe passage of this thoroughfare."

Respondent Board in its answer denies the aforesaid allegations and states in substantiation of the transfers that:

"a. Each of the premises involved herein has been continuously licensed for the sale of alcoholic beverages for more than thirty years last past.

"b. There was no enlargement of size of either of the two licensed premises, but, rather, each of the two licenses was transferred into an existing facility and said transfers involved absolutely no physical extension or alteration of the two existing premises.

"c. There is a public need and necessity for such licenses to be located in areas where the greatest number of people can avail themselves of the convenience afforded by the discriminate location of P.R.C. licenses which contain the broad package privilege; Rio Grande Avenue is such an area, being the only entrance which leads directly into the City of Wildwood from major highways.

"d. The premises from which the P.R.C. license with the broad package privilege was transferred has no provision for off-street parking for the use of its patrons; the premises to which the P.R.C. license with broad package privilege was transferred contains an off-street parking lot more than 5,000 square feet in area."

The answer filed on behalf of the respondent licensees also denies the allegations set forth in appellant's petition of appeal.

Petitions of approximately the same number of persons were filed for and against the transfers of the licenses.

It appears from the transcript (Exhibit R-2 in evidence) of the recording of the hearing below that eleven persons residing in the neighborhood testified in favor of the transfer of the plenary retail consumption license with broad package privilege to Schipani for premises 200 W. Rio Grande Avenue. No one at the hearing below spoke in opposition thereto. There was no expression of opinion from anyone with reference to the transfer of the plenary retail consumption license without broad package privilege to Ricci for premises 4401-03 Park Blvd.

Philip J. Maiorana testified that during the summers of 1966 and 1967 he was employed as a detective by the City of Wildwood and, on behalf of the appellant, made a survey of the business establishments that were located on Rio Grande Avenue and vicinity; that, beginning at the George Redding Bridge, Rio Grande Avenue is forty-four feet in width from curb to curb and, in addition to some private dwellings, contains various types of commercial business buildings such as restaurants, a liquor store, gasoline stations, an automobile showroom, a used-car lot, a paint store, etc.; that the traffic of Rio Grande Avenue is "highly congested."

On cross examination Maiorana testified that Schipani has "a rather large parking lot" fronting on Arctic Avenue north of his licensed premises, and that Arctic Avenue has "definitely" less traffic than Rio Grande Avenue. Further, on cross examination

Maiorana testified that he has an interest in a plenary retail consumption license, the premises being known as "The Old Philadelphia House" located on Burk Avenue, Wildwood. However, he testified that he has entered into an agreement for the transfer of said license.

Louis C. Fiocca (a retired police captain, with thirty-five years of service in the community) testified that he has been employed by the attorneys for appellant during the past two years as a "staff investigator;" that during his five years as captain he was in charge of the traffic division and is "completely familiar" with the streets and traffic patterns in the municipality; that about five years ago he made a survey of the area from the George Redding bridge up Rio Grande Avenue to New Jersey Avenue. In explanation as to what his survey disclosed, Fiocca testified that Rio Grande Avenue constitutes the only thoroughfare directly entering the City from the mainland and is a dual highway which "from the grade level of the bridge descends immediately into the congested part of the City;" that he recommended that "traffic be circulated along the parallel streets to Rio Grande Avenue and to the intersecting streets to Rio Grande Avenue and that the new access roads be built into the bridge area itself;" that his reason for so doing was that, because of traffic congestion during the summertime, there is a potential danger as ambulances, fire engines, police vehicles and other emergency equipment could not proceed through the area. Moreover, Fiocca stated that Rio Grande Avenue has the highest ratio for accidents.

On cross examination Fiocca testified that he prepared a survey in 1933, another in 1934 and still another in 1944, but does not have copies thereof and therefore had no statistical data or a breakdown as to the accidents on Rio Grande Avenue, but that his opinion was "based on my personal experience and my personal surveys." When further cross-examined as to his opinion whether a consumption license with broad package privilege compared to a consumption license without such privilege and would increase the traffic congestion, Fiocca stated this would be so despite the fact that there are parking facilities provided by Schipani in the rear of the premises which fronts on Arctic Avenue.

John H. Comiskey, Jr. testified that he is a consulting traffic engineer specializing in traffic control problems since 1950; that in 1965 he was retained by Wildwood to make a study of traffic conditions in the area of Rio Grande Avenue; that he was in the vicinity on the evenings of Friday, August 20, Sunday, August 22, 1965, and also on Thursday, August 17, 1967 and Sunday evenings of August 27 and September 3, 1967; that November 23, 1968 was the most recent date when he visited Rio Grande Avenue area. Comiskey testified that his observations from the various times he was on Rio Grande Avenue disclosed that on Friday evenings the traffic was heavy and moving very slowly coming into the municipality, and on Sunday evenings the problem was reversed and traffic moved slowly out of the City; that the parking was one of the major causes of the problem. Comiskey further stated that on November 23, 1968 he examined Schipani's parking facilities and, although probably thirty cars could park in the lot, in his opinion it would not ease the parking situation as the parking lot is not designed for short-time parking. Comiskey also said that the establishment of a package store operation in addition to the existing operation would create a greater hazard to the hazard which now is there.

On cross examination Comiskey testified, when asked to be specific about the number of cars parked on Rio Grande Avenue between Arctic Avenue and Park Boulevard, "I did not check the blocks for parking" but he was there "more or less looking for problems. It was not to find out how many cars were allowed to park or how many spaces were available."

Commissioner Wilbur J. Ostrander testified that his reasons for voting to deny the transfers of the license were that "this is a residential area. In my opinion, it's the last semblance of order in the City of Wildwood. That may stand some correcting, but this is the way I see that particular area. And over the years numerous times licenses have been tried to be transferred into that general area, and I hope this has some basic merit in so far as the case because I'm reminiscing here as far as the reason. And prior to my being elected, the City elected official in some instances, most instances in my time there, have protested this attempt of moving licenses into the area. So, therefore, I felt that generally the licenses that are opposed to be relocated stay in their general vicinity without interfering with the general, the areas of this particular, this Third Ward area because of its residential nature."

On cross examination Commissioner Ostrander, when questioned as to why he described the area of Schipani's licensed premises as residential, testified that "perhaps in a sense I may be incorrect. It is zoned, I think, in certain categories as commercial. But generally the area does comprise, and I would be safe, I suppose in saying 70 per cent of the area is a residential type of a situation." Further, he stated that where Schipani's premises are located, it "is definitely a commercial area."

Commissioner Ostrander also testified that, although neighbors appeared in favor of the transfer to Schipani, no objections were voiced at the hearing before respondent Board and that he (Commissioner Ostrander) did not base his opinion because of traffic on Rio Grande Avenue.

Edward Baker (City Clerk) testified that he received written objections to the transfers from "Perskie & Perskie representing Elise Allsop, trading as Rio Grande Liquor Store, the other Jones Boys on the objection;" that the letter was "signed by William Jones, president, Brighton Hotel Corporation", holder of a plenary retail consumption license.

Joseph D. Schipani testified that he has been interested in the plenary retail consumption license at the premises located on Rio Grande Avenue since 1946; that his in-laws held the license since 1933; that he gave as his reason for desiring a license with broad package privilege "There's a little bit of physical reason because we're getting too old to be in the bar business, plus the fact that the liquor industry is changing. There's more package goods being sold to homes than there was years ago. People are not drinking in barrooms like they used to. I've spent so many years behind the bar that I'm tired. I want to go to a cleaner-cut business, and I think I'm doing the right thing." Schipani stated that the parking lot he provides could accommodate twenty-five or thirty cars, which cars could easily get into and out of the lot; that he is contemplating emphasizing the sale of package goods for off-premises consumption, and he has also considered as a reason for trying to obtain

a plenary retail consumption license with broad package privilege the fact that he would reduce the hours of operation of the premises.

Mayor Charles Marciarella testified that he voted to grant the transfer of the respective licenses because "to begin with, I felt that the hearing was expounded with all evidence, and after hearing all the evidence I thought it was a reasonable request. I thought it would be advantageous to the City because of the parking facilities at the newer location which was being replaced to bring this broad C. And it wasn't an additional license; it was a transfer of a license which was already in existence for a good many years at both premises. And I also took into consideration the petitions that were brought into evidence. Whereas I did examine the petitions and I found that the petitions in favor of the license, the names and addresses of the persons in favor of the license, were more in the immediate area than the ones opposing the transfer. I found that the ones opposing the transfer were in a much further location away from the transfer-to-be." Moreover, he was impressed that those who spoke in favor of the transfer to Schipani lived in the immediate area whereas no one testified in opposition thereof.

Commissioner Joseph A. Furey testified that his reasons for voting in favor of the transfers were "I felt that this was actually not an additional license being introduced into the area. I felt that it was a mere transfer. I felt that the best interests of the City would be served in allowing it, particularly in view of the fact that those people who lived in the immediate and adjacent vicinity not only did not oppose it but vociferously and almost unanimously approved it. And since there were no people that got up and, say, complained about it or objected to it, I felt this was a valid reason along with the fact that here was an area that, in my opinion, would be improved, if anything, on a traffic basis, and as a director of public safety I was concerned about that." Commissioner Furey also stated "I felt that the public interest was best served in granting it. As I said, the public interest was that this would cause an expansion of the facility at Mr. Schipani's, and that this could give us an additional ratable if the proposed or suggested improvements were made."

The appellant in this matter, and also the other objector below, are retail licensees operating their respective businesses in the community. It is apparent that the said liquor licensees are of the opinion that their liquor establishments will be adversely affected when the license with the broad package privilege was transferred to Schipani at 200 W. Rio Grande Avenue.

Matters of economics are of no proper concern to issuing authorities. The Great Atlantic and Pacific Tea Company v. Conover, Bulletin 153, Item 12, aff'd Conover v. Burnett (Sup. Ct. 1937), 118 N.J.L. 483. The test to be applied is the welfare of the community. Knast et al. v. Camden et al., Bulletin 810, Item 2. The burden of establishing that the action of the Board in granting the transfers was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license will be transferred to a particular locality rests in the discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Dealers Assn. v. North Bergen et al., Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954).

In Fanwood v. Rocco, 33 N.J. 404, 414, Justice Jacobs stated:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him .... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Assn. v. Newark et al., 77 N.J. Super. 70 (1962).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. In other words, the action of the municipal issuing authority 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 Assn. v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, supra.

In Fanwood, the case of Ward v. Scott, 16 N.J. 16 (1954) was cited, wherein the Supreme Court dealt with an appeal from a zoning ordinance and set forth the following general principle:

> "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 variance. 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)."

There appears to be no dispute but that the area of the premises on Rio Grande Avenue is used mainly for business purposes.

I am satisfied from the record that the Board was not improperly motivated but that it was just an honest difference of opinion and the members of the Board acted in accordance with their best judgment in the interest of the community.

The attorney for the appellant contends, since the three members of the Board after hearing the matter did not deliberate prior to voting in the matter, that it was not permissible to enunciate their particular opinion in the case. However, there

is no such rule that deliberation is necessary among the various members of a local issuing authority prior to their action in voting in the case. Moreover, Commissioner Ostrander, prior to the hearing being completed below, left the rostrum and entered an objection to the transfers of the respective licenses in question. Therefore it appears that, under the circumstances, deliberation among the members of the Board would serve no useful purpose. Furthermore, one of the reasons as testified by Commissioner Ostrander at the within hearing indicates that he was under the impression that this transfer of the license with the broad package privilege was an attempt to move an additional license into the Rio Grande Avenue area whereas in fact Schipani already has had a license for many years.

After review of the evidence and the arguments of counsel, I conclude that the appellant has failed to sustain the burden of proof in showing that the action of respondent Board of Commissioners was unreasonable or constituted an abuse of discretion. Rule 6 of State Regulation No. 15. Cf. Helms v. Newark et al., Bulletin 1398, Item 3.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Board and dismissing the appeal.

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 record herein, including the testimony taken, the exhibits introduced in evidence at the hearing on the appeal, the Hearer's report and the recommendations therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 26th day of February, 1969,

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

JOSEPH M. KEEGAN
DIRECTOR

2. APPELLATE DECISIONS - ANCEL v. ASBURY PARK.

NOS. 3327, 3339)
NATHAN MICKEY ANCEL, t/a
Mickey's Savoy Bar,)

Appellant,)

v.)

City Council of the City of)
Asbury Park,)

Respondent.)
- - - - - - - - - - - - - - - - - -)

On Appeal

CONCLUSIONS
and
ORDER

Charles Frankel, Esq., Attorney for Appellant
James M. Coleman, Jr., Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On May 12, 1968 appellant applied for renewal of his plenary retail consumption license for premises 1108 Springwood Avenue, Asbury Park, for the 1968-69 licensing period. On May 20, 1968 respondent City Council of the City of Asbury Park (hereinafter Council) served notice of charges on appellant alleging that he permitted, suffered and allowed violations of Rules 4 and 5 of State Regulation No. 20 on the licensed premises. After hearing thereon on June 18, 1968, the Council revoked appellant's license by resolution and order dated June 25, 1968, effective July 1, 1968, and declared the licensed premises ineligible to become the subject of any further license under the Alcoholic Beverage Law during the period July 1, 1968 until July 1, 1970. Accordingly the Council took no action on the application for renewal of appellant's license.

Appellant appeals from both the revocation of the license and as from denial (by non-action) of the application for renewal, by single notice and petition of appeal.

In view of the fact that these appeals involve the same questions of law and fact, they were consolidated for hearing and are the subject of a single Hearer's report.

Appellant contends in his petition of appeal that the action of the Council was erroneous in that "no reasons were given for the revocation of said license; no facts were established for said revocation; no facts exist for said revocation." He asserts that "charges" brought against him in 1967 were dismissed and, further, that he never had a suspension or revocation of his license during his ownership and operation of the licensed premises.

In its answer the Council admits the jurisdictional facts and denies the substantive allegations of the petition. It admits that it did not prefer charges (in disciplinary proceedings) against appellant in 1967 but that objections to then renewal of appellant's license were filed and the license was renewed, after hearing on the objections, "with the warning that further violations might result in further proceedings." It sets forth as its statement of reasons for the now denial of the license

(meaning revocation) the following:

> "A hearing was given appellant after due notice served. The notice cited violation of Regulation No. 20, Rules 4 and 5. Various police calls to the licensed premises were cited in the notice. These were admitted into evidence at the hearing. The Respondent in making its decision said it was not denying renewal on the basis of the police calls alone but because the appellant had not demonstrated any attempt to control the premises thereby making it a source of trouble."

Upon the filing of the appeals an order was entered staying the revocation and extending the term of the 1967-68 license until the further order of the Director.

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

Thomas S. Smith (Chief of Police of Asbury Park) produced the Police Department records for the years 1967 through June 30, 1968. The records show that during the period of sixteen months twenty-two calls were received by the Police Department complaining about breaches of the peace inside and outside the premises. About five of these calls involved incidents in the parking lot adjoining appellant's premises. Another five calls to the police were made by appellant or his employees when they required assistance in quelling a disturbance or evicting an unruly patron.

The witness stated that at his recommendation the adjoining lot was fenced in and closed, which eliminated much of the difficulty in the operation of these premises. He was then asked:

> "Q Has there been some improvement as a result of that, of problems in that area, would you say?
> A Yes. It has to be with the lot being closed because the lot used to attract a lot of the people who would just be sitting in the cars and drinking."

Chief Smith felt that one of the main difficulties in this operation was that the employees engaged by appellant were not strong enough to control the patronage.

On cross examination this witness stated that since June 1968 no complaints of any kind were received by the Police Department concerning the operation of these premises. He knew that appellant had discharged the objectionable employees and had made an effort to operate his place properly. He indicated that other nearby taverns were operated in a much worse manner and it was his opinion that, with full control over his employees, appellant should remain in business. He would have recommended a suspension of license rather than a revocation.

Nathan Mickey Ancel (the appellant) testified that his premises were open from 5:30 p.m. to 3 a.m. daily except Saturday and Sunday during the summer months. After Labor Day the premises were open only on weekends. He asserted that many of the problems that arose in the operation of these premises resulted from inci-

dents that happened in the parking lot adjoining his premises. At the recommendation of the Police Department he fenced in this lot and it is now completely enclosed. At the hearing on the renewal application before the Council he first learned that one of his employees had a criminal record, and he immediately discharged him. On a number of occasions he called the Police Department to assist him in evicting unruly patrons, and he also employed a special officer to check people at the door during the 1967 summer season.

On cross examination the witness stated that he was open nights during the past summer until Labor Day, after which he completely closed the premises. The business is not being operated at the present time. The witness sought to explain that there was one patron, named Jerome Jackson, who had been barred from these premises and repeatedly came in to annoy and disturb him and his patrons. Although he was compelled to make a criminal complaint against Jackson, this did not keep the man out of the premises.

Alonzo Augustus Artis testified that he is an electrician and refrigeration repairman who had performed services for appellant over a long period of time and had also been a patron at these premises four or five times a week. Occasional arguments between patrons were usually settled by the bartender. On three occasions that he could recall, the bartender was required to call for police assistance. In his opinion these premises were conducted "to the best of the man's ability and I don't think it was operated too much different than any that I work in, which is mostly all of them."

John Richard Milby (a neighboring barber who patronized these premises since 1962 and visited the premises frequently during the evening) stated that in his experience the place was conducted properly; he was never present on any occasion when police assistance was required.

Appellant is charged with violation of Rules 4 and 5 of State Regulation No. 20. Rule 4, in so far as it is pertinent to to the matter herein, provides:

> "No licensee shall allow, permit or suffer in or upon the licensed premises any prostitute, female impersonator, pickpocket, swindler, confidence man, or any notorious criminal, gangster, racketeer, or other person of ill repute...."

The purpose of the rules is to prohibit licensed premises from being used as a hang-out for persons generally known or known to the licensee or his agents to be undesirables. Re Silver, Bulletin 441, Item 12. A necessary element of proof is that the licensee or his agents knew or should have known of the person's bad reputation or that such reputation was of common knowledge in the community where the licensed premises are located. Re Giaguinto, Bulletin 1605, Item 3.

Nowhere in the record is there any affirmative evidence to support a conviction under this rule. On the contrary, appellant testified that he did not know of any person of ill repute, nor was he aware of the criminal record of his employee prior to the hearing below. Thus a conviction based on Rule 4 cannot be sustained. Cubanacan Corp. v. Newark, Bulletin 1753, Item 2.

The credible evidence adduced herein preponderates in support of a conviction of violation of Rule 5 of State Regulation No. 20, which reads:

> "No licensee shall engage in or allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy, indecent or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

Chief of Police Smith testified at length with respect to incidents requiring police assistance, which indicated that the place was conducted in such manner as to constitute a nuisance. While numerous calls were made by appellant himself, it is clear that neither he nor his employees were able to control these premises and the patrons thereof. Appellant must be held accountable for the logical consequences of such activities. A licensee is responsible for incidents both inside and outside the licensed premises caused by the patrons thereof. Kaplan et als. v. Englewood, Bulletin 1745, Item 1; Essex Holding Corp. v. Hock, 136 N.J.L. 28 (1947); Rule 31 of State Regulation No. 20. I conclude that the evidence preponderates in support of guilt of this charge.

Appellant advocated that the penalty was harsh and discriminatory under the circumstances of the case and should be modified. He argued that several other licensees were convicted of the charge of conducting their premises as a nuisance at the same time that the charge against him was considered and that in none of those cases were the licenses revoked.

A liquor license is a special privilege to pursue an occupation which otherwise is illegal. Paul v. Gloucester County, 50 N.J.L. 585 (1888); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Mazza v. Cavicchia, 15 N.J. 498 (1954). The Legislature invested the issuing authority (the Council) in its administration and control of liquor licenses with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violations of the law or of State or local regulations. (R.S. 33:1-31.

It is well settled that the quantum of penalty to be imposed in disciplinary proceedings rests in the first instance within the sound discretion of the local issuing authority. The power of the Director to reduce or modify such penalty will be sparingly exercised, and only with the greatest caution, within the Director's discretion. Harrison Wine and Liquor Co., Inc. v. Harrison, Bulletin 1296, Item 2; Buckley v. Wallington, Bulletin 1772, Item 1; Mitchell v. Cavicchia, 29 N.J. Super. 11 (App. Div. 1953).

However, the Director has modified penalties where they have been manifestly unreasonable or unduly excessive. Cf. Kovacs v. South River, Bulletin 1008, Item 2 (reduction from revocation of license to suspension for twenty days); Conklin v. Bridgewater, Bulletin 809, Item 7 (reduction from revocation to suspension for twenty days); Lark, Inc. v. Paterson, Bulletin 1615, Item 1 (reduction from suspension for one hundred twenty days to thirty days).

Upon review of the totality of the record herein, I am persuaded that the penalty of revocation (as a result of which no action was taken on appellant's application for renewal of his license) was excessive for the following reasons:

1. While it is true that each case must be judged separately upon its merits, and the local issuing authority is not required to act in accordance with the standard or measure set by other issuing authorities, where the standard or policy, as with this Council, appears to be to warn the licensee or suspend the license, rather than to revoke, in similar factual complexes, the penalty of revocation would appear to be unreasonable and discriminatory. Council in fact acted so dissimilarly in matters considered on the same date.

2. The testimony of Chief Smith indicates a lack of control of the patrons on the part of appellant's employees, and those employees have been discharged.

3. Much of the difficulty in the operation of these premises seemed to stem from the open parking lot. Appellant has completely enclosed the lot in compliance with the recommendation of the Chief of Police.

4. At least five of twenty-two calls made to the police were made by appellant and his employees. Five other calls were made as the result of incidents at the parking lot or on the outside of the premises. Further, since June 1968 to the date of this hearing not a single complaint or call has been made to the Police Department concerning this tavern.

5. In Chief Smith's opinion, under all the circumstances herein the penalty should be modified. It is obvious that the attorney for the Council, too, felt that a penalty of revocation might be too severe. As he stated in his summation:

> "Certainly we say that no matter what happens, there certainly shouldn't be a reversal <u>in whole</u> ...."

The implication is that a penalty is clearly warranted but not one of revocation.

I am persuaded that appellant should be given one more opportunity to demonstrate his worthiness to hold a liquor license. I therefore recommend that the Council's action herein be modified and that an order be entered reducing the said revocation of appellant's license to a suspension of sixty days. Cf. <u>Mitchell v. Cavicchia</u>, <u>supra</u>. It is further recommended that the Council be directed to renew appellant's license for the current licensing period.

<u>Conclusions and Order</u>

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 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 27th day of February, 1969,

ORDERED that the action of respondent in revoking appel-

lant's license be and the same is hereby modified to a suspension of said license for a period of sixty days; and it is further

ORDERED that respondent renew applicant's license for the year 1968-69 in accordance with the application filed therefor, expressly subject to the sixty-day suspension, the effective dates of such suspension to be fixed by resolution of the City Council when the licensed business (not now operating) has been fully resumed on a substantial basis by the licensee or any transferee of the license.

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

CANCELLATION PROCEEDINGS - ORDER TO SHOW CAUSE DISCHARGED UPON CORRECTION OF UNLAWFUL SITUATION.

In the Matter of Disciplinary and Cancellation Proceedings against NATIONAL EAST BRUNSWICK MOTOR INN, INC. t/a Hostway Motel, also known as the Cloud Nine Lounge 247 Highway 18 East Brunswick, New Jersey Holder of Plenary Retail Consumption License C-17 issued by the Township Council of the Township of East Brunswick and transferred during the pendency of these proceedings to OTNAS HOLDING CO.(A corp.) for the same premises	)	CONCLUSIONS and ORDER

Richard M. Glassner, Esq., and Iaria and Gelzer, Esqs., by Seymour Gelzer, Esq., Attorneys for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee National East Brunswick Motor Inn, Inc. pleads non vult to a charge alleging that in its current application for license, it falsely denied that Salvatore Vitiello, its president and 98 per cent stockholder, had been convicted of crime, whereas he had been convicted on June 16, 1967 of willful failure to file federal income tax returns, in violation of R.S. 33:1.25.

In addition, the licensee (National) does not contest an order to show cause why its license should not be cancelled because its issuance was improvident, in violation of R.S. 33:1-25, since Vitiello's conviction involved moral turpitude.

During the pendency of these proceedings, the license was transferred to Otnas Holding Co. (a corp.), in which corporation Vitiello has no interest.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days; and in view of the correction of the unlawful licensing situation, the order to show cause why the license should not be cancelled is discharged. Re Zyry's Tavern, Inc., Bulletin 1840, Item 7.

Accordingly, it is, on this 26th day of February, 1969,

ORDERED that Plenary Retail Consumption License C-17, issued by the Township Council of the Township of East Brunswick to National East Brunswick Motor Inn, Inc., t/a Hostway Motel, also known as the Cloud Nine Lounge, and transferred during the pendency of these proceedings to Otnas Holding Co. (a corp.), for premises 247 Highway 18, East Brunswick, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Wednesday, March 5, 1969, and terminating at 2:00 a.m. Thursday, March 20, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against THOMAS J. PETITO and ANGELINA P. PETITO t/a Hamilton Villa 1222 Hamilton Avenue Trenton, New Jersey	)	CONCLUSIONS and ORDER
Holders of Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton	)	

Licensees, Pro se
Louis F. Treole, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on January 18, 1969, they sold drinks of beer to an intoxicated patron, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Downsea Beach Hotel, Inc., Bulletin 1831, Item 8.

Accordingly, it is, on this 25th day of February, 1969,

ORDERED that Plenary Retail Consumption License C-177, issued by the City Council of the City of Trenton to Thomas J.

Petito and Angelina P. Petito, t/a Hamilton Villa, for premises 1222 Hamilton Avenue, Trenton, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. Tuesday, March 4, 1969, and terminating at 2:00 a.m. Wednesday, March 19, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - PURCHASE FROM ANOTHER RETAILER - UNLAWFUL TRANSPORTATION - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
M. V. PATTERSON, INC. t/a Patterson's 245 Main Street Chatham, New Jersey	) CONCLUSIONS and ORDER
Holder of Plenary Retail Distribution License D-4 issued by the Borough Council of the Borough of Chatham	)

Gerold Kanengiser, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on November 26, 1968, it (1) purchased a quantity of alcoholic beverages from another retailer, in violation of Rule 15 of State Regulation No. 20, and (2) transported such beverages in a vehicle without requisite transit insignia, in violation of Rule 2 of State Regulation No. 17.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Albert C. Wall, Inc., Bulletin 1820, Item 12) and on the second charge for ten days (Re Oakley, Bulletin 1715, Item 4), or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 25th day of February, 1969,

ORDERED that Plenary Retail Distribution License D-4, issued by the Borough Council of the Borough of Chatham to M.V. Patterson, Inc., t/a Patterson's, for premises 245 Main Street, Chatham, be and the same is hereby suspended for twenty (20) days, commencing at 9:00 a.m. Tuesday, March 4, 1969, and terminating at 9:00 a.m. Monday, March 24, 1969.

JOSEPH M. KEEGAN
DIRECTOR

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

In the Matter of Disciplinary Proceedings against	)	
ROCCO J. MIELE & CLOTILDE MIELE t/a Rockys Tavern 10 Second Street Raritan, New Jersey	)	CONCLUSIONS and ORDER
Holders of Plenary Retail consumption License C-4 issued by the Mayor and Council of the Borough of Raritan	)	

Licensees, by Rocco J. Miele, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on January 7, 1969, they possessed 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.

Licensee Rocco J. Miele has a previous record of suspension of license (then held for premises 75 Somerset Street, Raritan) by the municipal issuing authority for one day effective January 10, 1939, for sale during prohibited hours.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Juniewicz, Bulletin 1822, Item 13.

Accordingly, it is, on this 3d day of March, 1969,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Raritan to Rocco J. Miele and Clotilde Miele, t/a Rockys Tavern, for premises 10 Second Street, Raritan, be and the same is hereby suspended for five (5) days, commencing at 1:00 a.m. Monday, March 10, 1969, and terminating at 1:00 a.m. Friday, March 15, 1969.

Joseph M. Keegan
Director