

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2371

October 14, 1980

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October 14, 1980

1. ATTORNEY GENERAL'S OPINION RELATIVE TO MEANING OF THE PHRASE "IN ANY SCHOOL" AS USED IN N.J.S.A. 2C:33-15.

Joseph H. Lerner, Director
Division of Alcoholic Beverage Control
P.O. Box 2039, Newark International Plaza
U.S. Route 1-9 (so.), International Way
Newark, New Jersey 07114

RE: Administrative Agency Advice M80-4365 --
Meaning of the phrase "in any school" as used
in N.J.S.A. 2C:33-15.

Dear Director Lerner:

A question has arisen regarding the meaning of the phrase "in any school" as used in N.J.S.A. 2C:33-15(a),* which specifies that "[a]ny person under the legal age to purchase alcoholic beverages who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage in any school, public conveyance, public place, or place of public assembly, or motor vehicle, is guilty of a disorderly persons offense, and shall be fined not less than \$100.00." We advise you that this portion of the statute relating to the possession or consumption of alcoholic beverages in any "school" refers to that kind of activity in elementary or secondary schools.

N.J.S.A. 2C:33-15 is part of a package of legislation

*N.J.S.A. 2C:33-15 reads in its entirety:

"a. Any person under the legal age to purchase alcoholic beverages who knowingly possesses without legal authority or who knowingly consumes any alcoholic beverage in any school, public conveyance, public place, or place of public assembly, or motor vehicle, is guilty of a disorderly persons offense, and shall be fined not less than \$100.00.

"b. Whenever this offense is committed in a motor vehicle, the court may, in addition to the sentence authorized for the offense, suspend or postpone for up to 30 days the driving privilege of the defendant.

"c. In addition to the general penalty prescribed for a disorderly persons offense, the court may require any person who violates this act to participate in an alcohol education or treatment program, authorized by the Department of Health, for a period not to exceed the maximum period of confinement prescribed

enacted during the 1979 legislative session designed to deal with the rising incidence of alcohol abuse among young people. The centerpiece of the package was L. 1979, c. 260, which amended existing statute law to "[e]xtend to persons 19 years of age and older, heretofore applicable only to persons 18 years of age and older, the right to purchase and consume alcoholic beverages...." N.J.S.A. 9:17B-1(b). With N.J.S.A. 33:1-77 already specifying that anyone selling liquor to an underaged person under circumstances showing culpability shall be a disorderly person, N.J.S.A. 33:1-81 was amended to make it unlawful for any underaged person, or any person on his behalf, to enter any premises licensed for the retail sale of liquor for the purpose of purchasing or having served to him any alcoholic beverage. L. 1979, c. 265. Modifications were introduced to N.J.S.A. 39:3-10f, specifying that each initial New Jersey motor vehicle license issued to a person under the age of 21 shall have a color photograph of the licensee, L. 1979, c. 261, while, as noted, N.J.S.A. 2C:33-15 was enacted to prohibit the possession or consumption of alcoholic beverages "in any school," among other places. Of significance to the present question, L. 1979, c. 263 amended N.J.S.A. 18A:35-4 to underscore its mandate that the nature of alcoholic drinks and their effects upon the human system be taught "in all schools supported wholly or in part by public moneys" and intensified the participation of each local board of education and of the Commissioner of Education in administering this responsibility.

The last-mentioned piece of legislation obviously concerns the grammar and high schools, and that fact bears strongly, we believe, upon the phrase "in any school" used in N.J.S.A. 2C:33-15(a). As the Supreme Court of New Jersey has said, "It is basic in the construction of legislation that every effort should be made to harmonize the law relating to the same subject matter. Statutes in pari materia are to be construed together when helpful in resolving doubts or uncertainties and the ascertainment of legislative intent. Such enactments are to be considered 'as a homogeneous and consistent whole, giving effect to all their provisions.'" State v. Green, 62 N.J. 547, 554-555 (1973), quoting Watson v. Jaffe, 121 N.J. Super.

(footnote continued)

by law for the offense for which the individual has been convicted.

"d. Nothing in this act shall apply to possession of alcoholic beverages by any such person while actually engaged in the performance of employment pursuant to an employment permit issued by the Director of the Division of Alcoholic Beverage Control, or for a bona fide hotel or restaurant, in accordance with the provisions of R. S. 33:1-26."

213, 214 (App. Div. 1972). See also Brewer v. Porch, 53 N.J. 167, 174 (1969). Furthermore, "the rule most obviously applies when the statutes in question were enacted during the same session or went into effect at the same time... ." Mimkon v. Ford, 66 N.J. 426, 434 (1975). In the present instance the "schools" to which reference was made in the amendment to N.J.S.A. 18A:35-4 were obviously those schools of grade 12 and below. Clearly, teaching grammar and high school students regarding the dangers of alcohol abuse is consonant with keeping those schools free from alcoholic beverages, and therefore we conclude that the Legislature used the phrase "in any school" in N.J.S.A. 2C:33-15(a) to mean the grammar and high schools, not post-secondary educational institutions.

Our conclusion is supported by testimony offered during public hearings held by the assembly Judiciary, Law, Public Safety and Defense Committee regarding the bill which eventually amended N.J.S.A. 9:17B-1 to raise the drinking age. That testimony shows a two-fold legislative concern -- that persons aged 18, many of whom are high school seniors and heretofore were legally entitled to purchase and consume alcohol, not thereby tempt younger, under-aged students to drink and that all students learn the dangerous potential of alcohol. Thus, on January 23, 1979 Senator Frank X. Graves, a sponsor of the legislation, observed that 74% of New Jersey high school seniors are aged 18, meaning that they are:

"in touch with over 300,000 [younger students] a day. They share the same corridor, the same library, the same gymnasium, the same playground facilities, the same classroom facilities and they are, in mass totals, making available to the 14, 15, 16 and 17 year old who would never have the opportunity to have made available to them, alcoholic beverages. That's one of the tragic parts of having lowered the age to 18. Only 5% of the students in the high schools in the State of New Jersey are age 19. ... The input of this legislation was to remove the legal availability of alcoholic beverages from the high schools, from the school systems of the State of New Jersey and it will do it" (T14, T15).

Senator Graves agreed with the suggestion of Assemblyman Mays that education of young people was equally important and that that requirement should be part of the legislative package (T29, T30).

The Attorney General, similarly, supported increasing the drinking age because "I think that an 18-year-old travels in a social peer group that includes kids of younger ages who are in lower grades in high school and junior high school and that the ability of an 18-year-old to purchase for off-premises consumption

package goods is a commonly used device to distribute that commodity to kids much younger than 18" (T1a). He too supported the suggestion of additional educational programs in the schools (T16a), while Riley Regan, Director of the Division of Alcoholism in the New Jersey Department of Health, said that increasing the drinking age and introducing preventive education "really have to go hand in hand. What we require is a very comprehensive approach to this problem" (T9). On February 5, 1979 the Commissioner of Education, Fred G. Burke, noted that increasing the drinking age by one year would make a difference "because we have a number of 18 year olds in the schools today who can, on their lunch hour or break, obtain and purchase, legally, alcoholic beverage" (T23), while James Hughes, Director of the General Education Division of the New Jersey State Safety Council, stated his opinion that the quality of alcohol education in the schools was poor and needed improvement (T51). The legislative focus plainly was upon the grammar schools and, in particular, the high schools, not upon college-level institutions.

In summary, then, we have concluded that the portion of N.J.S.A. 2C:33-15 which relates to the possession or consumption of alcoholic beverages in any "school" refers to that kind of activity in elementary or secondary schools.*

Very truly yours,

JOHN J. DEGNAN
ATTORNEY GENERAL

*We conclude further, however, that although the word "school" as used in this statutory provision does not encompass institutions of higher education, any person under the legal age to purchase alcoholic beverages who possesses or consumes those beverages in a public conveyance, public place, place of public assembly or motor vehicle would violate the statutes even if the activity were to occur on a college campus.

Dated: August 4, 1980

2. APPELLATE DECISIONS - THE BAN-SHEE v. SAYREVILLE.

#4332

The Ban-Shee
t/a King's Harem,

Appellant,

vs.

Mayor and Council of the Borough
of Sayreville,

Respondent.

CONCLUSIONS

AND

ORDER

MUN. REV. #7358

A. Kenneth Weiner, Esq., by Dean Anglin, Esq.,
Attorney for Appellant.
Robert A. Blanda, Esq., Attorney for Respondent.

INITIAL DECISION BELOW

Hon. Norman D. Smith, Administrative Law Judge

Dated: December 11, 1979

Received: December 13, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision of the Administrative Law Judge were filed by the parties hereto pursuant to N.J.A.C. 13:1-17.14.

Having carefully reviewed the entire record herein including the transcript of testimony and the Initial Decision, I concur with the finding of facts and the ultimate conclusion as reflected therein and adopt them as my conclusions herein.

However, I take exception to that part of the Initial Decision which, in commenting upon the matter sub judice, states " the State Division of Alcoholic Beverage Control will interfere in the exercise of the discretion of the municipal issuing authority only where that discretion has been abused" and further "such abuse can be established by showing a manifest mistake, clearly unreasonable action, or some untoward impropriety."

Since this is a disciplinary proceedings, discretion has nothing to do with it. As the Court pointed out in Fanwood v. Rocco, 59 NJ Super. 306 at page 317 (App. Div. 1959) "in such cases (disciplinary and similar proceedings) the Director's 'discretion' has nothing to do with his findings of the underlying facts if the evidence is not there no amount of 'discretion' can supply the deficiency". This is, of course, similarly applicable to local issuing authorities in their consideration of the facts in

disciplinary proceedings.

Therefore, the statement of the Administrative Law Judge that the action of the respondent "did not constitute an abuse of its discretion vested in that authority" was improperly applied in these proceedings so far as the finding of facts are concerned; however, it was properly applied so far as the imposition of the penalty is concerned. Therefore, I shall affirm the action of the respondent and reimpose the said penalty.

Accordingly, it is, on this 22nd day of January, 1980,

ORDERED that the action of the respondent Mayor and Council of the Borough of Sayreville be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed; and it is further

ORDERED that my Order dated May 6, 1979 staying the respondent's Order of suspension pending determination of this appeal be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License No. 1219-33-005-001 issued by the Mayor and Council of the Borough of Sayreville to The Ban-Shee, t/a King's Harem for premises Route #35, Sayreville, New Jersey is hereby suspended for fifteen (15) days commencing 3:00 a.m. on Monday, February 4, 1980 and terminating 3:00 a.m. on Tuesday, February 19, 1980

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

THE BAN-SHEE, T/A KINGS HAREM,
 APPELLANT,
 MAYOR AND COUNCIL OF THE BOROUGH
 OF SAYREVILLE,
 RESPONDENT.

INITIAL DECISION

OAL DKT. NO. ABC 1553-79
 AGENCY DKT. NO. 4332

APPEARANCES:

Dean Anglin, Esq., Counsel for Appellant
 Robert A. Blanda, Esq., Counsel for Respondent

See Witness List - Schedule A

See Exhibit List - Schedule B

BEFORE THE HONORABLE NORMAN D. SMITH, ALJ

This matter arises by the appeal of the Ban-Shee t/a Kings Harem from a resolution adopted by the Borough of Sayreville on April 18, 1979 which suspended the plenary retail consumption license number 1219-33-005-001 held by appellant for a period of fifteen days for reasons set forth therein. The suspension was stayed pending this appeal by order of the Director of the Division of Alcoholic Beverage Control dated May 8, 1979. This matter was certified by the Director of the Division of Alcoholic Beverage Control as a contested case and transferred to the Office of Administrative Law pursuant to the provisions of N.J.S.A. 52:14F-1 et seq.

A hearing was held on August 15, 1979. Final briefs were filed on September 5, 1979.

B-1 in evidence (for Borough) is the Resolution of the Mayor and Council of the Borough of Sayreville dated July 5, 1978 which renewed the appellant's plenary retail consumption license for the year ending June 30, 1979 subject to two conditions set forth

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therein. The first condition dealt with the collection of trash and litter and is not a subject of this hearing. The second condition provided as follows: "That full-time personnel be maintained by the licensee to control and supervise the parking lot area not only with regard to the parking of cars but with regard to the conduct and behavior of the patrons during the exiting from the said premises."

Although there was no testimony concerning the reasons for that condition, it is observed that the preamble to the resolution set forth the fact that certain objections were filed and a formal hearing was held prior to the adoption of the resolution. It is a fair implication that the conditions were inserted in the renewing resolution as a result of objections made at the cited hearing.

The Borough presented the testimony of several police officers who patrolled the area of the appellant's bar on the evenings of January 31, February 1, February 2, February 7, and February 9, 1979. Several times on each of those evenings a patrolman drove his patrol car through the appellant's parking lot slowly looking for the presence of a parking lot attendant as required by the condition of the renewal license above quoted. No parking lot attendant was observed, except on the evening of February 2. At approximately 2:47 a.m. on the morning of February 3, although a parking lot attendant was on duty, a man was observed urinating in the parking lot of the appellant's premises.

The testimony of all of the officer's was credible and their observations were uncontradicted by the testimony offered by the appellant. Rather, the appellant presented testimony to show that on the nights in question, there was in fact an attendant on duty. However, because of the extremely cold and snowy conditions, the attendant on all of those nights was either stationed inside a van owned by the appellant and parked in its parking lot or inside the building itself. This is the explanation offered for the failure of the police officers to observe an attendant on duty.

I find the testimony of the witnesses on behalf of the appellant to be equally credible and therefore make the following findings:

1. On January 30, February 1, February 7, and February 9, a parking lot attendant was on duty at the appellant's premises. However, because of the cold weather, he decided to stay either inside the building itself or in a van owned by the appellant which was parked in the parking lot. The attendant on those nights was not apparent to the police or

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anyone else who would happen to be in the parking lot.

2. On the said nights, patrons parked their own cars.

3. On February 3, 1979 at approximately 2:47 a.m., although one Larry Coppolla was on duty as a parking lot attendant, a man was observed urinating in the parking lot of the licensee's premises.

The requirement of condition 2 of the resolution was more than a simple employment of a parking lot attendant. The parking lot attendant was required to control and supervise the parking lot area with regard to parking of cars and the conduct and behavior of patrons. Therefore, the failure of the attendant to be visible in the parking lot on the evenings of January 31, February 1, February 7, and February 9, constituted a violation of the renewal resolution. The conduct of the person urinating on February 3 was very likely encouraged by the fact that, although a parking lot attendant was on duty, he spent a good time out of the parking lot.

A municipality has the power to suspend licenses' for violation of conditions set forth in a resolution of the governing body. N.J.S.A. 33:1-31 h. The State Division of Alcoholic Beverage Control will interfere in the exercise of the discretion of the issuing authority only where that discretion has been abused. Rajah Liquors v. Division of Alcoholic Beverage Control 33 N.J. Super 598 (App. Div. 1955). Such abuse can be established by showing a manifest mistake, clearly unreasonable action, or some untoward impropriety. Id at page 600. Such is the scope of review before the Division notwithstanding that testimony is taken de novo. Ibid.

I CONCLUDE that the appellant violated the terms of the renewal resolution and that the fifteen day suspension imposed by the issuing authority did not constitute an abuse of the discretion vested in that authority.

Therefore, it is hereby ORDERED that the action of the Borough of Sayreville IS AFFIRMED.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, who by law is empowered to make a final decision in this matter. However, if the Director does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-1 et seq

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph W. Lerner, my Initial Decision in this matter and the record in these proceedings.

3. SPECIAL RULING PURSUANT TO N.J.S.A. 33:1-12.39 - IN THE MATTER OF THE PETITION OF PHILIP AND FRANK LAX.

In the Matter of the Petition of)
Philip and Frank Lax) CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption)
License No. 1404-33-007-001 issued by)
the Borough Council of the Borough of)
Chatham.)

Charles M. Judge, Esq., Attorney for Petitioners

Initial Decision Below

Hon. Arnold Samuels, Administrative Law Judge

Dated: December 31, 1979 - Received: January 3, 1980

BY THE DIRECTOR:

No written exceptions to the Initial Decision were filed pursuant to N.J.S.A. 33:1-12.39.

I have carefully reviewed the entire record herein including the transcript of the testimony and the Hearer's Report. In finding that the Petitioners have established that good cause exists for authorization to be granted by the Director, the Administrative Law Judge uses as his sole criteria the "good faith efforts made to resume active use". However, a critical factor which must be considered is whether, realistically, the license will become operational during the license term for which authorization is sought. I have serious doubts, based upon the facts and circumstances in this matter, whether the said license will become operational during the 1979-80 license term.

Furthermore, I note that an extension was granted in this matter by the Director for the 1978-79 license term so that this is the second request. Also, objections have been filed by the Chatham Home Owners Civic Association. Although as was pointed out in the Initial Decision, the Association did not appear at the hearing in support of their objections.

Notwithstanding the above, I am inclined to give the applicants the benefit of the doubt, on this application, and will, therefore, affirm the recommendation reflected in the Initial Decision.

The Borough Council reviewed this license subject to the authorization of the Director. This procedure is improper and should not be followed hereafter. Action on a renewal application must await prior authorization, pursuant to the statute, so that the issuing authority may have the benefit of the evidence adduced at the hearing in this Division, prior to its consideration of the said application.

Accordingly, it is, on this 16th day of January, 1980

ORDERED that the Borough Council of the Borough of Chatham be and the same is hereby directed to consider the application of Philip and Frank Lax for renewal

of License No. 1404-33-007-001 for premises to be constructed at 34-50 Main Street, Chatham for the 1979-80 license term and to grant or deny the same in the reasonable exercise of its discretion; and it is further

ORDERED that, in the event that the application is granted, the renewal shall be made expressly subject to the special condition that the license must become operational during the 1979-80 license term.

IN THE MATTER OF)	
)	<u>INITIAL DECISION</u>
POCKET LICENSE APPLICATION)	
OF PHILIP AND FRANK LAX)	OAL DKT. NO. ABC 4273-79
(BOROUGH OF CHATHAM))	LICENSE NO. 1404-33-007-001

APPEARANCES:

Charles M. Judge, Esquire, attorney for Petitioners,
Philip and Frank Lax

WITNESSES:

For the Petitioners
Philip Lax

BEFORE THE HONORABLE ARNOLD SAMUELS, A.L.J.:

This matter concerns an application by Philip and Frank Lax for an extension of the renewal of their plenary retail consumption license for the 1979-80 license term (July 1, 1979 to June 30, 1980). The license was issued by and is located in the Borough of Chatham, where it is designated as license number C-1. The license has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application was filed. Therefore, an application for an extension of renewal is necessitated by the requirements of N.J.S.A. 33:1-12.39:

"33:1-12.39 Class C License; Renewal if not actively used within period of two years. No Class C license as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is filed unless the Director, for good cause and after a hearing, authorizes a further application for renewal; ..."

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On June 25, 1979 a resolution was adopted by the Borough Council of the Borough of Chatham approving renewal of the Lax license for the 1979-80 license term, for premises to be constructed at 34-50 Main Street, Chatham, New Jersey; subject to authorization of the Director of the Division of Alcoholic Beverage Control pursuant to the above statute. A verified petition for extension was filed by the licensees with the Director in August, 1979. Objection to the extension of renewal was filed with the Director by the Chatham Homeowners Civic Association. The matter was thereafter transmitted to the Office of Administrative Law as a contested case pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was held on November 19, 1979 at the Office of Administrative Law in Newark, New Jersey. The applicants presented oral argument and testimony in support of their petition. The following exhibits were marked for identification and received in evidence:

- A-1 Ground Round Restaurant Plan 10/20/79
- A-2 Proposed Site Plan 11/14/79
- A-3 Agreement with Celanese Corporation (undated and unexecuted)
- A-4 Letter from Planning Board 12/28/78
- A-5 Letter from Howard Johnson Company 1/3/78
- A-6 Summons and complaint, Lax v. Chatham, March 1979
- A-7 Order of dismissal, Lax v. Chatham, Sept. 14, 1979

The Division of Alcoholic Beverage Control did not appear at the hearing and indicated by telephone on the morning of the hearing that it would not participate. There was no appearance by anyone on behalf of the objector, Chatham Homeowners Civic Association. Charles M. Judge, Esquire, appeared on behalf of licensees, Philip and Frank Lax. Mr. Philip Lax testified in support of the petition.

The chronology of events leading to the application is as follows:

The licensees own two contiguous parcels of land fronting on Main Street in Chatham, New Jersey. Prior to 1965 they operated a restaurant (with liquor license) on one of the parcels, called the Chatham Inn. In 1965 and 1966 the licensees attempted to replace the restaurant, first with a Treadway Inn, and then with a Schraffts Restaurant, both of which did not materialize for various reasons. The Chatham Inn then burned down and the liquor license was retired by the Borough. The licensees erected an office building on the former location of the Chatham Inn and in

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1969 they applied for a new plenary retail consumption license, based upon a lease they entered into for a Red Coach Inn (owned by the Howard Johnson Company) on the adjoining parcel of property. The application was granted and the plenary retail consumption license was issued to the petitioners in 1970. That license is the subject of the present application.

Due to three years of objections and litigation regarding the licensees' uses of the premises, the Red Coach organization was unable to build, and in 1973/4, they withdrew from the contracts with the licensees.

After a further lapse in time, a new contract for use of the license on the premises was entered into with Steak and Ale. Due to problems regarding parking and location of a driveway, that also fell through.

In 1978 the Ground Round (also owned by the Howard Johnson Company) entered into a lease for construction and operation of a restaurant (with liquor license) on the premises, subject to site plan approval by the Borough, which was applied for at the same time. The liquor license continued to be held and renewed by the applicants since its issuance in 1970, but due to the above problems, it has not been actively used in connection with the operation of a licensed premises. N.J.S.A. 33:1-12.39 became effective on October 3, 1977, and on July 26, 1978 the Director of the Division of Alcoholic Beverage Control, after a hearing, authorized extension of renewal for the 1978-79 license term, in recognition of the past problems and likelihood that the restaurant would shortly be built. This application is for a further one year extension.

When the 1978-79 renewal was granted, the licensees' expectation was that the Ground Round restaurant would be built and use of the license commenced by this time. However, in January, 1979 certain zoning requirements were changed by the Borough of Chatham which affected construction of the restaurant. A new regulation limited the area of any one building to be erected on one lot to 2,500 square feet, instead of the previous 24,000 square foot maximum. The projected Ground Round restaurant was to cover 5,000 square feet. The Howard Johnson Company had been actively pursuing completion of its site plan applications. However, in light of the new zoning requirements, it became obvious that a variance would be required before site plan approval could be granted. The licensees chose to contest the validity of the zoning ordinance, and in March, 1979 they commenced an action against the Borough of Chatham in the Superior Court of New Jersey attacking the new

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zoning requirement and attempting to have it set aside in its applicability to the subject premises. In September 1979 the suit was dismissed by consent of the parties, without prejudice, for failure of the plaintiffs to exhaust their administrative remedies. The applicants and the Ground Round have since continued working on completion of the site plan. Some problems still remain regarding apportionment of the parking as between the existing office building and the new restaurant, but the licensees estimate that this problem, together with the need for a zoning variance on the building square footage, should be solved within the next six to eight months.

The Howard Johnson Company is obligated on their lease with the petitioners until the Fall of 1980, and the licensees state that they have at all times continued to pursue their goal of putting the license into operation on the property; and they will continue to do so.

Exhibits A-1 and A-2 are 1979 copies of the proposed site plans. A-3, A-4 and A-5 are copies of correspondence showing the licensees pursuit of answers to their problems, and A-6 and A-7 are copies of the summons, complaint and order of dismissal in the above mentioned Superior Court action.

The objections filed by the Chatham Homeowners Civic Association consisted of a letter dated August 3, 1979, with copies of correspondence attached. The primary complaint by the Homeowners Association relates to general housekeeping and overgrown vegetation in vacant areas of the licensees' property.

Having heard the testimony, observed the witness and reviewed the exhibits, the Court FINDS the following facts:

1. Philip and Frank Lax are the holders of plenary retail consumption license number 14-4-33-007-001 issued by the Borough of Chatham, New Jersey.
2. The license was issued in 1970 in anticipation of the building and operation of a Red Coach Inn on the vacant land owned by the licensees on Main Street in Chatham, New Jersey.
3. Due to lengthy litigation concerning the premises to be constructed, the Red Coach Inn withdrew from its contract with the licensees in 1973-4.

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4. After a lapse in time due to the licensees inability to find another tenant, petitioners then negotiated for construction and operation of a Steak and Ale Restaurant, but that contract was also not performed due to problems concerning parking and a driveway.
5. In 1978 the Ground Round entered into a lease for construction and operation of a restaurant, with liquor license, on the premises.
6. The Ground Round construction was subject to site plan approval by the Borough of Chatham, and the licensees have been diligently pursuing such approval.
7. Additional delays have been caused by zoning ordinance. Both of these problems should be resolved in the near future, thus clearing the way for construction of the Ground Round facility and use of the liquor license.
8. On June 25, 1979 the Borough Council of Chatham approved renewal of the petitioner's license for the 1979-80 license term, subject to authorization by the Director of the Division of Alcoholic Beverage Control in accordance with N.J.S.A. 33:1-12.39.
9. The Division of Alcoholic Beverage Control did not appear at the hearing.
10. Objections were filed by the Chatham Homeowners Civil Association, but the Association did not appear at the hearing in support of their objections.

The petitioners have the burden of proving that good cause exists for the Director of the Division of Alcoholic Beverage Control to authorize a further application for renewal of the license. A finding of good cause, or the lack of it, requires the Court to apply its discretion to the facts of the individual case. Knowledge of the reasons why the license has not be used, and of the good faith efforts made to resume active use are most relevant. Garrison v. Bridgeton, ABC Bulletin No. 2306, Item 2, December 28, 1978.

IT IS, therefore, CONCLUDED that the petitioners have established, by a preponderance of the credible evidence, that good cause exists for authorization to be granted to Philip and Frank Lax to apply for renewal of its Class C plenary retail consumption

license for a further period of one year, said extension to expire on June 30, 1980; and IT IS hereby ORDERED that authorization be granted to Philip and Frank Lax to make a further application to renew their license even though it has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period for which the renewal application is being filed.

This recommended decision may be affirmed, modified or rejected by the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, who, by law is empowered to make a final decision in this matter. However, if the Director of the Division of Alcoholic Beverage Control does not so act in forty-five (45) days, and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

4. STATE LICENSES - NEW APPLICATIONS FILED.

Foreign Brands, Inc.
600 Secaucus Road
Secaucus, New Jersey

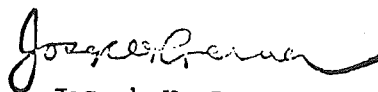
Application filed September 10, 1980
for place-to-place transfer of wine
wholesale license from 157 Hobart
Street, Hackensack, New Jersey.

Daniel M. Kirlin
1066 Ringwood Avenue
Wanaque, New Jersey

Application filed September 22, 1980
for person-to-person and place-to-place
transfer of a state beverage distributor's
license from William C. Smith, 546 N. Midland
Avenue, Saddle Brook, New Jersey.

Paterno Imports, Ltd.
2701 S. Western Avenue
Chicago, Illinois

Application filed September 30, 1980
for plenary wholesale license.



Joseph H. Lerner
Director