

**Report
and
Recommendations
of the
STATE OF NEW JERSEY
COMMISSION OF INVESTIGATION
on the
Incursion by Organized Crime
into Certain Legitimate Businesses
In Atlantic City**

NJ
10
C929
1977c

NJ

AGL

10

C929

1977c

c.l, N.J., SCI, Incursion by
Organized Crime into Business
in Atlantic City.

DATE DUE

ATTORNEY GENERAL'S

LIBRARY

TRENTON, NEW JERSEY 08625



December, 1977

TO the Governor and the members of the Legislature of the State
of New Jersey:

The New Jersey State Commission of Investigation submits
this "Report and Recommendations on the Regulation of Certain
Businesses in Connection with Legalized Casino Gambling in
Atlantic City" as part of its required and continuing surveillance
of the impact of that new enterprise and pursuant to Section 10
and 11 of P.L. 1968, Chapter 266 (N.J.S.A. 52:9M-10; 9M-11), the
act establishing the Commission of Investigation.

Respectfully submitted,

Joseph H. Rodriguez, Chairman
Stewart G. Pollock, Commissioner
Lewis B. Kaden, Commissioner
Arthur S. Lane, Commissioner

CONTENTS

	Page No.
<u>Introduction</u>	I
I. <u>Results of Investigation:</u>	
A. Cigarette Vending Business	1
B. Alcoholic Beverage Industry.	5
II. <u>Recommendations:</u>	
A. Preface.	10
B. Cigarette Vending Business:	
1. Statutory Modification	11
a. Who Controls the Applicant	11
b. Disqualification Criteria.	14
c. Standards for Revocation	17
2. Regulatory Modification.	18
a. Licensing Standards.	18
b. Application Process.	19
C. Alcoholic Beverage Industry:	
1. Preface.	20
2. Statutory Modification	21
a. Persons to be Licensed	21
b. Disqualification Criteria.	24
c. Issuing Authority.	27
d. Transfers and Renewals	27
3. Regulatory Modification.	27
III. <u>Exhibits</u>	30

INTRODUCTION

In 1974 the State Commission of Investigation (S.C.I.) undertook an inquiry into the threatened infiltration of Atlantic City by organized crime due to the possibility of legalized casino gambling. That inquiry was placed on an inactive status after the defeat that year of the casino referendum proposal. The Commission, however, reactivated its inquiry in the fall of 1976 after another referendum program was scheduled.

Subsequent to voter approval of the casino gambling referendum proposition in November of 1976, and at the behest of Governor Brendan T. Byrne, the S.C.I. committed substantial resources to two parallel projects:

- . An intensified program of monitoring of organized crime incursion.
- . An evaluation of proposed New Jersey casino control legislation.

In April of 1977 the Commission issued a 170-page "Report and Recommendations on Casino Gambling." That report was submitted to Governor Byrne and the New Jersey Legislature. In addition, various other S.C.I. comments and supplementary revisions were made available to the Legislature as the lawmaking process proceeded. A number of the provisions suggested by the Commission became part of the final bill draft which was enacted. One of the most important of the recommendations of the S.C.I. that was adopted called for stringent licensing of ancillary services which cater to the casino-hotel complex.

II

As the Commission's legislative support activities progressed, however, it became evident as a result of the agency's continuing, parallel monitoring of casino gambling that there were important issues relating to organized crime and casino gaming which could not be addressed appropriately in the enabling legislation. Specifically the Commission noted an incipient pattern of organized crime infiltration of certain legitimate enterprises, some of which were actually beyond the scope of the Casino Control Act itself. The timing of these incursions coincided markedly with the advent of casino gaming and related prospects for economic revival in Atlantic City.

To bring these facts to the attention of the public, the Commission in August of 1977 held public hearings on the developing movement of organized crime into Atlantic City. Chairman Joseph H. Rodriguez described the purpose of those hearings as follows:

Gambling in Atlantic City...will be an industry measured in billions of dollars, dollars which are invested and spent not only in casino-hotels but also on almost every other facet of economic and social life imaginable. The organs of state and local government cannot ignore this fact; nor can society tolerate an incursion by organized crime into areas not addressed by the licensing regulations of the casino legislation.

In short, just as New Jersey must not accept organized crime ownership of a casino, it must also foreclose mob investment or control of businesses which will prosper from the spinoff of gambling.

These hearings will address this subject matter by exposing organized crime through proven investigative methods. As one newspaper has recently editorialized: "The most efficacious way of fighting organized crime is to keep it in the cold, unsparing glare of the limelight (because) mob

III

elements prefer clandestine anonymity for their nefarious depredations."

We intend to address not only the problem, but also what can and should be done about that problem. Even the most distasteful preventive medicine, so far as the Atlantic City situation is concerned, will be better from the standpoint of the state and its citizens than a surgical operation at an intensive care stage.

The public hearings confirmed the fact of infiltration of the cigarette vending machine business and the tavern business as well as the attempted infiltration of a casino gaming school business and a potential casino hotel complex. The Commission will offer no comment upon the last two areas because of the current reviewing and rule-making activity of the Casino Control Commission. With regard to the cigarette vending machine business and the tavern business, however, the S.C.I. stated at the close of its public hearings that certain legislative and administrative recommendations would be proposed to rectify the problems depicted in the hearings. This report reviews the evidence which was set forth in those hearings, discusses the present statutory and administrative framework relating to the cigarette vending and the retail liquor industries, and suggests new statutory and regulatory avenues to be considered.

I. RESULTS OF INVESTIGATION

A. THE CIGARETTE VENDING BUSINESS

The evidence disclosed at the public hearings highlighted the fact that Angelo Bruno, the reputed head of organized crime in Philadelphia, was a "commissioned salesman" of a firm known as John's Wholesale Distributors, Inc., of Philadelphia. The evidence further revealed that John's Wholesale had applied for a retail distributorship in Atlantic City within a few days after the passage of the gambling referendum.

Also established was the fact that Mr. Bruno received one fifth of a cent per pack for every pack of cigarettes sold by John's Wholesale, whether or not he obtained business for that company. Additionally, the hearings showed that Bruno received three cents per pack from retail vending machine owners where he did obtain the business of a particular location. Mr. Bruno the hearings confirmed, had obtained such locations in Atlantic City.

John Martorano, listed in New Jersey State Division of Taxation records as the president of John's Wholesale Distributor's Inc., and his brother, Raymond Martorano, another "commissioned salesman" of John's Wholesale, testified in both public and private sessions before the S.C.I. In addition, Mr. Bruno, who recently declared his intent to purge himself of contempt of the State Commission of Investigation, also testified at public and private hearings. The convoluted corporate history of John's Wholesale Distributors, Inc.,

as explored in the public hearings, showed that the entity which exists at the present time was actually owned and operated by Mr. Bruno at its inception. It later merged with a Martorano - owned operation.

Furthermore, evidence elicited from the witnesses suggested that, although Mr. Bruno is the highest paid employee of John's Wholesale Distributors, Inc., at an annual salary of \$51,000 per year, both the Martoranos are granted bonuses at the end of the year with the result that they too received total remuneration of about \$51,000 each. That arrangement suggests a three-way split of the profits rather than a normal employer-employee relationship.

Finally, although Mr. Bruno contended that his vending interests in Atlantic City were limited, testimony and documentary evidence confirmed that the gross South Jersey business of John's Wholesale Distributors, Inc., had tripled since the passage of the casino gambling referendum.

On the question of legislative recommendations, the Commission recorded the private and public hearing testimony of Mr. J. Robert Murphy, Deputy Director of the New Jersey Division of Taxation, and Mr. Harry Silberman, Supervising Special Agent of the Tax Division's Investigation Unit. The S.C.I. introduced into the record of the public hearing a New Jersey application form for a cigarette distributor's license. That application form is included in this report as Exhibit #1.*

*See Exhibits, P. 30.

Mr. Murphy noted in his testimony that the application does not include questions as to whether any officers or stockholders have ever been convicted of a crime. Additionally, Mr. Murphy testified that he knew of only one application for a license which had been refused during his tenure of approximately seven years at the New Jersey Division of Taxation. Mr. Murphy further testified that the present application form was defective because it did not ask questions relative to prior conviction of a crime or the character of an individual seeking a license. A proposed new form drafted by Mr. Murphy is included in this report as Exhibit #2.*

Mr. Murphy and Mr. Silberman further testified that such factors as character and prior criminal record should be made known to the Division of Taxation because the individuals who were granted licenses actually became collection agents for the State of New Jersey. Cigarette tax stamps which are on each pack of cigarettes sold in the State of New Jersey are affixed by individuals who possess the license. Because they receive a fee for their service through a set-off of their bill, they are actually compensated agents of the State.

Mr. Murphy also testified concerning the present statutory ability to deny a license to individuals applying to the Division of Taxation. That power is contained in N.J.S.A. 54:40A-4, which provides as follows:

*See Exhibits, P. 30.

All licenses shall be issued by the Director, who shall make rules and regulations respecting applications therefor and issuance thereof. The Director may refrain from the issuance of any license under this act where he has reasonable cause to believe that the applicant has willfully withheld information requested of him for the purpose for determining the eligibility of the applicant to receive a license or where he has reasonable cause to believe that information submitted in the application is false or misleading and is not made in good faith.

The Commission finds the statutory provision cited above to be defective by not fully empowering the director to prohibit licensure of organized crime figures. This was brought out by testimony at the Commission's public hearings, particularly the following exchange between Executive Director Michael R. Siavage, counsel for the hearings, and Mr. Murphy:

- Q. Mr. Murphy, this question has been asked of you before and you gave us an opinion. I would like to have you give it now. The question is: If I was the head of organized crime in Philadelphia or Camden County and I submitted an application to the division and admitted that fact, that is, I did not make a statement which was not in good faith or was misleading, under the present statute would I get a license?
- A. You would.

B. THE ALCOHOLIC BEVERAGE INDUSTRY

The Commission's public hearings also involved the examination of the ownership of a bar and restaurant in Atlantic City called the Casanova Disco. The S.C.I.'s interest was initially drawn to the Casanova Disco when Angelo Bruno testified in executive session that the Gambino brothers of Delran, associates of Mr. Bruno and cousins and associates of the late Carlo Gambino, either owned or had an interest in the establishment.

The testimony in both public and private sessions demonstrated that the original investment of \$75,000 made by the ostensible sole owner, Domenico Adamita, was largely acquired through a complex system of loans from his associates.

One associate, Leonardo Soccolich, who provided approximately \$40,000 of the total amount, testified that he obtained the money from a "hole in the wall".

Further testimony illustrated a pattern of control exerted by Guiseppe and Rosario "Sal" Gambino over the Casanova Disco: Various services were obtained through Mr. Bruno; the premises were inspected by the Gambinos prior to purchase; the advertising campaign was approved first by the Gambino brothers; even the decor of Casanova's was highly similar to that of Valentino's, the Gambino bar and restaurant in Cherry Hill. Additional witnesses at the public hearing testified to the organized crime ties of the Gambino brothers and of the close association between them and Messrs. Adamita and Soccolich.

Pertinent to the cited revelations at the S.C.I. hearings and to the topic of this discussion is Title 33 of the New Jersey Statutes Annotated (N.J.S.A.) on intoxicating beverages and particularly certain chapters of the N.J.S.A. 33:1-1 to 33:1-96, the Alcoholic Beverage Law. Pursuant to N.J.S.A. 33:1-19, municipalities are given the status of "other issuing authorities" who have the responsibility of administering a portion of New Jersey's regulatory scheme concerning alcoholic beverage control. N.J.S.A. 33:1-24 prescribes those duties as follows:

It shall be the duty of each other issuing authority to receive applications for such licenses as such other issuing authority is authorized to issue; to investigate applicants and to inspect premises sought to be licensed; to conduct public hearings on applications and revocations; to enforce primarily the provisions of this chapter and the rules and regulations so far as the same pertain or refer to or are in any way connected with retail licenses, except plenary retail transit licenses; to maintain proper records; to keep full and correct minutes; and to do, perform, take and adopt all other acts, procedures and methods designed to insure the fair, impartial stringent and comprehensive administration of this chapter. The enumeration of the above specific duties shall not be construed to limit or restrict in any way the general authority given by this chapter to each said other issuing authority.

In order to illustrate the extent of Atlantic City's compliance with this statutory mandate, the S.C.I. took the executive and public hearing testimony of Commissioner Horace J. Bryant, Jr. of the Board of City Commissioners of Atlantic City. Among other duties of his office, Commissioner Bryant had charge of alcoholic beverage control in Atlantic City under the previously mentioned statute.

Commissioner Bryant testified that the local alcoholic beverage control unit in Atlantic City employs one supervisor, one investigator and two clerks. He attributed this shortage of staff to municipal budgetary limitations in Atlantic City. Concerning the procedures followed with reference to the application of the Casanova Disco for a transfer of license, Commissioner Bryant provided the following testimony:

- Q. Now, with respect to this change in ownership, which apparently was accomplished solely by a letter with the renewal application, what measure of investigation was conducted by the local ABC into the qualifications of this individual to have this license?
- A. I would say, none. I would say, the change in the ownership would be reflected there. I don't I don't see anything on that paper that would indicate any further investigation, no.
- Q. Do you know if, in fact, Mr. Adamita was interviewed by you or any members of your agency with respect to the transfer?
- A. No, I don't. It would appear from the letter, covering letter that went to the attorney, that was done on the representation made by the attorney to this other attorney who presented it to the supervisor.
- Q. In other words, it's fair to say that all that was done by the local ABC was to actually process the papers that come in as --
- A. Yes.
- Q. -- opposed to any investigation whatsoever as to disqualifications?
- A. That's right.
- Q. So, based on what has not been done, you have no indication as to whether this individual has a prior criminal record or not?

A. That's right.

Q. And you were, therefore, not aware if he's subject to any disability which would make him ineligible to hold any license?

A. That's right.

Q. And you are, therefore, not aware whether he is connected to organized crime or not?

A. No, we have no knowledge on that.

Q. And, therefore, you are further not aware as to whether he is fronting for anyone else who would either in their own right have no right to have a license or their interests are not disclosed?

A. Yes.

Q. And, further, you are not aware, then, of any financial investment that was made and what the nature of that investment was?

A. No, we're not aware of that.

Q. And, therefore, you finally do not know whether he's evading the intent and purpose of the ABC statutory regulations, do you?

A. Wouldn't know that.

Commissioner Bryant testified that certain questions on the Casanova application form filed by Adamita were left blank, that the form was not notarized and that the corporate seal of Casanova, Inc., was not affixed to it.

Commissioner Bryant, in conclusion, candidly admitted it was impossible for the alcoholic beverage control unit in Atlantic City to discharge responsibilities under N.J.S.A. 33:1-24 as presently staffed. He further pointed out that adequately staffing his unit with sufficient resources to oversee the 259 licensees in Atlantic

City could create an agency too unwieldy to be municipally administered.

On September 9, 1977, Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control, announced that his agency would be the licensing control authority in Atlantic City rather than the municipality. Lerner issued his directive under an order promulgated by Attorney General William F. Hyland on August 24, 1977.

II. RECOMMENDATIONS

A. PREFACE

1. Applicability.

A most critical issue in considering the appropriate recommendations to be made in light of the foregoing factual outline is whether those recommendations should relate solely to Atlantic City or, instead, to the state as a whole. The S.C.I.'s interest in the two particular subject areas examined was spawned by the problems of Atlantic City, yet the investigation disclosed weaknesses in both systems as they are applied statewide. The Commission, therefore, recommends that the foregoing alterations be considered and implemented on a statewide basis.

2. Statutory vs. Regulatory Change.

There exist competing points of view on the question of whether to recommend amendments to statutes as opposed to changes of regulations in order to rectify weaknesses such as those cited in this report. On the one hand, statutory mandates carry more legal weight; on the other hand, regulations are simpler to change as needed.

Because most regulations rarely go beyond a specific grant of authority, which is explicitly stated in the appropriate statutory counterpart, the S.C.I. proposes

legislative action in most areas.

3. Right vs. Privilege

The crux of the following recommendations by the S.C.I. relates to the expansion of the disqualification criteria in both subject areas discussed. Disqualification criteria often raise a question of unduly limiting the number of qualified applicants of a denial of constitutional rights. The recommendations advanced here however, are related to the necessity of blocking organized crime infiltration of two very sensitive industries. The Commission considers both the ability to dispense alcoholic beverages and to distribute and stamp cigarettes as privileges granted by the state. As such, the conditions under which those privileges are granted may be appropriately controlled. Judicial decisions in both areas support this view, as does the action of the Legislature in compiling the Casino Control Act itself.

B. THE CIGARETTE VENDING BUSINESS

1. Statutory Modification.

A. Who Controls the Applicant:

It was clear from the testimony of Mr. Murphy and Mr. Silberman that the present statutory language is inadequate. Although N.J.S.A. 52:40A-4 does give the Director of the Division of Taxation the right to make regulations respecting the issuance of licenses,

it further specifies certain limited situations in which he "may refrain" from the issuance of such licenses when he has reasonable cause to believe (1) that the applicant has willfully withheld information requested or (2) the information submitted is incomplete, false or misleading.

This somewhat confusing statutory language is probably what fostered N.J.A.C. 19:5-6.2, the New Jersey Administrative Code regulation which also pertains to the issuance of licenses. Under it, the director may refrain from issuing licenses only when either of the two adverse circumstances mentioned in the statute occurs.

The difficulty is further compounded by the fact that neither the statute nor the regulations deal with the question of which natural persons need be licensed when a corporation or some other legal entity is the applicant.

N.J.S.A. 54:40A-2 (1) defines "person" as:

Any individual, firm, corporation, co-partnership, joint adventure, association, receiver, trustee, guardian, executor, administrator, or any other person acting in a fiduciary capacity, or any estate, trust or group or combination acting as a unit, the State Government and any political subdivision thereof, and the plural as well as the singular, and the feminine and neuter as well as the masculine, unless the intention to give a more limited meaning is disclosed by the context.

Presumably then, in the case of corporations and other legal entities, it is the entity which becomes licensed and the entity which answers the questions on the application form. This circumstance is undesirable. The Commission recommends, therefore, that additionally there be specified by statute the natural persons to be qualified for licensure under the act. Those persons should include at a minimum the following:

- . All individuals having any interest whatsoever in a proprietorship or company.
- . All partners of a partnership, regardless of percentage.
- . All joint venturers in a joint venture.
- . All officers, directors and all stockholders holding directly or indirectly a beneficial interest in any of the outstanding shares of private corporations.
- . All stockholders holding directly or indirectly a beneficial interest in more than 5 percent of the outstanding shares of public corporations.
- . All key employees of any entity applying for a license. (A key employee should be

defined as any employee receiving in excess of \$20,000 per annum compensation, whether as salary, commission, bonus or otherwise, and all persons who, in the opinion of the Director, are employed, in fact, in a supervisory capacity or have the power to make or substantially effect discretionary business judgments of the applicant entity.

- . Any other person who, in the discretion of the Director, has the ability to control the applicant entity through any means including, but not limited to, loan, mortgage or pledge of securities.

COMMENT:

This recommended statutory modification would foreclose the various subterfuges utilized by undesirable elements in camouflaging legal entity ownership and control. Under such a statutory framework organized crime figures and their associates who attempt to secrete themselves in the vagaries of regulating nomenclature would be exposed to licensing scrutiny.

b. Disqualification Criteria:

The Director, after receiving the information supplied

pursuant to the Commission's suggested guidelines, would make a determination as to eligibility based on certain disqualification criteria. The disqualification criteria which the Commission proposes would include (1) failure to provide information and documentation as required by this act or as requested by the Director, (2) failure to reveal any fact material to qualification, and (3) the supplying of information which is untrue or misleading as to any material fact pertaining to qualification criteria. These three causes for disqualification are drawn from the present statute and administrative regulation. But in addition the S.C.I. urges the following criteria:

- . The conviction of the applicant or any person required to be licensed under this section of any crime in any jurisdiction which would be, under New Jersey law, at the time of the filing of the application, a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the law:

2A:80-1 et seq.; 2A:85-1, 2A:91 et seq.;
2A:93-1 et seq.; 2A:96-1, -2, -3, -4;
2A:97-1, -2; 2A:98-1 et seq.; 2A:99-1;
2A:102-1 et seq.; 2A:103-1, -2;
2A:104-2; 2A:105-1 et seq.; 2A:109-4,
-5, -8; 2A:111-42, 43, 44; 2A:112-1 et
seq.; 2A:115-1 et seq.; 2A:117-7; 2A:119-2;
2A:119A-1, -4; 2A:121-1 et seq.; 2A:131-4;
2A:133-2; 2A:135-1 et seq.; 2A:138-2;

2A:148-22.1; 2A:151-3, -4, -8, -15, -23, -31, -40, -45; the following disorderly persons offenses: 2A:170-5; 2A:170-18; 2A:170-42 et seq.; 2A:170-120.

- . The identification of the applicant or anyone required to be licensed under this act as a career offender or a member of a career offender cartel or an associate of a career offender cartel in such a manner as to create a reasonable belief that such association is of such a nature as to be inimical to the policies of this act or to the taxation, distribution and sale of cigarettes within the state of New Jersey.
- . Contumacious defiance by any person or entity licensed under this act of any legislative investigatory body of this state or of the United States when such a body is engaged in the investigation of organized crime, official corruption or the cigarette industry itself.
- . Current prosecution of any of the crimes mentioned in the first additional criterion proposed above, except that the Director may, at the applicant's request, withhold action on such application until the charge is resolved.

COMMENT:

The above criteria are based upon similar criteria presently in New Jersey's Casino Control Act, P.L. 1977, c. 110, §87. However, the criteria based upon the casino control law were modified appropriately by the S.C.I. to comport with the public interest vis-a-vis the cigarette industry.

c. Standards for Revocation:

A consistent approach to the present statutory provisions, in view of the previously suggested modifications for issuance of licenses, requires amendment of the standards for revocation. The present statutory power for revocation of licenses is granted to the Director and is embodied in N.J.S.A. 54:40A-5, which provides:

The director may, upon notice and after hearing, suspend or revoke the license or all licenses issued to any person under this act who violates any of the provisions of this act, or of any rule or regulation of the director, made pursuant thereto or if the licensee has ceased to act in the capacity for which the license was issued or for other good causes. No person whose license has been suspended or revoked shall sell cigarettes or permit cigarettes to be sold during the period of such suspension or revocation on the premises occupied by him or upon other premises controlled by him or others or in any other manner or form whatever. Nor shall any disciplinary proceedings or action be barred or abated by the expiration, transfer, surrender, continuance, renewal or extension of any license issued under the provisions of this act.

The Commission recommends that appropriate language be added to this statutory subsection mandating revocation of the license where any of the disqualification criteria apply to an existing license. The Commission proposes the insertion of the following clause after "act", at line six in the statute cited above:

"or who, during the period of licensure alter his (its) position in that any person required to be licensed by this act becomes disqualified for licensure pursuant to § _____ (blank to be filled by the number of the new section containing the disqualification criteria proposed herein).

2. Regulatory Modification and Extension.

a. Licensing Standards:

As has been previously noted, the present administrative regulations follow the statutory pronouncements on licensure. The Commission recommends therefore, that the present regulations be modified to reflect all of the statutory revisions it has previously recommended. Specifically, N.J.A.C. 18:5-6.1, the administrative code regulation dealing with the requirement of licenses, should be amended to include a paragraph identifying the persons required to be licensed under the revised statute. Additionally, N.J.A.C. 18:5-6.2, the code regulation which sets out the reasons

for denial of a license, should also be amended to include the disqualification criteria appearing in the new statute. Finally, N.J.A.C. 18:5-6.19, which refers to reasons for revocation, should be made to coincide with the suggested addition to N.J.S.A. 54:40A-5, the statutory provision dealing with revocation.

b. Application Process:

The opportunity of requesting and receiving information from the applicant at the time of the application cannot be overemphasized.

Failure to provide sufficient information requested by the Director, should in and of itself, be sufficient reason for denial.

Many of the S.C.I.'s recommendations deal with issues of control and therefore do not lend themselves to a single affirmative or negative check-off on an application form. Attempting to answer questions of control through the utilization of investigative manpower resources rather than through applicant cooperation, however, would be wasteful and irresponsible.

Thus, rather than merely asking the question

"does any other person not mentioned in this application have the ability to control the applicant entity through any means,"

the Division should ask as well for a statement including all liens, mortgages, and other forms of indebtedness. The Division then would have a starting point to decide whether anyone mentioned as, for instance, a noteholder would be in a position of control. Likewise, the complete corporate history of applying corporations, including mergers and acquisitions and the terms thereof, should be required so as to make possible a determination of indices of control.

Therefore, the Commission recommends a total modification of the application forms used by the Division of Taxation which would comport with the previous recommendations.

Further, the modified forms would require answers not only to questions which would provide the basis for any final qualification for licensure but also answers to questions which would clarify precisely what the conditions are for such final qualification.

C. THE ALCOHOLIC BEVERAGE INDUSTRY

1. PREFACE.

The Commission's hearings demonstrated that present requirements of the statutes and regulations dealing with

the control of alcoholic beverages are not being met.

The Commission notes, however, that even if compliance was the rule, there would be a need for substantial modification and extension of the statutes and regulations.

More importantly, where systemic problems exist within the statutory and regulatory framework, that structure must be altered at the outset and, only after that alteration, implemented by a sufficient staff.

2. Statutory Modification.

a. Persons to be licensed:

N.J.S.A. 33:1-25 provides in pertinent part:

No license of any class shall be issued to any person under the age of 21 years or to any person who has been convicted of a crime involving moral turpitude.

N.J.S.A. 33:1-26 provides similarly:

No person who would fail to qualify as a licensee under this chapter shall be knowingly employed by or connected in any business capacity whatsoever with a licensee. Persons failing to qualify as to age or by reason of conviction of a crime involving moral turpitude may, with the approval of the director, and subject to rules and regulations, be employed by any licensee, but such employee, if disqualified by age, shall not, in any manner whatsoever, serve, sell or solicit the sale or participate in the manufacture, rectification, blending, treating, fortification, mixing, processing or bottling of any alcoholic beverage, and further provided, that no permit shall be necessary for the employment in a bona fide hotel or

restaurant of any person failing to qualify as to age so long as such person shall not in any manner whatsoever serve, sell or solicit the sale of any alcoholic beverage, or participate in the mixing, processing, or preparation thereof.

These two statutes provide very simply criteria for applicants for liquor licenses and their employees: They must be over twenty-one years of age, and must be free of conviction of a crime of moral turpitude.

The Commission strongly recommends that much more should be required for liquor licenses in Atlantic City and that a new chapter should be added to Title 33.

The first issue with regard to licensure is again the persons requiring licensure. Presently, N.J.S.A. 33:1-25 addresses that topic as follows:

In application by corporations, except for club licenses, the names and addresses of, and the amount of stock held by, all stockholders holding 1% or more of any of the stock thereof, and the names and addresses of all officers and of all members of the board of directors must be stated in the application, and if one or more of such officers or members of the board of directors or one or more of the owners, directly or indirectly, of more than 10% of such stock would fail to qualify as an individual applicant in all respects, no license of any class shall be granted.

Addresses of all members of the corporation, association or organization must be stated in the application.

In application by partnerships, the application shall contain the names and addresses of all of the partners. No license shall be issued unless all of the partners would qualify as individual applicants.

The Commission would license the same group of persons suggested under the S.C.I.-recommended cigarette licensing section, to wit:

- . All individuals having any interest whatsoever in a proprietorship or company.
- . All partners of a partnership, regardless of percentage.
- . All joint venturers in a joint venture.
- . All officers, directors and all stockholders holding directly or indirectly a beneficial interest in any of the outstanding shares of private corporations.
- . All stockholders holding directly or indirectly a beneficial interest in more than 5 percent of the outstanding shares of public corporations.
- . All key employees of any entity applying for a license. (A key employee is defined as any employee receiving in excess of \$20,000 per annum compensation, whether as salary, commission, bonus or otherwise,

and all persons who, in the opinion of the Director, are employed, in fact, in a supervisory capacity with the power to make or substantially effect discretionary business judgments of the applicant entity.)

- . Any other person who, in the discretion of the Director, has the ability to control the applicant entity through any means including, but not limited to, loan, mortgage or pledge of securities.

b. Disqualification Criteria:

Likewise, the disqualification criteria should be expanded to include the same list recommended by the S.C.I. in the case of the cigarette vending business, as follows:

- . Failure to provide information, documentation and assurance as required by this act or as requested by the Director.
- . Failure to reveal any fact material to qualification.
- . Supplying of information which is untrue or misleading as to any material fact pertaining to qualification criteria.
- . The conviction of the applicant or any person required to be licensed under this

section of any crime in any jurisdiction which would be, under New Jersey law, at the time of the filing of the application, a capital offense or a high misdemeanor or a misdemeanor under any of the following sections of the law:

2A:80-1 et seq.; 2A:85-1; 2A:91 et seq.; 2A:93-1 et seq.; 2A:96-1, -2, -3, -4; 2A:97-1, -2; 2A:98-1 et seq.; 2A:99-1; 2A:102-1 et seq.; 2A:103-1, -2; 2A:104-2; 2A:105-1 et seq.; 2A:109-4, -5, -8; 2A:111-42, 43, 44; 2A:112-1 et seq.; 2A:115-1 et seq.; 2A:117-7; 2A:119-2; 2A:119A-1, -4; 2A:121-1 et seq.; 2A:131-4; 2A:133-2; 2A:135-1 et seq.; 2A:138-2; 2A:148-22.1; 2A:151-3, -4, -8, -15, -23, -31, -40, -45; the following disorderly persons offenses: 2A:170-5; 2A:170-18; 2A:170-42 et seq.; 2A:170-120.

- . The identification of the applicant or anyone required to be licensed under this act as a career offender or a member of a career offender cartel or an associate of a career offender cartel in such a manner as to create a reasonable belief that such association is of such a nature as to be inimical to the policies of this act.

- . Contumacious defiance by the entity or any person required to be licensed under this act of any legislative investigatory body of this state or of the United States when such a body is engaged in the investigation of the industry, organized crime or official corruption.
- . Current prosecution of any of the crimes mentioned above, except that the Director may, at the applicant's request, withhold action on such application until the charge is resolved.

COMMENT:

The Commission is mindful of the public interest in allowing rehabilitated offenders the opportunity of useful employment. It is therefore suggested that the present regulatory scheme dealing with the granting of work permits to rehabilitated offenders, N.J.A.C. 13:2-13.4 to 13:2-13.8, remain intact as long as N.J.A.C. 13:2-13.6 is aggressively enforced. That latter provision stipulates that:

No licensee shall allow, permit or suffer the holder of a limited rehabilitation employment permit, issued pursuant to Section 4 of this Subchapter hereof, to act in a managerial capacity with respect to the licensed business, or to sell, serve or deliver any alcoholic beverage, nor shall any holder of a limited rehabilitation employment permit engage in any such activity.

The Commission observes, however, that no owner or party in interest should be considered for any waiver of criminal conviction disqualification because of this particular provision.

c. Issuing Authority:

It is clear from the established record that Atlantic City was not fulfilling its responsibility as the issuing agent for licenses in that municipality. The Division of Alcoholic Beverage Control has superseded that local agency because of such failure. To suggest that Atlantic City is the only municipality where laxity is the rule, however, would be naive. The Commission recommends that the Division of Alcoholic Beverage Control re-evaluate municipal participation as a concept, set firmer guidelines as needed and again supersede where and when appropriate.

d. Transfers and Renewals:

The hearing record established by the S.C.I. disclosed that transfers and renewals of liquor licenses received minimal attention by the issuing authority. The S.C.I. recommends that all renewals and transfers be treated as new applications.

3. Regulatory Modification and Extension.

In addition to the creation of a new body of regulations to reflect the additional Title 33 statutory chapter proposed by

the S.C.I., the Commission again calls for the requirement of considerably more financial information at the time of the application so that the control body will have sufficient information upon which to base decision of control. New Jersey's Alcoholic Beverage Control Commission presently employs a "long form" application which requests a significant degree of information and a less informative "short form" application which is sometimes used in the cases of transfers and renewals.

The Commission's investigations and public hearing inquiry, however, again disclosed that this information is attested by the applying entity and not by the individual owners thereof. The Commission recommends therefore, that each individual required to be licensed under the new statute must answer and submit a personal questionnaire as to his background and finances. This procedure is followed in the State of New York and personal questionnaires employed by that state have been used as a model for the S.C.I. in constructing the personal questionnaires which are attached hereto as Exhibits 3-A and 3-B*. The S.C.I. recommends, therefore, this three-step application process:

- . The filing of a modified long form together with a determination by

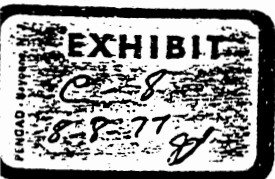
*See Exhibits, P. 30.

the New Jersey A.B.C. as to who should be exposed to the licensing process.

- . Notice to all such persons and filing by them of personal questionnaires to augment the entity questionnaires.
- . A final decision on all persons and entities required to be licensed based on the new disqualification criteria.

III. EXHIBITS

Exhibit 1



DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
CIGARETTE TAX
Trenton, New Jersey, 08625

LICENSE NO. _____
ISSUED _____
EXPIRES MARCH 31, 19____

APPLICATION FOR DISTRIBUTOR'S LICENSE

In compliance with Chapter 65, P.L. 1948, as amended, application is hereby made by the undersigned for a license to operate in the State of New Jersey as a Cigarette Distributor for the year ending March 31, 19____. Fee of \$350.00 is herewith enclosed.

Telephone No: _____

1. Name of Applicant _____
(NAME IN WHICH LICENSE IS TO BE ISSUED - TRADE, CORPORATE OR OTHERWISE)

2. Address: Office _____
(STREET AND NUMBER) (CITY OR TOWN) (COUNTY) (STATE) (ZIP CODE)

Warehouse _____
(STREET AND NUMBER) (CITY OR TOWN) (COUNTY) (STATE) (ZIP CODE)

3. State if Individual, Partnership or Corporation _____

4. Name and Address of Proprietor (if an individual) _____
(NAME)

(ADDRESS) (CITY OR TOWN) (ZONE) (COUNTY) (STATE)

5. If partnership, give names and addresses of each member. _____

6. If corporation, give names and addresses of following officers:

OFFICERS	NAME	ADDRESS
President		
Vice-President		
Secretary		
Treasurer		

7. If corporation, state where incorporated. _____

8. Give name, title and address of Agent in New Jersey on whom service may be made. _____

9. Give name and title of officer charged with the duty of filing Cigarette Tax Reports. _____

10. What percentage of cigarettes is purchased directly from manufacturers? _____

11. Do you sell cigarettes to retail dealers? _____ (A) If "Yes", to how many "over the counter" retail dealers? _____

(B) To how many vending machine retail dealers? _____

12. To how many duly licensed wholesale dealers do you sell cigarettes? _____

13. Do you sell cigarettes at retail? _____ . If "Yes", at how many "over the counter" locations? _____

14. Are you in the cigarette vending machine business? _____. If "Yes", at how many locations are cigarettes sold by you through cigarette vending machines? _____
15. Do you operate as a cooperative: Yes _____ No _____
16. Are you engaged in the business of producing or manufacturing cigarettes? _____
17. Give name, address and telephone number of person in charge of accounting records _____

18. Where are books and records located during business hours? _____

19. Give the address and telephone number of additional warehouses or other storage facilities where cigarettes handled by you are stored. _____

20. What percentage of cigarettes acquired and sold by you is stored at the above listed locations? _____
21. State the number of trucks or other delivery equipment which you own or operate for the purpose of delivering cigarettes _____. List the motor vehicle registration number of each. _____

22. List all other places of business maintained by you for which a New Jersey Distributor's License has been applied for or issued: _____

NAME	ADDRESS	LICENSE NO.

NOTE: Effective July 1, 1952, Chapter 65, P.L. 1948, as amended, prescribes a yearly license fee for Distributors of \$350.00. Distributors are required to secure a separate license, for each place of business, whether established or temporary, from which cigarettes are sold or are intended to be sold. A separate application for each such place of business must be tendered. The license year commences April 1st and expires March 31st of each year.

This Division reserves the right before issuing a Distributor's License to conduct a thorough investigation of the activities of the applicant.

The Undersigned Applicant states, (UNDER THE PENALTY OF PERJURY), that all of the information contained in this application is true and accurate in every particular.

Signed At _____

(TRADE OR CORPORATE NAME OF DISTRIBUTOR)

This _____ day of _____ 19 _____.

By _____

Exhibit 2

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF TAXATION
CIGARETTE TAX
TRENTON, NEW JERSEY 08625

(For Official Use Only)

LICENSE NO. _____

ISSUED _____

APPLICATION FOR DISTRIBUTOR'S LICENSE
(DRAFT)

EXPIRES MARCH 31, 19__

In compliance with Chapter 65, P. L. 1948, as amended, application is hereby made by the undersigned for a license to operate in the State of New Jersey as a Cigarette Distributor for the year ending March 31, 19__. Fee of \$350. is herewith enclosed. All applications must be filed by March 1, 19__.

Business Name: _____ Individual _____ Partnership _____ Corporation _____ Phone Number _____

Business Address: _____ Street and Number _____ Post Office _____ County _____ State _____ Zip Code _____

Home Address: _____ Street and Number _____ Post Office _____ County _____ State _____ Zip Code _____

(Specifics Relating to Individual Principals to be Noted Below)

Following must be completed:

Sales will be: _____ to Retailers _____ to Wholesalers _____ for Vending Machines

List Number of: _____ Retailers _____ Wholesalers _____ Vending Machines _____

Do you purchase, stamp or sell other than New Jersey stamped cigarettes? _____ Yes _____ No

If so, list name of states _____

Do you sell New Jersey stamped cigarettes to accounts located outside New Jersey? _____ Yes _____ No

If so, list names and addresses on separate sheet.

List addresses of all warehouses or storage facilities where cigarettes handled by you are stored.

If the APPLICANT is a partnership, give names and residence addresses, date of birth and social security numbers of each partner. If individually owned, give same information for owner.

Print Name with Signature Above	Residence Address	Date of Birth	Soc. Sec.
---------------------------------	-------------------	---------------	-----------

_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IF THE APPLICANT is an association or corporation, give the names and residence addresses date of brith and social security number of each officer, director and stockholder (include entity) with 20% or more interest.

Print Name with Signautre
Above

Residence Address

Date of Birth

Soc. Sec.

President

Vice President

Treasurer

Secretary

Other Officers

Directors:

Stockholders: (with 20% or
more interest)

List the name and address of any other licensed cigarette business in which applicant or any of the principals of the applicant have an interest (in or outside of New Jersey).

Name of Principal

Business Name and Address

State License Number

To the best of your knowledge, have any of the principals, partners, officers, directors, stockholders with 20% or more interest of the applicant been convicted:

- a. At any time of a violation of the New Jersey Cigarette Tax or Unfair Cigarette Sales Acts? Yes No
- b. At any time of a violation of any other state's or federal cigarette tax laws? Yes No
- c. Within the past 10 years of any misdemeanor or high misdemeanor in New Jersey or any crime of offense designated as such in any other state or against the United States? Yes No

Is this application for renewal of distributor's license? Yes No

If your answer is no, please indicate whether:

- a. Just starting in the cigarette business Yes No
- b. Recently purchased a cigarette business Yes No

If yes, please indicate the name and address of former owner.

NOTE: Distributors are required to secure a separate license for each place of business, whether established or temporary, from which cigarettes are sold or are intended to be sold. A separate application for each such place of business must be tendered.

Any changes that occur in this application after submission, or after a license has been issued, must be brought to the attention of the Division of Taxation within ten (10) days. Failure to do so may be cause for rejection, suspension or revocation of license.

All Cigarette Distributor application must have attached thereto fingerprints of the owner if under individual ownership; partnership fingerprints of all partners if a partnership application; and if a corporation, fingerprints of all corporate officers, directors and stockholders with a 20% or more interest. No license will be issued unless fingerprints as required are attached.

The Division of Taxation reserves the right before issuing a Distributor's License to conduct a thorough investigation of the activities of the applicant and its principals.

Applicant agrees to comply with the New Jersey Cigarette Tax Act and the Unfair Cigarette Sales Act and the rules and regulations promulgated thereunder.

I certify on behalf of the applicant and under penalty of perjury that the information contained on this application is true and correct to the best of my knowledge and belief.

Sworn to before me this _____ day of _____, 19__ at _____.

Applicant

Notary Public

By _____
(Title)

Exhibit 3-A

STATE OF NEW JERSEY
ALCOHOLIC BEVERAGE CONTROL DIVISION

PERSONAL
QUESTIONNAIRE

This form is required to be filed in duplicate by each person whose name is listed on an application for a license, a renewal or a transfer, including, but not limited to (1) key employees and (2) any other person whom the director or his designate requires subsequent to the filing of the application.

ALL QUESTIONS MUST BE ANSWERED IN BOXES BELOW. (If more space is needed, attach rider) Any false answer or statement made by the applicant constitutes perjury and will subject any license issued hereunder to revocation.

IN THE MATTER OF THE APPLICATION OF

Serial No. (If known):

Full name of applicant

address of premises to be licensed or now licensed

☐ Corp. Change

☐ Transfer of Ownership, Nature of Business:

☐ Renewal

☐ New License. Type of License:

The undersigned, appearing as a principal in the above designated application submits the following information and understands that said representation will be relied on by the State of New Jersey in acting on such applications and further understands that false statements or misrepresentations shall constitute sufficient cause for the disapproval of the application and/or revocation, cancellation or non-renewal of any license which may be issued or affected as a result of such application and/or prosecution.

Name of Subject Individual

Social Security No.

Telephone No.

Nature of Interest (Fill in if Applicant, Partner, Officer etc.) and Relationship, if any, to Others on Application

Former Residence Addresses, Past 10 Years
(Add Rider if more space is needed)

From

To

Date of Birth

Place of Birth (Country)

Color of Hair

Height

Sex

Citizenship

If Alien
State Reg.#

Marital
Status

Color of Eyes

Weight

Occupation Record Past (10) Years (Add Rider if more space is needed)

From (Give Date)	To (Give Date)	Occupation or Business	Location	Employed F

1. (a) Will you terminate your present occupation or business ? (b) If yes, submit certification attesting to same. If no, submit certification with schedule or hours for each business or occupation.		1. (a) Yes or No	
2. (a) Will you take an active part in the business sought to be licensed? (b) If so, explain nature of activity.		2. (a) Yes or No	(b) Nature of Activity
3. (a) Are you a police commissioner or other police official, or subordinate of any police department, or sheriff, deputy or undersheriff or any other peace officer? (b) If so, state title.		3. (a) Yes or No (b) Title of Officer	
4. (a) Have you ever been known by any other name or names, (Including maiden name, if any)? (b) If, so state each such name.		4. (a) Yes or No.	(b) Names
5. (a) Have you, or any corporation in which you were a principal ever filed a petition in bankruptcy or been adjudged a bankrupt or make an assignment for the benefit of creditors? (b) If so give details		5. (a) Yes or No.	(b) Details
6. (a) State whether you are making any financial investment in the said business or are making any loan thereto either directly or by supplying collateral for, endorsing or otherwise underwriting or guaranteeing any loan to be made thereto. (b) If so, state total amount you are investing in said business and/or the amount of any such loans and answers parts (c) and (d).		6. (a) Yes or No (b) Amount Investing \$ Amount of Loans \$	

- (c) List below the specific bank accounts or other assets (including moneys borrowed) that have been or will be used by you in connection with such investment or loan. (In listing bank accounts, give the name and address of the bank). List all other sources of funds being utilized, gifts, loans etc. and describe all securities, real estate and other assets being liquidated to finance investment or pledged as collateral for loans. Where any bank account or other asset was opened or acquired within two years prior to execution of this form specify date of opening of account or acquisition of asset. These assets should be included among assets listed on Statement of Assets.

<u>Description of account, asset or borrowing</u>	<u>Total dollar amount or value</u>	<u>Amount to be withdrawn, used or pledged</u>	<u>Date opened, acquired or made</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

-) If source of funds to be used is (are) personal savings bank account(s) attach official transcript(s) of account for last five (5) years.
 -) If source of funds is commercial borrowing attach copy of loan application.
 -) If source of funds is the bank savings of relatives attach official transcript of account for five (5) year period.
 -) If source of funds is the sale of other assets attach photocopy of contract and settlement sheet.
 -) Attach retained copies of personal federal income tax returns for past five (5) years.
-
-) State net worth (excess of assets over liabilities) of undersigned. State net worth to nearest \$1000, unless net worth is more than double the amount of the investment being made, if so it may be stated in terms "in excess of \$ _____," inserting the appropriate amount.

NET WORTH \$.....

Questions 7 through 9 need not be answered by individual applicants or members of partnership applicants who have made answers to similar questions in the application for license.

Have you ever been ARRESTED OR INDICTED or served with a SUMMONS for any crime of offense of any kind, except traffic infractions?

7. Yes or No If yes give date and type of Offence.

each case, a CERTIFICATE of DISPOSITION or a CERTIFICATE of CONVICTION by the Court Clerk st be attached to the application for the license unless previously submitted. If so, give te of submission.

(a) Have you ever applied anywhere for any license or permit to traffic in alcoholic beverages, including any application as a partnership or corporation in which you were a principal?

8. (a) Yes or No

(b) Date Filed

Disposition

(b) If so, state address of premises, date of filing and disposition.

Name of Applicant

(c) Has such license or permit ever been revoked, cancelled or otherwise involuntarily terminated?

Address of Applicant

(d) If so, state what action was taken, and date thereof.

(c) Yes or No

(d) Date

Penalty or Action

(a) Have you any interest, directly or indirectly, in any premises or business where any alcoholic beverage is manufactured or sold at whole-sale or retail, whether by stock ownership, interlocking directors, mortgage or lien on, or ownership of any real or personal property, or by any other means including loans?

9. (a) Yes or No

(b) Type of Business

Address of Premises

Nature of Interest

(b) If so, set forth the location any type of such business, the nature of the interest and the date when it was acquired.

Date Acquired

hereby certify that all statements hereinabove made by me are true to my own knowledge, and any representations therein are changed prior to the receipt of the license or approval the corporate change or endorsement, I undertake to so notify the Authority.

Dated

Signature

Exhibit 3-B

STATE OF NEW JERSEY

ALCOHOLIC BEVERAGE CONTROL DIVISION

(Name of Applicant)

(Street Address of Premises)

(Municipality other than City)

(City)

(County)

Each application for a license must be accompanied by this "STATEMENT OF FINANCES" properly filled out IN DUPLICATE.

The total assets of all interested parties should be listed herein regardless of the amount of investment in the business. In listing bank deposits, the name and address of the bank wherein the monies are deposited and the date the account was opened should be set forth under description. Similarly, the date of acquisition should be incorporated in the description of all securities, real estate, etc.

Where the applicant is a partnership or corporation, the INDIVIDUAL ASSETS OF EACH PARTNER OR STOCKHOLDER in the corporation should be listed preceded by the NAME OF THE INDIVIDUAL, PARTNER OR STOCKHOLDER. The statement of liabilities should be set forth in a similar manner showing the amount of indebtedness, the name of the creditor and the date incurred.

The information contained herein will be deemed to be part of the application for license and will be considered by the State of New Jersey in acting upon such application.

1. (a) State the amount of the total investment the applicant is making in the business for which this application is filed.

1. (a) _____
(Amount)

(b) State amount to be invested in fixtures (including goodwill if this application involves a transfer of ownership); in inventory; and in other expenses.

(b) _____
(Fixtures)

(Inventory)

(Other Expenses)

2. State total net worth of applicant (deduct total liabilities from total assets as set forth on the reverse side hereof).

2. _____
(Total Net Worth)

(b) If not, state amount of additional monies to be invested in the business, the source of the same and the name and address of any person who has undertaken to advance monies to the applicant to assist in financing said business and the relationship, if any, of each such person to the applicant. (Add schedule if more space is needed).

(b) _____

[illegible]

LIABILITIES**Description****Amount**

\$

Total Liabilities \$

(Date)

19

Signature of Applicant, each partner,
or (if a corporation) an Authorized Off

