

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

Mrs. Dora P. Rothschild

BULLETIN 1449

May 22, 1962

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New Jersey State Library

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

BULLETIN 1449

May 22, 1962

1. APPELLATE DECISIONS - ESSEX COUNTY RETAIL LIQUOR STORES ASSOCIATION  
v. NEWARK, ET ALS.

|  |   |             |
|--|---|-------------|
| Essex County Retail Liquor Stores Association,   | ) |             |
|  | ) | ON APPEAL   |
| Appellant,   | ) | CONCLUSIONS |
|  | ) |             |
| v.   | ) | AND         |
|  | ) |             |
| Municipal Board of Alcoholic Beverage Control of the City of Newark; Bartlett M. Smith, t/a Muldoon Liquors, and Home Liquors Incorporated of New Jersey | ) | ORDER       |
|  | ) |             |
| Respondents.   | ) |             |

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Brass and Brass, Esqs., by Leonard Brass, Esq., Attorney for Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent Municipal Board.

Richard L. Amster, Esq., Attorney for Respondent Bartlett M. Smith.

Abe W. Wasserman, Esq., and Harry Castelbaum, Esq., Attorneys for Respondent Home Liquors Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board, whereby on July 19, 1961, by a unanimous vote, it granted the application of respondent Bartlett M. Smith, t/a Muldoon Liquors (hereafter Smith) to transfer his plenary retail consumption license C-189 from 776 South Orange Avenue to 773 South Orange Avenue, and on August 16, 1961, by a similar vote, granted a person-to-person application for transfer of said license from respondent Smith to respondent Home Liquors (hereafter Home).

"Appellant, in its petition of appeal, alleges that the actions of the local board should be reversed for the following reasons: (a) the filing of the separate applications by respondents Smith and Home were made to circumvent Section 3.29 of the Revised Ordinance of the City of Newark, and (b) the procedure followed by respondents Smith and Home to effect aforesaid transfers was in violation of Rule 14 of State Regulation No. 6.

"The pertinent portion of Section 3.29 of the Revised Ordinance of the City of Newark provides:

"No plenary retail consumption license, except renewals for the same premises and transfers of license from person to person within the same premises, shall be granted or transfer made to other premises within a distance of one thousand feet from any other premises then covered by a plenary retail consumption license, provided, however, that the local license issuing authority may, in its discretion, grant a transfer of an existing license to the same licensee to other

premises within six hundred feet of the premises from which the transfer is made, notwithstanding that the premises to which the license is so transferred is within one thousand feet of an existing plenary retail consumption licensed premises.'

"Rule 14 of State Regulation No. 6 provides:

'Transfers of licenses both as to person and place may be applied for simultaneously and in a single application; but if there is such combined application for person-to-person and place-to-place transfer, the license shall not be transferred to the applicant unless the place-to-place transfer is also effected.'

"The answer filed on behalf of respondent Smith denied appellant's allegations and, by way of separate defense, states:

'The evidence adduced at the hearings below established that the transfer of the licensed premises from No. 776 to No. 773 South Orange Avenue, Newark, New Jersey, being the opposite side of the street on the same block, in no way aggravated the concentration of licenses and was beneficial to the public interest.

'The evidence adduced at the hearings below established that a denial of such transfer would impose a hardship upon the licensee.

'The evidence adduced at the hearings below established that the licensee actually intended, in good faith, to conduct the licensed business at the new address if his pending sale to Home Liquors was not consummated.'

"The answer filed on behalf of respondent Home denied the allegations of the appellant.

"The answer filed on behalf of respondent Board denied the aforesaid allegations of the appellant and contends that 'the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board from which it, in its sound discretion, concluded that the transfer should be granted'.

"The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15. The transcripts of the proceedings before the respondent Board were received in evidence and additional and supplemental testimony was presented by appellant and respondents, in accordance with Rules 6 and 8 of said Regulation.

"The record before the local Board discloses that on July 6, 1961, respondent Smith filed his place-to-place application with the Clerk of the Board; that on July 19, 1961, a public hearing on the application was held before the Board; Smith was represented by Mr. Amster and Mr. Brass appeared on behalf of the Essex County Retail Stores. Mr. Brass announced that the purpose of his appearance was to determine whether the application was being made in good faith or was being made for the purpose of defeating Section 3.29 aforesaid, following which Mr. Brass inquired if it were the present intention of Smith to operate his licensed business at the new location. Mr. Amster stated that Smith intended to transfer

his license if the application were granted and that neither the Board nor Mr. Brass had a right to go behind the application. The Chairman of the Board agreed with Mr. Amster's contention. On July 19, 1961, the Board adopted a resolution granting the place-to-place transfer of said license (endorsed and effective August 7, 1961).

"The Board's record further discloses that on August 3, 1961, respondent Home filed its person-to-person application; that on August 16, 1961, a public hearing on the application was held before the Board; that appearances were entered for all parties concerned by their respective attorneys and Mr. Sol Reiss, the holder of a D license at 783 South Orange Avenue, appeared to object to the transfer.

"Mr. Leonard Brass argued that the filing of separate applications by respondents Home and Smith was in violation of Rule 14 of State Regulation No. 6; that this procedure was the result of a preconceived plan to give respondent Home the privilege of establishing a licensed business within 1,000 feet of existing licensed premises covered by a plenary retail consumption license; that in the instant case this is a privilege afforded, at the discretion of the local Board, only to respondent Smith, within the exception permitting a transfer of his license to other premises within 600 feet of 776 South Orange Avenue, despite the existence of the 'one thousand foot rule'; that Smith ceased to operate his licensed business at his former premises shortly after the effective date of the approval of his application, following which Home removed his stock of liquor.

"Mr. Wasserman, on behalf of Home, informed the Board that Smith's new location at 773 South Orange Avenue was not ready for occupancy at the time Smith ceased operations of his licensed business at 776 South Orange Avenue (on August 7, 1961); that under the circumstances, Smith was required to dispose of his stock within five days of the effective date of the approval of his application for transfer; that Home purchased Smith's stock of liquor and that Home, after obtaining a special permit from the Division, removed the same.

"Mr. Wasserman also disclosed to the Board that on June 20, 1961 Home had entered into an agreement with Smith to purchase his license and licensed business contingent upon the Board's approval of the aforementioned two applications as filed; that the procedure of first obtaining approval of the place-to-place transfer followed by an approval of the person-to-person transfer was not made 'in any sense of evasion or subterfuge, but strictly on the basis of sound business practice'; that to do otherwise Home would be undertaking a poor business risk and that on June 30, 1961 Home and the lessor of premises 773 South Orange Avenue executed a written lease which was being held in escrow by the lessor subject to the approval of the person-to-person application and the termination of a month-to-month tenancy given to Smith by the lessor on June 20, 1961.

"Mr. Amster, on behalf of Smith, joined in Mr. Wasserman's representations to the Board and placed in evidence the aforementioned agreement and a letter dated June 20, 1961 to Smith from the lessor of premises 773 South Orange Avenue, to establish Smith's right of possession to the new location.

"On August 16, 1961, the Board adopted a resolution approving the person-to-person application.

"At the hearing held herein, Bartlett M. Smith, called as a witness by appellant, testified that on July 6, 1961, at the time he filed his application, he had a month-to-month tenancy at the new location; that on said date he did not know that respondent Home held a lease for the premises; that on June 20, 1961, he had made an agreement to sell his license and his stock of liquor to respondent Home upon the following contingencies: (1) that the respondent Board approve a place-to-place transfer to 773 South Orange Avenue, (2) that the respondent Board approve a person-to-person transfer to respondent Home, (3) that respondent Home will be able to obtain, at terms satisfactory to it, a lease for the new location, and (4) that in the event that either of the aforesaid applications shall not be approved, the agreement shall be cancelled. Mr. Smith further testified that he did not file his application with the knowledge that respondent Home could not otherwise become the holder of the license and conduct a licensed business at the proposed site; that at the time he filed his application, he had intended to operate his business at the new location; that he had no way of knowing whether the person-to-person application would be approved.

"Mr. Smith further testified that at the hearing on the place-to-place application, he did not inform the respondent Board of the aforesaid agreement; that all negotiations for the sale of his license to respondent Home were carried on by Harold Goldberg (a business broker), and that he was familiar with the terms of the agreement.

"Upon examination by Mr. Amster, Mr. Smith testified that he is 66 years old; that he had conducted a licensed business at 776 South Orange Avenue for three years; that he had become dissatisfied with his working conditions at the premises; that there was inadequate storage space at the premises; that he was having parking difficulties; that he had discussed his problems with Mr. Goldberg who suggested that he move to larger quarters; that in the Spring of 1961 (April, May or June) Mr. Goldberg informed him of the availability of the new location; that there were no discussions then with respect to the sale of his license; that it was his intention to conduct a licensed business at the new location; that he had a tentative arrangement to occupy the same on a month-to-month basis, and that in the early part of June aforesaid, Mr. Goldberg suggested a sale of the license to respondent Home.

"On redirect examination by Mr. Brass, Mr. Smith testified that Mr. Goldberg effected aforesaid monthly tenancy for him; that it was in the form of a letter dated June 20, 1961 and signed by Samuel Cohen, president of the Imperial Outfitters, the lessor of the premises, that on the same day he had executed aforesaid agreement to sell his license to respondent Home; that on August 7, 1961, the effective date of his place-to-place transfer, he ceased operations of his licensed business and that on the same day respondent Home removed his stock of liquor from the premises.

"It was stipulated by respondents that Robert E. Brown, Clerk of the local Board, if called as a witness, would testify that there are three plenary retail consumption licenses located within 1,000 feet of 773 South Orange Avenue and three within 1,000 feet of 776 South Orange Avenue.

"Richard L. Amster, attorney for respondent Smith, called as a witness by appellant, testified that at the hearing before the local Board on Smith's application, Mr. Brass stated to the Board that the purpose of his appearance was to determine whether the application was being made in good faith or for the purpose of circumventing Section 3.29 aforesaid; that he (Mr. Amster) stated,

'It is our intention to transfer this license if you grant it'; that Mr. Brass asked what were the present intentions of Smith if the application were granted; that he (Mr. Amster) replied, 'I think the application speaks for itself' and 'I'm not going to make any representations here and I don't think we are under obligation to make them'.

"Mr. Amster further testified that in his opinion, respondent Home had no interest (directly or indirectly) in Smith's license on July 6th aforesaid.

"Louis R. Cerefice, Chairman of the local Board, on behalf of respondent Home, testified that at the hearing on the place-to-place application 'we were aware that there was a good possibility that he (respondent Smith) might want to transfer', 'sell. Person to person', and that the issues raised in the within hearing were presented and argued before the local Board.

"On cross-examination, Mr. Cerefice testified that the local Board did not question the good faith of Smith's place-to-place application; that it refused to go behind the application; that appellant failed to introduce any affirmative evidence to show that respondent Smith's application was not made in good faith; that at the hearing on the person-to-person application, respondent Home made a complete disclosure of all the pertinent facts relating to the aforesaid agreement; that there was no need for the local Board to have been apprised of these facts on the application for the place-to-place hearing and that there was no deception practiced on the local Board by Smith. Cf. Weston et als. v. Newark et als., Bulletin 719, Item 2.

"Harold H. Goldberg, Jr., on behalf of respondent Home, testified that he is a real estate and business broker; that he has known Mr. Smith for about three years; that in response to a telephone call, he visited Mr. Smith in the Spring or the early part of Summer of 1961; that Mr. Smith informed him that he was experiencing difficulties in the operation of his business because of his age, the long hours he was required to spend in the conduct of his business and that his wife was no longer able to give him any assistance; that Mr. Smith wanted to know whether he should sell his business or if he had any suggestions to alleviate his problems; that he suggested to Mr. Smith to try to increase his business which would enable him to hire a clerk and spend less time at the premises; that there was a larger store with a parking lot available at 773 South Orange Avenue where he should be able to increase his business; that he knew aforementioned Mr. Cohen, the lessor of the premises, for a few years. Mr. Goldberg further testified that as a result of this conversation, he met with Mr. Cohen and his broker; that they arrived at a tentative arrangement for the renting of the premises to Mr. Smith subject to the local Board's approval of a transfer of the license to the proposed site; that subsequent thereto, sometime in the month of June aforesaid, Mr. Smith became a little apprehensive 'about the situation'; that he informed Mr. Smith if he were reluctant to consummate the transaction he 'could get him some one who would take over' and that Mr. Smith asked him to obtain a purchaser for his licensed premises.

"Mr. Goldberg further testified that he related his conversation with Smith to Edwin Fisher, an officer of respondent Home and also informed him of the verbal lease he had made with Cohen for respondent Smith; that on June 20, 1961, respondents Smith and Home executed their agreement; that Mr. Smith informed him that he intended to operate his licensed business at the new location if the transfer to Home were denied.

"On cross-examination Mr. Goldberg testified that he had negotiated four or five other sales of licensed premises to respondent Home; that respondent Home had asked him to find licensed premises which were on the market; that he did not visit Mr. Smith for that purpose; that the initial arrangements he had made with Mr. Cohen for respondent Smith were verbal; that these arrangements were later incorporated in a letter executed by Mr. Cohen on June 20, 1961; that at the request of respondent Home he negotiated the written lease between it and Mr. Cohen.

"Edwin Fisher, on behalf of respondents, testified that on August 6, 1961, respondent Smith had discontinued his licensed business; that on August 7, 1961 he had obtained a special permit from the Division to remove respondent Smith's stock of liquor and that on August 9, 1961 respondent Home removed the same.

"On cross-examination, Mr. Fisher testified that on the morning of August 7, 1961, respondent Smith's license for the new location was endorsed, following which he obtained the special permit.

"Appellant argues that the right granted by the exception to the '1000-foot' rule in the ordinance in question runs only in favor of an existing licensee seeking a transfer from place to place. Therefore, this right is personal to an existing licensee and cannot accrue to the ultimate benefit of a prospective transferee of the license, either directly through a single place-to-place and person-to-person transfer application, or indirectly by means of a place-to-place transfer by an existing licensee, who, at the time he applies for such transfer, intends immediately thereafter to consent to the transfer of the license to a new person. Appellant characterizes the latter situation as an attempt to 'circumvent' or 'avoid' the 'spirit and letter' of the proviso.

"Respondents Smith and Home contend that (1) the privilege afforded an existing licensee is not a personal one, (2) even if the privilege is deemed to be personal to the existing licensee, the ordinance requires only that said licensee be the one transferring from place to place, it being immaterial for whose ultimate benefit the transfer is effected, and (3) in any event, the record herein supports a factual determination that Smith's intention, in applying for the place-to-place transfer, was in fact, to benefit himself primarily in that he intended to operate the licensed business at the new location in case the contemplated person-to-person transfer to respondent Home did not eventuate.

"Appellant, in support of its contentions, cites the case of Dal Roth, Inc. v. Division of ABC et als... 28 N.J. Super 246 (App. Div. 1953), wherein a Jersey City ordinance somewhat similar to the one involved herein was construed. Therein, the court held that an exceptive clause should be construed to limit relief only to licensees actually having premises which they were forced to vacate and to deny relief to a corporate applicant for a person-to-person and place-to-place transfer from a licensee who has gone out of business, since it was not an existing licensee under any applicable hardship situation. In the present case, however, Smith, the licensee, applied for the place-to-place transfer. Apparently, the exceptive clause in the Newark ordinance is grounded on the belief that permitting licensees to transfer their premises within a certain radius of their existing locations, regardless of the proximity of other similar licenses to the new location, would not unduly interfere with the primary purpose of the over-all provisions of the ordinance to spread out the licensed premises in the municipality and prevent the clustering of licenses

in particular areas of the municipality. Accordingly, the fact that a third party rather than the licensee may eventually operate the licensed business at the new location, will not result in any greater concentration of licensed premises. If Home Liquors had first obtained a person-to-person transfer of Smith's license at 776 South Orange Avenue, in all probability it would not then have been prevented from transferring the license to the new location. In any event, even in the Dal Roth case, there is no indication that an existing licensee, compelled to vacate the licensed premises, could have been refused a place-to-place transfer within the prescribed radius thereof solely because he intended thereafter to transfer the license to another person. As long as the license remains in the name of the existing licensee, the issuing authority, as here, is justified in not going into the question of what may occur after the transfer.

"Appellant also cites the case of Willner Liquors v. Jersey City, Bulletin 1332, Item 3, in support of its argument. It appears that Willner Liquors filed a combined place-to-place and person-to-person application to transfer a plenary retail consumption license. The local Board denied the application for the reason 'that the interest of the public at large would be best served by not granting the application in question'. On appeal, the Director affirmed respondent's action and held that an exceptive clause in the Jersey City ordinance (quite similar to the exceptive clause in the Newark ordinance) does not run in favor of an applicant for person-to-person and place-to-place transfer, but runs only in favor of a licensee seeking transfer from place to place. In the present case, however, the licensee, Smith, applied for the place-to-place transfer and he was entitled to the benefit of the exceptive clause. Here, Smith complied with the letter of the ordinance in his place-to-place transfer, the local issuing authority deeming immaterial his intention thereafter. There is no showing that Smith's action circumvented the 'spirit' of the ordinance.

"After reviewing all the evidence, the exhibits and the briefs presented, I conclude that appellant has failed to sustain the burden of proof in showing that the actions of respondent Board were erroneous. Rule 6 of State Regulation No. 15; Helms v. Newark et als., Bulletin 1398, Item 3. For the reasons aforesaid, it is recommended that an order be entered affirming the action of the respondent Board and dismissing the appeal."

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's Report and written argument thereto were filed with me by the attorneys for appellant, and written answering arguments were filed by the attorneys for respondents Home Liquors and Bartlett M. Smith. Thereafter, on my own motion, pursuant to aforesaid Rule, I heard oral argument.

While I am convinced that the methods used by licensee Smith and Home Liquors were without question for the purpose of circumventing the local ordinance, nevertheless this fact was forcibly called to the attention of the respondent Board and argued at length. However, the Board saw fit to grant the transfer and, regardless of my personal opinion of the means devised to effect the transfer, I will not question the discretionary authority, in this case, of the Board to grant the transfer.

I shall affirm the Hearer's Report and dismiss the appeal.

Accordingly, it is, on this 29th day of March, 1962,

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

WILLIAM HOWE DAVIS  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED-  
PRIOR RECORD - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary  
Proceedings against

Jack Harris  
t/a Jack's Bar & Restaurant  
357½-359 West Side Avenue  
Jersey City, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption  
License C-214, issued by the Municipal  
Board of Alcoholic Beverage Control of  
the City of Jersey City.

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Licensee, Pro se.

David S. Piltzer, Esq., Appearing for the Division of  
Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 22, 1962 he possessed on the licensed premises five bottles of alcoholic beverages bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension for twenty-five days in 1947 for possession of "refills" (Re Harris, Bulletin 745, Item 9; Bulletin 749, Item 2) and for ten days effective September 25, 1961 for sale in violation of State Regulation No. 38 (Re Harris, Bulletin 1418, Item 5).

Not considering the 1947 suspension for a similar offense because it occurred more than ten years past, but considering the 1961 suspension for dissimilar violation, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Re Simmons, Bulletin 1423, Item 6.

Accordingly, it is, on this 4th day of April, 1962,

ORDERED that Plenary Retail Consumption License C-214, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Jack Harris, t/a Jack's Bar & Restaurant, for premises 357½-359 West Side Avenue, Jersey City, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m., Monday, April 16, 1962, and terminating at 2:00 a.m., Friday, May 11, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO A MONOR - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Michael J. Sabo  
t/a Idle Hour Tavern  
239 E. Blackwell Street  
Dover, N. J.

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption License C-14, issued by the Board of Aldermen of the Town of Dover.

Licensee, Pro se.

Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on Sunday, February 11, 1962 he (1) sold drinks of alcoholic beverages to a 19-year-old minor, in violation of Rule 1 of State Regulation No. 20, and (2) sold twelve cans and twelve bottles of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days on charge 1 (Re Florence Warner, Inc., Bulletin 1226, Item 11) and for fifteen days on charge 2 (Re Nan-Max Co., Inc., Bulletin 1435, Item 7) or a total of thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 2d day of April, 1962,

ORDERED that Plenary Retail Consumption License C-14, issued by the Board of Aldermen of the Town of Dover to Michael J. Sabo, t/a Idle Hour Tavern, for premises 239 E. Blackwell Street, Dover, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 A. M. Monday, April 9, 1962 and terminating at 1:00 A.M. Friday, May 4, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - POSSESSION OF SLOT MACHINES - SALE TO NON MEMBERS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against  
 Court Lakewood #127, Foresters of America  
 227-229 First Street  
 Lakewood, New Jersey  
 Holder of Club License CB-3 issued by the Township Committee of the Township of Lakewood.

CONCLUSIONS

AND

ORDER

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 Robert A. Lederer, Esq., Attorney for Licensee.  
 Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on March 3, 1962 (1 and 2) it permitted five slot machines on its licensed premises, in violation of Rules 7 and 8 of State Regulation No. 20, and (3) sold alcoholic beverages to non-members, in violation of Rule 8 of State Regulation No. 7.

Absent prior record, the license will be suspended for ten days on charges 1 and 2 (Re Hoboken Lodge No. 74, B.P.O. Elks, Bulletin 1166, Item 10) and for fifteen days on charge 3 (Re Italian American Columbus Relief Association, Bulletin 1400, Item 9) or a total of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 29th day of March, 1962,

ORDERED that Club License CB-3 issued by the Township Committee of the Township of Lakewood to Court Lakewood #127, Foresters of America for premises 227-229 First Street, Lakewood, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 A. M. Tuesday, April 3, 1962, and terminating at 2:00 A. M. Monday, April 23, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF PRIVATE LEWDNESS DETERMINED NOT TO INVOLVE MORAL TURPITUDE.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.

Case No. 1679

CONCLUSIONS

Samuel Raffaello, Esq., Attorney for petitioner.

BY THE DIRECTOR:

In 1940 petitioner pleaded non vult to a charge of private lewdness and as a result was sentenced to two months in the county penitentiary. Prior thereto in 1938, he was given one year probation after being convicted of assault and battery. Petitioner also disclosed in his testimony a conviction for gambling (card playing) in 1960, for which he was fined \$10.00; however, his fingerprint records fail to reveal this conviction.

The crime of simple assault and battery does not involve the element of moral turpitude. Re Case No. 610, Bulletin 864, Item 2. The crime of lewdness may or may not involve moral turpitude, depending on the circumstances of the case. Re Case No. 7, Bulletin 92, Item 18. Petitioner testified that prior to his arrest on the above charge, he had loaned his car to a friend. Subsequently, he was arrested with eighteen other young men and charged with carnal abuse, the charge being subsequently reduced to private lewdness. The complainant, an 18-year-old girl, allegedly recorded the license plate numbers of the vehicles in which she conducted her promiscuous activity, and this was the basis of her identification of the young men involved. Petitioner further testified that on the advice of his father he changed his plea from not guilty to non vult. It would seem that under the facts as testified to by petitioner, the charge of private lewdness was tantamount to a charge of fornication. Fornication may or may not involve moral turpitude depending on the circumstances (Re Case No. 369, Bulletin 451, Item 3) and generally a single offense is deemed not to involve moral turpitude. I shall accept as true petitioner's sworn testimony as to the circumstances and, in my opinion under the facts, the conviction of private lewdness does not involve moral turpitude.

The gambling charge testified to by petitioner appears to have been brought before a local magistrate. In view of the light sentence and the fact that the fingerprint records fail to disclose such a conviction, it would seem that the charge was brought under a local ordinance. Hence, such a conviction would not be a crime under the Alcoholic Beverage Law.

Based on what has been presented heretofore, petitioner has not been convicted of a crime involving moral turpitude. Therefore, if he is otherwise qualified, he is not disqualified by any such conviction to be associated with the alcoholic beverage industry and hence no order removing disqualification need be entered.

WILLIAM HOWE DAVIS
DIRECTOR

Dated: April 2, 1962

6. DISQUALIFICATION REMOVAL PROCEEDINGS - CONVICTION OF THEFT OF GOODS FROM INTERSTATE SHIPMENT - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33:1-31.2.

CONCLUSIONS AND ORDER

Case No. 1678

BY THE DIRECTOR:

In 1943 petitioner was found guilty in a federal district court of theft of goods from interstate shipment and sentenced to twelve years in a federal penitentiary. He was subsequently paroled to state authorities in 1951, by whom he was charged with parole violation and confined in a state prison until 1954. His fingerprint records further disclose a conviction for disorderly conduct in 1932, for which he received a suspended sentence; a conviction for possession of firearms in 1937, for which he was sentenced to a city reformatory; and a conviction for attempted robbery in the first degree in 1937, for which he was sentenced to an indefinite term in a state reformatory.

In view of the fact that knowledge is an essential element of the crime of theft of goods from interstate shipment and due to its great similarity to the statutory crime of grand larceny, in my opinion the crime, per se, involves the element of moral turpitude. The petitioner was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing herein, petitioner testified that he has been employed as a platform worker for a trucking company for the last seven years. He further testified that he is married and has one child and he seeks relief in this proceeding in order that he might continue his employment with a New Jersey liquor licensee.

Three witnesses (a platform worker and two freight handlers) testified that they have known petitioner for over five years last past and he now bears a reputation for being a law-abiding person.

The police department of the municipality wherein petitioner resides has advised that no complaint or investigation involving petitioner is presently pending.

It is evident that petitioner has been employed by a liquor licensee for some time while disqualified. However, after carefully considering his testimony, I am of the belief that he was unaware of the legal requirements until being notified a short time ago when he executed a questionnaire. In view of the fact that knowledge of the law is not an essential prerequisite in these proceedings (Re Case No. 996, Bulletin 943, Item 8) and considering all the circumstances herein, I am satisfied that petitioner has conducted himself in a law-abiding manner for over five years last past and conclude that his association with the alcoholic beverage industry will not be contrary to the public interest.

Accordingly, it is on this 3d day of April, 1962,

ORDERED that applicant's statutory disqualification because of the conviction described herein be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.

WILLIAM HOWE DAVIS DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - PRIOR RECORD -  
LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )  
 )  
 Malcolm Kirk )  
 t/a The Fireside )  
 53 Broadway & 36 Bloomfield Ave. )  
 Denville, New Jersey )  
 Holder of Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Denville )  
 ----- )

CONCLUSIONS  
AND  
ORDER

Licensee, Pro se.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 12, 1962 he sold drinks of alcoholic beverages to two minors, ages 18 and 19, in violation of Rule 1 of State Regulation No. 20.

Licensee (then in partnership with Mary and William Kirk) has a previous record of suspension for ten days effective September 8, 1959 for sale to minors. Re Kirk, Bulletin 1300, Item 10. The prior record considered, the license will be suspended for twenty-five days (Cf. Re K. & O. Tavern, Inc., Bulletin 1439, Item 5; Re Tony Mart, Inc., Bulletin 1437, Item 4) with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 3rd day of April, 1962,

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Denville to Malcolm Kirk, t/a The Fireside, for permises 53 Broadway and 36 Bloomfield Avenue, Denville, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m., Tuesday, April 10, 1962, and terminating at 3:00 a.m., Monday, April 30, 1962.

WILLIAM HOWE DAVIS  
DIRECTOR

8. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - APPLICATION APPROVED.

In the Matter of Objections to the transfer of State Beverage Distributor's License SBD-198 from )

Louis Kraemer, Receiver of Peter Piper Distributors, Inc. 811 Georges Road North Brunswick, New Jersey )

to )

Peter Kamper, Jr. t/a Turnpike Beverages Rear 1329 Hamburg Turnpike Wayne, New Jersey. )

CONCLUSIONS

Leo J. Berg, Esq., by Harry Castelbaum, Esq., Attorney for Applicant Sellinger & Chester, Esqs., by Robert H. Chester, Esq., Attorneys for Objectors Passaic County Retail Liquor Dealer's Association and Wayne Township Tavern Owner's Association, Inc.

BY THE DIRECTOR:

On December 27, 1961, Peter Kamper, Jr., t/a Turnpike Beverages, filed an application for transfer of a state beverage distributor's license from Louis Kraemer, Receiver of Peter Piper Distributors, Inc., and from premises 811 Georges Road, North Brunswick, to premises Rear 1329 Hamburg Turnpike, Wayne. The notice for transfer of said license was published (verified by affidavit of publication) on December 28, 1961, and January 4, 1962, respectively, in the Herald-News, printed, published and circulated at Passaic, N. J.

On January 23, 1962 (after the necessary investigation had been completed), the application was approved but endorsement on the license certificate was withheld until the applicant complied with certain stated conditions. Thereafter an inspection disclosed proper compliance with the recommended conditions. However, by letter dated February 5, 1962 (which was prior to the aforesaid endorsement), objections were filed by the Passaic County Retail Liquor Dealer's Association and the Wayne Township Tavern Owner's Association alleging that "publication in the Passaic-Clifton Herald News was erroneous in that there existed, and does now in fact exist, a newspaper published in the Township (Wayne) which should have been used for publication."

R.S. 33:1-25 provides, among other things, that a notice of intention to apply for a license must be published in a newspaper "published and circulated in the municipality in which the licensed premises are located; but if there shall be no such newspaper, then such notice shall be published in a newspaper ... published and circulated in the county in which the licensed premises are located."

At the hearing herein Gustave K. Nelson testified that he is the editor and publisher of the North Jersey Times, a weekly newspaper published and circulated in Wayne Township since 1919

and that all legal notices, including proposed ordinances of said Township, are printed in said newspaper. He further testified that, although the format of the newspaper is laid out at his office in Wayne, the actual printing of the paper is done in Pequannock or Riverdale; and that he personally transports the printed copies to Pompton Lakes where, with the assistance of an employee, stickers containing names and addresses of the subscribers are affixed thereto. Thereafter he brings the newspapers to the Wayne post office from where they are delivered under the second class mailing privileges.

Peter MacDonald, Township Clerk, testified that the North Jersey Times is used exclusively for publication of all ordinances, liquor applications, election applications and election notices.

Hugo Munzer and James J. Gabriel, the former a member of a partnership holding a plenary retail distribution license and the latter president of a corporation holding a plenary retail consumption license in Wayne Township, testified that they were of the opinion, as were the respective liquor dealers' associations of which they are officers, that there is no need for a license of the class in question in the municipality.

In Lending v. Palisades Park et al., Bulletin 1329, Item 1, wherein a similar matter as appears in the instant case was considered, the Director stated:

"A weekly newspaper is nevertheless a newspaper within the meaning of the statute. Bulletin 11, Item 1. A newspaper may be considered as published in a municipality other than the municipality in which it is printed. Bayer v. Hoboken, 44 N.J.L. 131; aff'd. 45 N.J.L. 185, In Montesano v. Liberty Warehouse Co., 121 N.J.L. 124 (E. & A. 1938), the Court said:

'It appears, however, that within the meaning of such statutes as that upon which we are now passing, the place of publication of a newspaper is where the paper is first put into circulation, where it is first issued to be delivered or sent, by mail or otherwise, to its subscribers.'

"See also In re Bond Printing Co., Inc., 135 N.J.L. 478 (E. & A. 1947); Wildwood Independent Record Publishing Co. et al. v. Wildwood, 35 N.J. Super. 543 (Sup.Ct. 1955); Re Facts of Bayonne, Bulletin 35, Item 2."

I find from the evidence that the North Jersey Times is published and circulated in Wayne Township and thus qualifies under the provisions of R.S. 33:1-25 as a newspaper eligible for publication of a notice of intention for transfer of a liquor license.

Although the notice of intention in this matter was originally advertised in the Herald-News, printed and published in Passaic, the applicant herein has re-advertised his notice of intention in the North Jersey Times, such insertions being shown by affidavit of publication to be on February 8 and 15, 1962. In view of this, I am satisfied that a proper correction of the notice of intention for transfer has been made.

The municipality did not file any objection to the transfer in question. I have carefully considered the testimony of Munzer and Gabriel but find nothing therein which in any way would warrant a denial of the present application.

Accordingly, the pending application for the person-to-person and place-to-place transfer is approved, and the appropriate endorsement on the license certificate may be made.

WILLIAM HOWE DAVIS  
DIRECTOR

Dated: March 28, 1962

9. STATE LICENSES - NEW APPLICATION FILED

Edward Kabot and Muriel Kabot  
t/a Home Beverage Service  
80 West Forest Avenue  
Englewood, New Jersey

Application filed May 16, 1962  
for State Beverage Distributor's  
license for the 1962-1963 fiscal year.  
License for 1961-62 held by Edward Kabot  
as an individual.



William Howe Davis  
Director