

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

BULLETIN 1743

August 10, 1967

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1. APPELLATE DECISIONS - MANIACI v. HALEDON.

NUNZIO N. MANIACI, T/A HALEDON)
FOOD TOWN, INC.,)
Appellant,)
v.)
BOROUGH COUNCIL OF THE BOROUGH) On Appeal
OF HALEDON,) CONCLUSIONS
Respondent.) AND ORDER
)
Vincent A. Perneti, Esq., Attorney for Appellant
James V. Segreto, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Borough Council of the Borough of Haledon (Council) whereby it unanimously denied appellant's application for a person-to-person and place-to-place transfer of a plenary retail distribution license from John Salute, at premises 10 Tilt Street, to the appellant at premises Belmont Avenue and John Street, Haledon.

Council's determination, as reflected in the minutes of the meeting held on December 12, 1966, was made after a full hearing at which appellant, represented by an attorney, was heard, as well as objectors. The resolution of denial reads as follows:

"Application having been made by Nunzio Maniaci for permission to transfer the Plenary Retail License D2 issued in the name of John Salute trading as Community Wine and Liquor at 10 Tilt Street to a proposed location at Belmont Avenue and John Street; and

"Written objections having been filed and the Mayor and Council having heard and considered both the written objections and the oral presentation of the various witnesses and the Police Report and the Public Works Report together with the argument of Counsel for the applicant; and

"The Mayor and Council hereby determine the following facts:

"1. Haledon is a community of approximately 6,300 residents and there are 30 liquor licenses issued. The ratio of licenses to population is greatly in excess of the statutory standards and accordingly transfer applications must be carefully scrutinized so that the heavy concentration of licenses in some areas is not aggravated by further transfer into those areas of the Borough. It is hereby determined that the proposed transfer would have the undesired result.

"2. The lower Belmont Avenue area is one of the sections of the Borough with a heavy concentration of licenses. Of the five package licenses in the Borough two exist within 500 feet of the proposed location. A granting of the application would result in 60% of all of the package licenses of the Borough being located within a 500 feet radius. Additionally, there are several plenary consumption licenses in the immediate area.

"3. The area of the proposed transfer has been the site of numerous police problems. Its set back from the main street; its parking behind the building; the location of the service station which blocks the view of the parking area; the location of industrial buildings to the rear;- all of these factors have resulted in police problems at the site. The location of a licensed premises at the site would not be desirable from a police point of view.

"4. Liquor licenses are a privilege, the regulation of which is for the accommodation of the members of the community. It is desirable that there be a reasonable geographic distribution of licenses throughout the Borough, so that the residents of the Borough can be effectively accommodated. The proposed transfer would work the opposite result.

"5. The proposed transfer would not be in the common good for the reasons herein stated and the Council does hereby find, determine and declare that the reasonable regulation and control of liquor licenses require the denial of the application.

"The application is hereby denied."

In his petition of appeal appellant contends that the action of the Council was arbitrary, capricious and erroneous for reasons which may be summarized as follows: (a) the proposed premises to which the license would be transferred would be located in a large supermarket and would be in a more desirable location than the present premises at which the license is located; (b) the present location has been a problem for the police department because several burglaries have occurred there; (c) objectors at the meeting were mainly holders of similar licenses who "exercised undue influence upon the Council"; (d) the proposed transferor has a heart condition and finds it difficult to continue in business, and (e) the parking facilities at the proposed new premises are superior to those of the present location.

The answer of Council admits the jurisdictional allegations of the petition, and generally denies its substantive allegations. It further defends upon reasons which may be briefly summarized: (a) that the action of the Council was a valid exercise of its discretionary powers and in furtherance of the "common good of the municipality;" (b) that there are thirty liquor licenses issued in Haledon, five of which are for package stores; (c) the proposed transfer would result in a greater concentration of liquor licenses in that area; (d) that the objectors did not exercise undue influence upon the members of Council, and (e) admits that the proposed premises contain substantial off-street parking facilities.

This appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for the attorneys

for the respective parties to present additional testimony and cross-examine witnesses.

At this plenary de novo hearing the appellant testified as follows: He presently operates a supermarket, trading as Haledon Food Town, Inc., which is part of the Food Town chain and which contains a substantial amount of off-street parking. He entered into a contract for the transfer of a license presently held by John Salute, subject to the approval of Council. Salute operates his present license in conjunction with a grocery and delicatessen business, and is located directly opposite the police headquarters and the municipal building in that Borough. He asserts that the proposed premises to which this license would be transferred has parking facilities for approximately two hundred cars, and that it would be a more convenient location than the location at which the license is presently being operated. On cross examination he admitted that the transfer of this license would result in three of the five plenary retail distribution licenses in this Borough being in an area of two blocks or within five hundred feet. He also admitted that he had heard of recent burglaries which occurred in the area of his supermarket.

John Salute, the proposed transferor, testified that his license is being operated at premises directly across the street from the municipal building and the police headquarters. He also explained that, because of the condition of his health, it would be a hardship for him to continue in operation and therefore he welcomed this opportunity to dispose of his license by the proposed transfer.

Mayor Ernest Holte, testifying on behalf of the respondent, gave the following account: He presided at the meeting on December 12, 1966, at which the appellant was given a full opportunity to testify in support of his application for a transfer. Objectors were also heard in opposition thereto. In considering this application he noted the following: This community has a population of 6,388 persons. The location of the appellant's premises is at the borderline zone facing Paterson. He took note of the fact that the proposed premises would be in close proximity to "five or six liquor licenses within 500 feet of [appellant's] store." The Council also took into consideration the report of the police commissioner which recommended the denial of his application. It was the opinion of this witness that this community was already overburdened with a surplus of liquor licenses (a total of thirty liquor licenses) and that a transfer would merely add to the concentration of liquor licenses in that particular area. He added the following:

"I would be very happy if Haledon could buy several of these licenses and do away with them, but we are not financially in this position. To say it would be better to take this license and move it to Maniaci's store after that open hearing we had and the reasons for not moving it, I could not honestly do this."

This witness, an ex-officio member of the local Planning Board, questioned on cross examination with respect to proper planning in the community, testified:

"Q As far as a planning man, would you say the Salute license would be better off somewhere else?

A Salute's license, as far as Haledon is concerned,

as far as planning, if I would have had to do something with the license it is in as good a place right now as anywhere else in Haledon, as far as planning goes. As far as parking goes, we are now in a study of the entire community, which is chaotic, whether in front of Mr. Salute's store or any street in Haledon."

The Mayor also added that the area in which the appellant's store is located has been a police problem and there were several instances of burglaries, robberies and shooting. Finally he stated that he did not conceive that there was any public need and necessity for such transfer.

I have given careful consideration to the pleadings, the exhibits and the testimony contained in the transcript both as reflected in the minutes of the meeting before Council and at this plenary de novo appeal. I think it would be desirable to set forth some of the basic principles of the applicable law.

In order for the appellant to succeed in the instant appeal it is incumbent upon him to show that Council acted in an abuse of its discretion in its determination to deny transfer. To meet this burden appellant must show manifest error and that indeed such finding was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, 135 N.J.L. 502, 511; Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

It has been consistently held by this Division and the courts that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Andrew C. Kless Enterprises Inc. v. East Orange, Bulletin 1588, Item 2; Gentes v. Middletown, Bulletin 1327, Item 1. See also Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949), where the issuing authority was upheld in denying a transfer of a liquor license because it was of the opinion that no need existed for a liquor outlet in that location of the community. Also, in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306 (App. Div. 1960), aff'd 33 N.J. 404 (1960), Judge Gaulkin stated, at p. 321:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26."

As was stated in Ward v. Scott, 16 N.J. 16 (1954):

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.'"

Graham v. United States, 231 U.S. 474, 480,
34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)..."

The issuing authority may grant or deny a transfer in the exercise of reasonable discretion and such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484; Zicherman v. Driscoll, 133 N.J.L. 586.

The court stated in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, supra:

"No person is entitled to the transfer of a license as a matter of law... If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial."

In this connection it may be well to quote further from Fanwood, supra, at p. 320:

"The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

Advancing this reasoning, as the Fanwood case enunciates, where the municipality decides in good faith that a license should not be transferred to a particular area the Director may not interfere. Cf. Bumball v. Burnett, 115 N.J.L. 254.

The appellant further maintains that, when the Council acted unanimously in denying this application for a transfer, it so acted because "objectors at the meeting were mainly holders of package liquor store licenses who exercised undue influence upon the Mayor and Members of the Council." While it is true that some of the objectors were licensees in that community, there is not the slightest scintilla of evidence to bottom appellant's contention that the members of Council were unduly influenced. Licensees who are residents of this Borough have a perfect right to express themselves as any resident would, and the fact that they may be licensees does not delimit such right.

What is important is that the Council reach its own independent determination based upon the available evidence and its investigation.

Mayor Holte has frankly admitted that the action of Council was not predicated upon any personal character disqualification of appellant. In so far as the record is concerned, he has an unblemished personal character. I therefore find that there was no personal malice against the appellant nor was there any improper motivation by and influence upon the Council when it reached its decision as aforesaid. In the absence of such affirmative showing, the Council's determination, based upon proper and bona fide use of its discretion must be supported. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Hoboken, supra; Blanck v. Mayor and Borough Council of Magnolia, supra.

The resolution states very articulately and clearly the reasons upon which Council based its determination. It felt that such transfer would cause an undue concentration of liquor licenses within a very small area; that such transfer would create a geographical imbalance in the community; that it would aggravate an already undesirable condition; that the police commissioner and police chief have recommended a denial because the area is already troublesome from a police supervisory point of view, and would become worse if another liquor license were introduced in that area. All of these factors motivated the Council to act as it did.

Appellant argues, rather cynically, that the expressions used by Council--"common good for the community", "public interest" and "public necessity"--"are nebulous terms not based on fact." However, it is the local issuing authority which is in the best position to make the factual determinations upon which it concludes that it is acting in the public interest and public necessity. Where it makes such determination in good faith, such action will not be disturbed in the absence of a clear abuse of discretion. 279 Club, Inc. v. Newark, 73 N.J. Super. 15 (1962).

It is often a temptation that appellant finds difficult to resist, to skirt the central issue of the public interest, in urging that the proposed transfer would serve the personal and financial interest of Salute who suffers from a heart condition. This would resolve Salute's personal problem. But, of course, it is totally irrelevant to the inquiry herein. Similarly, the financial benefit or convenience which may accrue to the appellant must be subordinated to the public interest. This is an inflexible principle in these matters.

The Director's function on appeal is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Ware v. Newark, Bulletin 1420, Item 3. This is particularly cognizable in matters which concern liquor regulation and in which the issuing authority did not grant but denied the application. As the court added, in Fanwood, supra, at p. 323:

"The Director may not compel a municipality to transfer licensed premises to an area in which the municipality does not want them, because there more people would be able to buy liquor more easily. Such 'convenience' may in a proper case be a reason for a municipality's granting a transfer but it is rarely, if ever, a valid basis upon which the Director may compel the municipality to do so."

After considering all of the evidence herein and the memoranda submitted in summation by counsel for the respective parties, I conclude that appellant has failed to sustain the burden of establishing that the action of respondent was arbitrary, unreasonable or constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 15. Hence I recommend that an order be entered affirming Council's action and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the record herein, including

the transcript of the testimony, the exhibits, the argument of the attorneys for the respective parties and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 29th day of May, 1967,

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

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - TOWN HOUSE MOTOR HOTEL, INC. v. EAST PATERSON.

TOWN HOUSE MOTOR HOTEL, INC.,)	
)	
Appellant,)	
v.)	On Appeal
)	
MAYOR AND COUNCIL OF THE)	CONCLUSIONS
BOROUGH OF EAST PATERSON,)	AND ORDER
)	
Respondent.)	

Ronald J. Picinich, Esq. and John J. Bergin, Esq.,
Attorneys for Appellant
Lucian Baron, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the unanimous action of respondent Mayor and Council whereby it denied appellant's application for a plenary retail consumption license for a motel (designated by appellant as a motor hotel) located at 50 New Jersey State Highway Route 46, East Paterson.

Appellant's petition of appeal contends that the action of respondent was erroneous in that it was arbitrary, capricious, against the weight of the evidence, a mistaken exercise of discretion, and contrary to State statutes.

Respondent's answer denies the aforesaid allegations and avers that its action was proper in that issuance of an additional license in the municipality would be in violation of New Jersey statutes. It sets forth the resolution adopted by respondent after the hearing held on May 17, 1966, as follows:

"WHEREAS, an application has been made by Town House Motor Hotel, Inc. for a Retail Alcoholic Beverage License for premises located at 50 U. S. Highway 46, East Paterson, N. J. and

"WHEREAS, a public hearing was held on same this 17th day of May, 1966, and

"WHEREAS the applicant through its president and other witnesses did testify that its motel contained in excess of fifty sleeping rooms, and

"WHEREAS, it was noted and stipulated that the Borough Ordinance concerning the sale of alcoholic beverages does limit the number of Plenary Retail Consumption Licenses outstanding in the Borough of East Paterson at the same time to seventeen (17), and

"WHEREAS a large number of residents opposed to the issuance of the requested license did testify to the following facts and circumstances:

(1) The applicant's motel building is located in close proximity to the Gantner Avenue School, a public elementary school, with a portion of the motel building being only approximately 110 feet distant from said elementary school;

(2) The New Jersey State Legislature is currently considering new legislation increasing the required number of sleeping rooms for exemption from the provisions of R.S. 33:1-12.14 to one hundred in number; said proposed legislation being better attuned to the proper protection of health, safety and welfare of the inhabitants of the municipalities,

(3) The Borough of East Paterson has outstanding at the present time approximately seven (7) licenses more than would be permitted under State Statutes for the service of the general public.

(4) The proposed service of liquor would not be restricted to the service of Motel room guests, creating an additional burden upon the local police department in the maintenance of law and order.

(5) The applicant is the original tenant and operator of the subject motel premises. When permission to construct the motel on the premises was granted, the residents who opposed same and the Board of Education of the Borough were assured that liquor would never be served on the premises and no application would ever be made for a liquor license for the premises.

"WHEREAS correspondence was received from the East Paterson Board of Education, the East Paterson P.T.A. Council, the Gantner Avenue P.T.A. and Fire Company No. 3 opposing the granting of any license for the subject premises,

"THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of East Paterson does hereby decline to amend the current Borough Ordinance limiting the number of Plenary Retail Consumption Licenses to 17, and does further deny the application of Town House Motor Hotel, Inc. for a Retail Consumption License for its motel premises located at 50 Route 46, in the area of Roosevelt Avenue and Myl Street, said denials being in the best interests of the municipality and necessary to the protection of the health, safety, morals and welfare of the residents and their children."

At the instant hearing Joseph Testa (vice president of appellant corporation) testified that the premises in question contain sixty-one rooms, a coffee shop and also a restaurant with facilities for seating forty to fifty persons. He stated that, if the license is granted to appellant, it will conduct a restaurant and cocktail lounge along with the renting of rooms to guests. He further stated that the nearest licensed premises to the premises in question is one-quarter mile distant and that the motel fronts on Route 46 where there is very little, if any pedestrian traffic.

Walter Brazell testified that he is executive vice president of the New Jersey Hotel-Motel Association and has been engaged in the hotel business since 1936. Mr. Brazell stated that in his opinion it is necessary for a motel to obtain a license for service of alcoholic beverages to its guests in order to attract business to its establishment; that he does not believe a restaurant would be able to exist without the service of alcoholic beverages with the meals.

Frank Stein (president of appellant corporation) testified that during the past several years income from the operation of the motel has been steadily declining so that at the present time the establishment is operating at a loss.

Joseph P. Fox (a police sergeant employed by the Borough) testified that he was requested to take photographs of the vicinity of the motel in question and the Gantner Avenue School located on Roosevelt Avenue. It appears from the photographs that the rear of the motel faces the front of the school. However, the motel site is enclosed by the erection of a fence on Roosevelt Avenue.

Appellant produced a survey dated October 20, 1966, prepared by F. William Koestner, Jr., professional engineer and surveyor, which indicates that from a point opposite the nearest entrance of the motel on Route 46 to a point opposite the nearest entrance of the Gantner Avenue School on Roosevelt Avenue the distance is 462 feet. Another survey dated November 29, 1966, and revised December 2, 1966, prepared by Savage & Nunno, professional engineers and land surveyors, discloses the distance from a point on Route 46 opposite the nearest entrance to the motel to a point on Roosevelt Avenue opposite the nearest entrance to the Gantner Avenue School to be 469 feet. Both the aforesaid surveys prepared for use in this matter appear to have been measured in the normal way a person would properly walk from the nearest entrance of the school to the nearest entrance of the premises sought to be licensed. R.S. 33:1-76.

Mayor Albert St. George testified that, although it was not necessary that he vote on the application, he opposed the issuance of a license to appellant's premises. He stated that, on the evening when this matter was heard, another application filed by appellant for a plenary retail consumption license for another motel located in a different part of the municipality was approved. He further stated that he opposed the application now under consideration because of the close proximity of the premises to the Gantner Avenue School and because of the numerous objectors who appeared before respondent.

Abraham Hampel (a councilman) testified that his reason for voting against issuance of the license sought by appellant was because of opposition from P.T.A. groups and residents and educators in the community and because of the additional burden on the Police Department to have another liquor license in the Borough in addition to those presently outstanding. He felt it would not serve any useful purpose.

Four women (all members of the Gantner Avenue Parent-Teachers Association) appeared and testified that they were opposed to the issuance of this particular license because of the motel being so close to the school.

Rose Lopchuk testified that she is a trustee on the East Paterson Board of Education and had been authorized to appear and voice the sentiments of the Board. Objection to the

issuance of the license at the site in question was based on the concern of the Board of Education for the safety and welfare of the children attending the school.

According to the aforementioned resolution, and verified by the records of this Division, there is in effect an ordinance limiting the number of plenary retail consumption licenses in the Borough to seventeen. It further appears that there are presently seventeen plenary retail consumption licenses issued and outstanding in the Borough, and that the population thereof, according to the 1960 federal census, is 19,344.

Appellant contends that its application should have been granted because its premises constitute a bona fide hotel containing fifty or more sleeping rooms, and thus it comes within the "hotel exception" (R.S. 33:1-12.20) which provides:

"Nothing in this act shall prevent the issuance in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms..."

The State Limitation Law pertaining to the hotel exception merely removed the operator of a fifty-room hotel from that statute's limitation as set forth in R.S. 33:1-12.14, which provides in part as follows:

"Except as otherwise provided in this act, no new plenary retail consumption...license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each two thousand of its population as shown by the last then preceding Federal census..."

R.S. 33:1-12.21 of the State Limitation Law does not mean that the operator of a fifty-room hotel is entitled to a license, nor does it mean that a license may be issued to the operator of a fifty-room hotel in violation of a municipality's numerical limitation ordinance. Said section provides:

"This act is in addition to and not in exclusion of municipal regulations, limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes."

The numerical limitation ordinance of the Borough contains no exception in favor of fifty-room hotels. Therefore, since the quota of plenary retail consumption licenses has already been filled, there is no vacancy for the issuance of an additional license. An ordinance, until repealed or set aside, is binding upon a municipal governing body. Thus respondent had no jurisdiction to issue the license sought by appellant. Re Suskowitz, Bulletin 534, Item 2, and cases cited therein. See Bachman v. Phillipsburg, 68 N.J.L. 552.

There is no inherent right to a liquor license. Crowley v. Christensen, 137 U.S. 86, 34 L. Ed. 620; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946). Also see Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960). Nor is a bona fide hotel which meets the minimal requirements of the State Limitation Law or a municipal ordinance ipso jure entitled to a license merely because it is such a hotel. "There is no 'must' in the Control Act which provides that all hotels /or motels/ are entitled as of right to a liquor license." Current v. Fredon, Bulletin 184, Item 1.

Appellant has not shown that the numerical limitation contained in the ordinance is unreasonable, either generally or as applied to its individual case. Having reached this conclusion, it is unnecessary to consider any other reasons advanced for or opposed to the issuance of the license.

For the reasons that respondent had no jurisdiction to issue the license applied for, it is recommended that the action of respondent be affirmed and the appeal herein be dismissed.

Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15, exceptions to the Hearer's report were filed by the substituted attorney for the appellant. The exceptions, taking issue with the Hearer's sole reliance upon the numerical limitation ordinance and the Hearer's conclusions that the ordinance's numerical limitation was reasonable, set forth that at no time did the appellant argue that the ordinance was unreasonable or arbitrary--that the appellant relies on the express language of R.S. 33:1-12.20 which provides:

"Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel containing fifty sleeping rooms..."

The exceptions continue:

"The Hearer contends that the hotel exception merely removed the operator of such hotel from the limitations set forth in R.S. 33:1-12.14, the statute setting up the population ratio to licenses. Thus, the question of legislative intent would appear to be the issue in this matter. It should be noted that the Hearer cites no legal authority for his proposition. While Appellant was unable to find any reported decision squarely on point, it is submitted that the Borough of East Paterson has issued to Appellant and others 7 more licenses than would be permitted under state statutes. Thus, it would appear that the Borough has in fact ignored its own ordinance.

"The clear language in R.S. 33:1-12.20 places hotels having 50 sleeping rooms or over in a separate and distinct category from any other plenary consumption licensee. It is apparent that the legislature recognizes that a hotel without a plenary consumption license could not compete with other hotels so favored. It apparently also recognized from an empirical point of view, that hotel licenses do not present the problems that the ordinary license does. They recognize that the trade is mainly confined to transient guests and there is less likelihood of public health and morals being affected.

"R.S. 33:1-12.21 cited by the Hearer is general in nature and obviously refers to the ordinary consumption licenses subject to the various state regulations and local ordinances and not to hotels who are treated as an exception by statute.

"It is respectfully contended that the Hearer was in error and the application should have been granted as Appellant's premises constitute a bona fide hotel within the exception provided in the statute."

The exceptions bespeak a misconception and the Hearer was right. Bulletin 762, Item 2 (in section-by-section Interpretation and Explanation of the State Limitation Law) contains the following paragraphs concerning Section 9 of the Limitation Law (R.S. 33:1-12.21):

"The law does not permit issuance of a license in violation of a municipality's numerical limitation regulation. Where a municipal ordinance fixes license quotas more restrictive than those fixed in the new law, the municipal regulation prevails. Where the State law's quotas are more restrictive, the law prevails...

"It is very important to re-emphasize the fact that a new license may not be issued in violation of a municipality's limitation ordinance. The various exceptions in the law will not permit issuance of a new license unless such issuance is permitted also by the municipal regulation. For example, where a municipality has a limitation ordinance and the quota is filled, Section 7 (ex-licensee veterans) and Section 8 (fifty-room hotels) would not permit issuance of a new license unless the ordinance were first amended or supplemented to provide for the indicated exceptions."

The exceptions bespeak a further misunderstanding in stating that it would appear that in issuing seventeen plenary retail consumption licenses the Borough has in fact ignored its own ordinance. In the 1947 State Limitation Law, Section 2 (R.S. 33:1-12.14) fixed the ratio as to retail consumption licenses at one for each 1000 of a municipality's latest official Federal census population. As amended by P.L. 1960, c. 72, the ratio is one for each 2000 of such population. In issuing seventeen plenary retail consumption licenses, the Borough did not ignore or violate its own ordinance. Those licenses were first issued long before the 1960 amendment of R.S. 33:1-12.14 and Section 4 of the Limitation Law (R.S. 33:1-12.16) provides that "Nothing in this act shall prevent the renewal of licenses existing on the effective date of this act May 15, 1947, or the transfer of such licenses or the renewal of licenses so transferred."

(It will be well to clarify the record with respect to appellant's application for a new plenary retail consumption license for a motel (containing 50 or more sleeping rooms), in a different section of the Borough known as Town House Motel, Inc., East, the denied application having been for Town House Motel, Inc., West. At the respondent's meeting held June 21, 1966, a motion was made and seconded to grant the application for a new plenary retail consumption license for Town House Motel, Inc., East. The votes on the motion were 2 "Yes" and 2 "No" whereupon the Mayor broke the tie by voting "Yes." Then a motion was made, seconded and carried to authorize the Borough Attorney "to change the ordinance accordingly", i.e., to prepare an ordinance to permit issuance of a new plenary retail consumption license for a hotel or motel containing at least 50 sleeping rooms. Such an ordinance was not adopted, and the new license has not been issued, and in the absence of respondent's adoption of such an ordinance, a new license cannot lawfully be issued to Town House Motel, Inc., East.)

I find that if the respondent had granted the application of Town House Motel, Inc., West for a new plenary retail consumption license the grant, in violation of the operative numerical limitation ordinance, would have been unlawful.

Accordingly, it is, on this 7th day of June, 1967,

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

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -
LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JOHN J. SOMOGYI, JR.)
t/a Somogyi's Cafe & Bar)
132 Somerset Street)
New Brunswick, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-80 issued by the Board of)
Commissioners of the City of New)
Brunswick)

Wilentz, Goldman & Spitzer, Esqs., by Robert W. Lewandowski,
Esq., Attorneys for Licensee.

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on January 23, 27 and February 1, 2 and 9, 1967, he permitted the acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Commissioner for five days effective August 2, 1943, and again for fifteen days effective January 22, 1945, both for sale to minors (Re Somogyi, Bulletin 578, Item 9; Bulletin 647, Item 6), and by the municipal issuing authority for one day effective January 13, 1948 for mislabeling beer taps.

The prior record of suspension of license for dissimilar violations occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Ludwiczak, Bulletin 1720, Item 6.

Accordingly, it is, on this 31st day of May, 1967,

ORDERED that Plenary Retail Consumption License C-80, issued by the Board of Commissioners of the City of New Brunswick to John J. Somogyi, Jr., t/a Somogyi's Cafe & Bar, for premises 132 Somerset Street, New Brunswick, be and the same is hereby suspended for the balance of its term, viz., until midnight, June 30, 1967, commencing at 2:00 a. m. Wednesday, June 7, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a. m. Tuesday, August 1, 1967.

JOSEPH P. LORDI
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION = ORDER LIFTING SUSPENSION.

In the Matter of a Petition to Lift)
the Automatic Suspension of Plenary)
Retail Distribution License D-9,)
issued by the Municipal Board of)
Alcoholic Beverage Control of the)
City of Hoboken to)

STANLEY DOPART)
740 Washington Street)
Hoboken, N. J.)

On Petition

SUPPLEMENTAL ORDER

-----)
BY THE DIRECTOR:

On April 18, 1967, an order was entered herein temporarily staying the statutory automatic suspension of license of the licensee-petitioner pending determination of disciplinary proceedings against him.

It now appears that in disciplinary proceedings conducted by the municipal issuing authority, the license was suspended for five days effective 9:00 a.m. June 26, 1967 and terminating at 9:00 a. m. July 1, 1967, on a charge alleging sale of alcoholic beverages to the same minor, which sale was the subject of the previous criminal conviction. Hence, I shall lift the automatic suspension in anticipation of the service of the municipal suspension. Re Ciric, Bulletin 1732, Item 6.

Accordingly, it is, on this 31st day of May, 1967,

ORDERED that the statutory automatic suspension of said license D-9 be and the same is hereby lifted, effective at the expiration of its term, viz., at midnight, Thursday, June 30, 1967.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE TO INTOXICATED PERSONS - FOUL LANGUAGE - PRIOR SIMILAR RECORD - AGGRAVATING CIRCUMSTANCE - LICENSE SUSPENDED FOR 80 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

EDWARD LESNIEWSKI)
t/a "Johnny's Cafe")
1135-37 So. 4th St.)
Camden, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-199 issued by the Municipal)
Board of Alcoholic Beverage Control)
of the City of Camden)

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

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on April 22, 1967, he (1) sold drinks of alcoholic beverages to five intoxicated persons, in violation of Rule 1 of State Regulation No. 20, and (2) permitted foul and filthy language by

patrons, in violation of Rule 5 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for thirty days effective August 12, 1964, for similar violations. Re Lesniewski, Bulletin 1581, Item 5.

The minimum penalty for an unaggravated first offense of sale to intoxicated person is suspension of license for twenty days. Re Hudimac, Inc., Bulletin 1716, Item 6. However, where, as here, the violation is deemed aggravated by the number of persons involved, the minimum suspension is thirty days. Re Schmidt, Bulletin 1654, Item 9. Further, for a second similar offense within five years, the minimum penalty for that offense is doubled. Re Manruff Corp., Bulletin 1691, Item 1.

Hence, the prior record of suspension of license for similar violations within the past five years considered, the license will be suspended on the first charge for sixty days and on the second charge for twenty days (Re Fixler, Bulletin 1716, Item 3), or a total of eighty days, with remission of five days for the plea entered, leaving a net suspension of seventy-five days.

Accordingly, it is, on this 1st day of June, 1967,

ORDERED that Plenary Retail Consumption License C-199, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Edward Lesniewski, t/a "Johnny's Cafe", for premises 1135-37 South 4th Street, Camden, be and the same is hereby suspended for the balance of its term, viz., until midnight June 30, 1967, commencing at 2:00 a. m. Thursday, June 8, 1967; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a. m. Tuesday, August 22, 1967.

JOSEPH P. LORDI
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

FELIX CIESLARCZYK)
t/a Anton and Chuck)
516 Ridgeway Avenue)
South Amboy, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-2 issued by the Common Council of the City of South Amboy)

Wilentz, Goldman & Spitzer, Esqs., by Robert W. Lewandowski, Esq., Attorneys for Licensee.

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on April 3, 1967, he sold five containers of beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Lotito, Bulletin 1732, Item 9.

Accordingly, it is, on this 5th day of June, 1967,

ORDERED that Plenary Retail Consumption License C-2, issued by the Common Council of the City of South Amboy to Felix Cieslarczyk, t/a Anton and Chuck, for premises 516 Ridgeway Avenue, South Amboy, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a. m. Monday, June 12, 1967, and terminating at 2:00 a. m. Thursday, June 22, 1967.



Joseph P. Longi
Director