

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2163

November 4, 1974

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1. APPELLATE DECISIONS - WEST ORANGE LICENSED BEVERAGE ASSOCIATION  
v. WEST ORANGE ET AL.

West Orange Licensed Beverage Association,	)	
	)	
Appellant,	)	ON APPEAL
	)	
v.	)	CONCLUSIONS
	)	and
Board of Alcoholic Beverage Control of the Town of West Orange and Richard L. Plotkin, Esq., Receiver for Rallo's Bar, Inc.	)	ORDER
	)	
Respondent.	)	

-----  
Peter G. Stewart, Esq., Attorney for Appellant  
Harry P. Durkin, Esq., Pro se  
Richard L. Plotkin, Esq., Receiver, Pro se, Respondent  
Joseph J. Dooley, Jr., Esq., Attorney for Respondent-Board

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from action of the Board of Alcoholic Beverage Control of the Town of West Orange (hereinafter Board) which, on January 22, 1974 approved a person-to-person and place-to-place transfer of a plenary retail consumption license from Richard L. Plotkin, Receiver of Rallo's Bar, Inc., a respondent herein, to West Orange Tennis Club, a New Jersey Corporation, and from 3 Beasley Street to 1448 Pleasant Valley Way, West Orange.

The petition of appeal alleged that Councilman Cuozzi (now Mayor) had an indirect connection with the transferee and should have abstained from participating in both the discussion of the proposed transfer and the vote in relationship thereto.

It also alleges that the action of the Board was erroneous because (a) the transfer site is in a "totally residential zone"; (b) there is no need for a license in that area; (c) the transfer was "predicated" on the "financial gain" to the transferee and was not in the "best interests of the community"; and (d) the "premises are located within 200 feet of a cabana club pool and playground".

Answers were filed by the Board putting the appellants

to their proofs and by the receiver who contended that the appeal was filed out of time.

A de novo hearing was held in this Division with full opportunity afforded the parties to introduce evidence and to cross examine witnesses.

At the outset of the hearing, counsel for appellant affirmed that the West Orange Tennis Association, although not named as a respondent in the caption of the pleadings, was in fact a party respondent, having been served with a petition of appeal and a notice thereof. In addition a representative of that organization and its counsel were present at and participated in the hearing.

### I

The respondent Receiver challenged the appeal as being out of time and demanded that the appeal be summarily dismissed. Testimony was taken of Town Clerk Thurman J. Williams who is also Clerk of the Board; of Harry P. Durkin; Councilman William Cuozzi, Receiver Richard Plotkin and Councilman Samuel A. Spina. From all of said testimony, it was clearly apparent, and not effectively controverted, that the Board adopted the motion for approval of the subject transfer at its meeting of January 22, 1974. Of the five voting members, three voted in the affirmative and two in the negative.

The Board Clerk Williams testified that following the Board's meeting, a formal resolution is prepared by the Board's attorney and that resolution is made part of the minutes. In the present case, the Clerk received a formal resolution following its custom on February 4, 1974 and attached it as part of the minutes. Mr. Durkin testified that he was not present at the January 22nd meeting and did not learn of the approval by the Board until March 18th.

Thereafter and upon the remonstrance of Mr. Durkin, particularly that notice of the Board's action had not been furnished him by the Board, the Resolution, as prepared by the Board's attorney and attached to the minutes of the January 22nd meeting was reintroduced and readopted at the Board's meeting of April 2nd. Clerk Williams admitted that in his twenty-four years experience, he could not recall a prior instance where such reintroduction and repassage procedure was followed.

The plenary retail consumption license was endorsed for transfer on January 22, 1974 and a copy of the license C-57, so endorsed was introduced into evidence.

It was admitted that the petition of appeal was filed on May 2, 1974. Hence the critical issue is raised: was the appeal filed within time?

In consequence, the municipal issuing authority as an obvious accommodation to appellant and, presumably, to secure the timeliness of an appeal, adopted the resolution complained of, for a second time on April 2, 1974.

It has been held that a Board is without power to alter or condition a license once issued. Alanwood Holding Company v. Atlantic City, Bulletin 1963, Item 1. Once the license is granted or issued, the licensee obtains certain rights which must be respected. Lakewood Twp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). In short, once the license is issued, it may not be abrogated by a municipal issuing authority, without cause. Thus, as the Board is without power to negate the adopting action it previously took, it is a corollary and equally true that it may not affirm its own action and by that affirmation vest further benefits unto the licensee. Its action, done simply to extend an appeal period not authorized by statute is without force or validity.

The Director is without power to entertain an appeal filed out of time; he loses jurisdiction completely. Hess Oil & Chemical Corp. v. Doremus Sport Club, 80 N.J. Super. 393 (App. Div. 1963).

Hence as the action of the municipal issuing authority appealed from occurred on January 22, 1974, the appeal filed on May 3, 1974 was out of time and the Director could not entertain the appeal, nor could jurisdiction to do so be conferred upon him by the subsequent repetitive action of the municipal issuing authority.

The applicable statute (N.J.S.A. 33:1-22) must be read in its entirety pari materia. The distinction between an applicant and an objector in the statute arose from the legislative recognition that an applicant is identifiable, whereas an objector is not necessarily known. To protect the rights of each, it places upon the objector a duty to become aware of the action of the issuing authority, and appeal from its action within the thirty day period. The simplicity of requiring service of notice of rejection of application of applicant, either personally or by registered mail, gives to the applicant that measure of security to obviate maintaining constant surveillance of the authority's action, by being in constant attendance at the authority's meetings. There is, therefore, an unquestionable and mandatory duty on the part of the issuing authority to notice an applicant for a license of its refusal to do so. Cf. Shop-Rite of Hunterdon County Inc. v. Raritan, Bulletin 2132, Item 3.

The appellant herein is an objector; there is no statutory imperative for the issuing authority to notice an objector of the action of that authority.

II

Notwithstanding my recommended finding hereinabove, I shall briefly consider the other matters raised by appellant.

The principal challenge to the Board's action surrounds the participation therein by then Councilman (now Mayor) Cuozzi. Appellants contend that he was a member of the transferee-club and as such had such an interest, even an indirect one; that he should not have participated in the discussion or vote on the transfer.

Cuozzi testified on behalf of the Board concerning his relationship with the transferee, West Orange Tennis Club. Firstly, he described the West Orange Tennis Club as a profit making corporation; it has no "members" as does a club nor has he any financial interest in it. He does reserve and pay a fee for a court for a certain two-hour period weekly when he and three friends play tennis there.

He likens his association with the transferee to that of a bowling enthusiast who reserves the use of an alley. He is unconcerned whether the transferee has or has not a license as he considers himself a tennis "buff", and his sole interest in that establishment is limited to tennis activity.

The transferee, West Orange Tennis Club, is a New Jersey corporation having two stockholders, one of whom, Abraham Gorelich testified at the hearing in this Division. He stated that the Club is a business, so designated because of custom in the trade of providing tennis facilities at a profit. More than two thousand people use his facilities, of whom Mayor Cuozzi is but one. The Club does not have members. He applied and obtained the plenary retail consumption license, the subject of this appeal, solely to expand the services surrounding a swimming pool on his grounds. He does not anticipate the liquor license to provide for any great expansion of his business.

It is a well-established legal principle that a quasi-judicial action of a municipal body is rendered voidable by the participation of a member thereof, who is, at the time subject to a direct or indirect private interest which is at variance with the impartial performance of his public duty. Aldom v. Roseland, 42 N.J. Super. 495, 501 (App. Div. 1956). In Aldom, the court stated "The rule disqualifies only where personal and public loyalties come into conflict. In those rare instances such high-minded persons undoubtedly will welcome the disqualification".

In short, the connection alleged between the Councilman and the transferee did not exist. As one of the two thousand five hundred patrons the transferee corporation had, the councilman could not be said to have had an "interest" in the premises. There

was no "membership" connection between the patrons and the transferee. No benefit directly was derived by the Councilman by virtue of the transfer.

Thus use of the word "club" in the name of the transferee does not create a "club" relationship, which is defined "an association of persons for social and recreational purposes or for the promotion of some common object..." Websters Third New International Dictionary, 1961, p. 430. State Regulation No. 7 defines a "club" as an organization, corporation or association consisting of sixty (60) or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes, and not for private gain. (emphasis added).

The transferee "club" is not a club in which the allegation of membership could apply. Numerous licensees have designated their establishments as "Club \_\_\_\_\_" by which designation the social or recreational aspects of the establishment have been emphasized. "Club Delite, Inc." Bulletin 1495, Item 6, "Club Harlem Inc." Bulletin 1539, Item 2, "Club Zanzibar Corp." Bulletin 1408, Item 1 are examples of the use of the word "Club" where a "club" by the above definition did not exist.

In a lengthly and documented memorandum supplied by counsel for the appellant, reference was made to the reservation of tennis courts and the use of the facilities in the transferee's premises that the Councilman enjoyed. That reference alluded to the ostensible connection between the Councilman and the management as participation in the facilities as would give rise to an "interest".

It is noted however that many bowling alleys and restaurants conduct their businesses by means of a reservation system. In bowling alleys in some communities, the regular patrons who play by a reservation system often have certain facilities open to them not usually available to other patrons. Some restaurants who hold reservations for regular patrons often give favored table positions to such guests. In neither of these instances can the patron be considered as having an "interest" in the establishment. Thus, I find that the councilman had no disqualifying interest in this club.

### III

Appellant finally contends that its objection, raised at the meeting of the Council on January 8, 1974 did not carry with it any announcement that the matter would thereafter be determined at a subsequent meeting to be held on January 22nd. Although Clerk Williams and Councilman Cuozzi were sure that an announcement to that effect had been made on the January 8th meeting, Councilman Spina testified that he was not sure if such a statement had been made, and if it had, if it had had any definitive force behind it.

To that contention, counsel for Board responded that a electronic tape of that meeting had been made and that such tape was available for use in this Division. No objections thereto being raised, a tape recording copy of that meeting was thereafter submitted to the Division.

At the conclusion of the meeting of January 8, 1974, a setting of January 22nd, meeting by the Chair was made and approved by the Board. Councilman Spina himself moved for a continuance of the matter to that date. There were no less than five references to January 22nd as the date for the next meeting when the matter sub judice would be then finally determined. In short, the charge that appellants were unaware of the date when the matter would be finalized, is clearly without substance.

In sum, it is, recommended that the appeal be dismissed for the following reasons:

(a) the appeal has been filed out of time and in consequence thereof the Director lacks jurisdiction to entertain the appeal, pursuant to Hess Oil & Chemical v. Doremus, supra.

(b) Even if the appeal had been filed within time, the same recommendation should apply, since I find that there was no conflict of interest on the part of the then Councilman Cuozzi; in fact, he has no disqualifying interest whatever in the respondent transferee.

Accordingly, I, therefore, find that the appellant has failed to establish that the action of respondent Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that the action of the Board be affirmed, and the appeal herein be dismissed.

#### Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15 written exceptions to the Hearer's report and argument in support thereof have been filed by the appellant. Answering argument to such exceptions have been filed by the respondent Receiver for Rallo's Bar, Inc., the transferor.

One of the exceptions maintains that the transferor herein, namely, Richard L. Plotkin, Esquire, Receiver for Rallo's Bar, Inc., was neither a necessary nor proper party to this appeal and, therefore, the answer filed on his behalf should have been dismissed, citing Barrasso v. Irvington, Bulletin 1319, Item 2.

While it is well-settled that a transferor is neither a necessary nor proper party in appeals from the grant of a license transfer, in the instant matter it appears that the Receiver was permitted to participate because of the long history of litigation

respecting the subject license. See Bulletins 1662, Item 3; 1739, Item 1.

It further appears from the record that the participation of Plotkin served to delineate the factual background and define the issues. In any event, neither party was prejudiced by such participation.

More critical, however, is the fact that the transferee, West Orange Tennis Club, was not named as a respondent, as required by Rule 2 of State Regulation No. 15. Such failure would normally be a fatal procedural defect in these proceedings. However, the Hearer notes that the said licensee was actually served with the notice and petition of appeal, and was, in fact, represented and participated in the hearing herein.

The Hearer found from the evidence that the action of the Board, in approving the said person-to-person and place-to-place transfer of this plenary retail consumption license, occurred on January 22, 1974; thus, the appeal filed on May 3, 1974 by the appellant was out of time. Rule 3 of State Regulation No. 15; N.J.S.A. 33:1-26. Therefore, the Director was without authority to entertain this appeal, nor could jurisdiction to do so be conferred upon him by the subsequent repetitive action of the municipal issuing authority. Hess Oil & Chemical Corp. v. Doremus Sport Club, supra (80 N.J. Super. 393).

The appellant takes exception to this recommendation claiming that there are "factual distinctions" between Hess Oil and the instant matter. I can perceive no factual distinction in the applicable Law nor has the appellant cited any legal precedent for an alleged permissible exception. I thus find that the Hearer has accurately interpreted the stated Statute and Division regulation, and I concur in the recommendation of the Hearer with respect thereto. I, therefore, conclude that the appellant is barred by the imperative of the statutory limitation. N.J.S.A. 33:1-26; Rule 3 of State Regulation No. 15. Host Services of New York, Inc. v. Newark et al, Bulletin 2146, Item 1.

The Hearer stated that notwithstanding his recommended finding as stated hereinabove, he would consider the other matters raised by the appellant and make recommended findings with respect thereto. While I, too, consider it unnecessary to reach those recommendations and the exceptions with respect thereto, I shall briefly consider them in view of the fact that they were discussed and resolved by the Hearer.

Another exception filed with respect to the Hearer's report maintains that the Hearer erred in concluding that Councilman Cuozzi had no direct or indirect interest therein, and therefore, was not required to disqualify himself from participating in the said action. In support of this exception appellant relies on the recent case of Paitakis v. New Brunswick, (Bulletin 2137, Item 2) wherein

the Appellate Division remanded this matter for further investigative hearing to determine whether or not there was in fact a conflict of interest on the part of one of the councilmen who participated in the consideration and vote in that matter.

However, the facts of Paitakis are inapposite from the facts in the instant matter. Paitakis involved an application for a place-to-place transfer of a plenary retail consumption license. The vote to deny the transfer was by a three to two vote with the deciding vote being cast by one of the Council members whose office was adjacent to the objector's tavern and who maintained a telephone answering connection in the tavern.

On the remand to this Division, the testimony at the hearing clearly manifested a close relationship between the objector and the said councilman. The proofs revealed that the objector had this telephone connection and gratuitous answering service from the councilman's law office to his tavern for more than six years prior to the date of the appeal. Further, there was a financial transaction on one occasion wherein the said councilman was benefited by this objector which reflected this close relationship. The Director thereupon determined that there was, indeed, a conflict of interest.

In the instant matter, it was well established by the testimony, that the West Orange Tennis Club is a private business. Councilman Cuozzi has, for the past three years, during the thirty weeks indoor season, played tennis on a weekly basis (Saturday mornings) at the Tennis Club. In return he and three friends, who share one court, pay the Tennis Club a standard fee. His pro-rated share for the season is approximately \$225.00, plus an additional charge of \$25.00 which is assessed to all members.

The membership consists of approximately 2400 people. Councilman Cuozzi has no more rights than any other patron of this Club. Like the other members the only benefit that he receives is that when he reserves a tennis court for the season he is allowed a 10% discount at the pro shop. All members receive a \$2.00 discount towards the payment for court time which they had not reserved. Cuozzi has no pecuniary interest in the Club. The courts are available to anyone willing to pay the price whether or not he is a member.

Based on these facts, can Cuozzi be held to have such direct or indirect interest and to constitute a conflict of interest? I think not.

Cf. Springdale Park, Inc. v. Andover et al, Bulletin 1649, Item 1.

Appellant cites Van Itallie v. Borough of Franklin Lakes, 28 N.J. 258 (1958) in support of this exception. In Van Itallie case the court held inter alia that a remote and speculative interest will not be sufficient to disqualify a public officer. Said the court: "The decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of the particular case." Aldom v. Borough of Roseland, 42 N.J. Super. at p. 503. No definitive test can be devised. The

question will always be whether the circumstances could reasonably be interpreted to show that they had the likely capacity to tempt the official to depart from his sworn public duty. And further:

"Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for as Justice Holmes has said, 'Universal distrust creates universal incompetency.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913); see also Ward v. Scott (II), 16 N.J. 16 (1954)."

I, therefore, conclude that Councilman Cuozzi had no disqualifying interest by reason of his being a member of this private club, and consequently there was no conflict of interest in his participation herein.

I have fully analyzed and evaluated the other exceptions and find that they have either been satisfactorily considered and resolved in the Hearer's report, or are devoid of merit. Appellant's request for oral argument before me is unwarranted, and is, accordingly, denied.

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the written memorandums in summation, the Hearer's report, the written exceptions filed with respect thereto and the answering argument to the said exceptions, I concur in the finding and conclusion of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 9th day of August 1974,

ORDERED that the action of the respondent Board of

Alcoholic Beverage Control of the Town of West Orange be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

LEONARD D. RONCO  
DIRECTOR

2. APPELLATE DECISIONS.- COHEN v. IRVINGTON.

Aaron L. and Miriam R. Cohen,	)	
t/a Maple Liquor Shop,	)	On Appeal
	)	
Appellants,	)	CONCLUSIONS
	)	and
v.	)	ORDER
	)	
Municipal Council of the Town	)	
of Irvington,	)	
	)	
Respondent.	)	

-----  
 Myron E. Fuhrmann, Esq., Attorney for Appellants  
 Samuel J. Zucker, Esq., by Herman W. Kurtz, 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 Municipal Council of the Town of Irvington (hereinafter Council) which on February 13, 1974 suspended appellants' plenary retail distribution license for fifteen days, effective March 1, 1974, upon finding appellants guilty of a charge which alleged that they sold, served and delivered alcoholic beverages to a minor on October 6, 1973, in violation of Rule 1 of State Regulation No. 20.

In their petition of appeal, appellants allege that the Council's action was contrary to the weight of evidence and erroneous. This contention was denied by the Council in its answer.

Upon filing of the appeal, the Director, by order dated February 27, 1974, stayed the order of suspension pending the determination of this appeal.

The transcript of the proceedings by the Council, supplemented by oral testimony and written memoranda in summation were submitted by counsel in accordance with Rules 6 and 8 of State Regulation No. 15.

The facts are substantially not in dispute. It appears that on October 6, 1973, Leon A--, age 16, entered appellants' package goods store, proceeded to the counter and asked Jareslaw Kuziv, the

clerk then on duty, for a six-pack of Budweiser beer and a bottle of Boone's Farm Strawberry Wine. The clerk put the items requested in a paper bag and placed the paper bag on the counter in front of Leon. Leon placed a ten dollar bill on the counter.

Sergeant Edward Rizzo of the local police department walked up to the counter, peered into the bag and upon ascertaining that it contained alcoholic beverages and that Leon appeared to be a minor confiscated the beverages and the ten dollar bill. Both the minor and Sergeant Rizzo asserted that Kuziv had picked up the money. Kuziv conceded that ten dollars was more than sufficient to cover the cost of the purchase. However, he could not recall whether he "was lifting it (the ten dollar bill) up or moving it away."

The appellants' contentions may be distilled, as follows: (1) the proofs failed to show that there had been a completed sale or delivery of alcoholic beverages; and (2) no proof was adduced that the beverages allegedly sold or delivered were alcoholic.

I

In support of appellants' first contention, they urged that the allegedly proscribed transaction was never completed; no sale was consummated since the money was confiscated prior to payment having been recorded and the act of delivery was not completed. Appellants maintain that the clerk was about to follow his usual procedure that when doubtful of the age of a patron he would ordinarily bag the purchase and, prior to accepting payment and delivering the beverages, would request proof of age. However, the clerk was interrupted from following his usual procedure by the overzealous action of the police officer who interrupted the clerk before he could ask for identification and before any delivery or sale was made.

I find appellants' contention to be without merit.

Appellants were charged with violating Rule 1 of State Regulation No. 20 which forbids the sale, service or delivery of an alcoholic beverage to a minor. (Emphasis added).

Guilt of the charge is established where any of the elements of sale, service or delivery are proven. The conjunctive "or" is used to indicate an alternative and is dissimilar from the conjunctive "and" which expresses "in addition to."

From the facts adduced, it is my view that a delivery was made. The fact that payment was interrupted and not actually consummated due to the fact that the money and the beverages were confiscated by the police officer is of no moment.

The violation was established by the delivery of the alcoholic beverages.

II

In considering appellants' contention that there was no proof adduced that the beverages involved were, in fact alcoholic beverages, it is uncontraverted that the alcoholic beverages were identified as Budweiser beer and Boone's Farm Strawberry Wine.

Although no sample of the beverage delivered or sold was available for chemical analysis, testimony by the purchaser or any other person that the purchaser ordered an alcoholic beverage by name (e.g. beer whiskey, Tom Collins, wine, etc.) and that a drink, bottle or other container, was sold or delivered pursuant to that order, creates a permissible inference that the beverage ordered was actually served. It further warrants judicial notice of the fact that such beverage had an alcoholic content of more than one-half of one percent, by volume and hence constitutes an "alcoholic beverage" within the purview of N.J.S.A. 33:1-1(b).

In State v. Marks, 65 N.J.L. 84 (Sup. Ct. 1900), it was held that proof that a vendor, in compliance with the request of a vendee for a half-pint of whiskey, sold to him a half-pint of liquor and received payment for it as whiskey, will, in the absence of proof to the contrary, justify the conclusion that the liquor sold was, in fact, whiskey.

In Holmes v. Cavicchia, 29 N.J. Super. 434, 436 (App. Div. 1954), wherein minors testified that they had ordered beer by the glass, the court held that there is an inference that a purchaser received that which he has ordered and paid for, citing State v. Marks, supra; Lewinsohn v. U.S., 278 F. 421, 426; 48 C.J.S. Intoxicating Liquors, sec. 371(a), p. 548 and sec. 371(c), p. 549. The cases in this Division are myriad wherein this principle has been followed.

From the evidence adduced herein I find that Leon ordered and received beer and wine and that such beverages are alcoholic beverages within the purview of N.J.S.A. 33:1-1 (b).

I, therefore, conclude that this contention is without merit.

III

The Director may not reverse the determination of the municipal issuing authority unless he finds as a fact that there was a clear abuse of discretion or unwarranted finding of fact or mistake of law by respondent. Schulman v. Newark, Bulletin 1620, Item 1; Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

In matters of this kind we are dealing with a purely disciplinary action, and such action is civil in nature, and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus, the proof must be supported only by a preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956).

I am satisfied that Council has proved its case by a fair preponderance of the believable evidence. Thus, appellant has failed to meet the burden of establishing that the action of Council herein was erroneous. Rule 6 of State Regulation No. 15.

It is, accordingly, recommended that the action of the Council be affirmed, the appeal be dismissed, and that the suspension heretofore imposed by the Council and stayed by the Director pending this appeal be reimposed.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the appellants and answering argument to the said exceptions were filed by the respondent, pursuant to Rule 14 of State Regulation No. 15.

In essence, appellants assert that there was no delivery and sale of the alcoholic beverages by reason of the overzealousness of the police who interrupted the alleged consummation thereof.

I agree with the conclusion of the Hearer that there was, in fact, a sale and delivery of the alcoholic beverages. The minor ordered a six-pack of Budweiser beer and a bottle of wine; these items were placed in a paper bag by the clerk in front of the minor; the minor paid for the same.

The fact that the police officer intercepted the transaction, and confiscated the money before the clerk could deposit it in the cash register does not negate or invalidate the sale and delivery.

N.J.S.A. 33:1-1(w) defines "sale" (in its pertinent part):

"Every delivery of an alcoholic beverage otherwise than by purely gratuitous title, ...or the solicitation or acceptance of an order for an alcoholic beverage, and including ...delivery, for value, possessing with intent to sell,...."

I have fully analyzed and evaluated the other exceptions asserted by appellants and find that they have either been considered and satisfactorily resolved in the Hearer's report, or are lacking in merit.

In view thereof, I find no warrant to require further oral argument before me, as requested by the attorney for appellants. The request for oral argument is, therefore, denied.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report, the exceptions filed herein, and the answers to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Appellants have requested that in the event that the Hearer's report is adopted, that they be permitted to pay a fine, in compromise, in lieu of license suspension. Absent prior record within the past five years, appellants' application for the imposition of a fine in lieu of suspension, in accordance with the provisions of Chapter 9 of the Laws of 1971 will be considered.

Accordingly, it is, on this 8th day of August 1974,

ORDERED that the action of respondent be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that Plenary Retail Distribution License D-9, issued by the Municipal Council of the Town of Irvington to Aaron L. and Miriam R. Cohen, t/a Maple Liquor Shop, for premises 876 Springfield Avenue, Irvington, be and the same is hereby suspended for fifteen (15) days, the effective dates of which will not be fixed pending my consideration of appellants' application to pay a fine, in compromise, in lieu of suspension of license for fifteen (15) days, and until the entry of a further order herein.

LEONARD D. RONCO  
DIRECTOR


3. STATE LICENSES - NEW APPLICATIONS FILED.

The Fleischmann Distilling Corporation  
Docks Corner Road  
Dayton, New Jersey

Application filed October 29, 1974  
for rectifier and blender license.

Martlet Importing Co., Inc.  
107 Northern Boulevard, Suite 210  
Great Neck, New York

Application filed October 31, 1974  
for limited wholesale license.

  
Leonard D. Ronco  
Director