

closure regulation. By its express terms, N.J.A.C. 13:2-23.3 applies to situations where the licensing authority closes a tavern because of a public emergency or investigation of crime. Requiring an actual conviction as a prerequisite to closing the licensed premises would eviscerate the purpose of the regulation to suspend operations pending completion of the criminal investigation, and indeed N.J.A.C. 13:2-23.3 would then be superfluous since N.J.A.C. 13:2-9.2(a)(2) already authorizes revocation of a licensee who has been convicted of a crime of moral turpitude. *Luisa Enterprises, Inc. v. Town of Guttenberg*, OAL Dkt. No. ABC 01078-06. 2008 N.J. AGEN LEXIS 47, Initial Decision (January 30, 2008).

13:2-23.4 House-to-house solicitation forbidden

No licensee shall solicit from house-to-house, personally or by telephone, the purchase of any alcoholic beverage, or allow, permit or suffer such solicitation.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revision.

13:2-23.5 Prohibited patrons; narcotics or other unlawful drugs; illegal activity or enterprise

(a) No licensee shall allow, permit or suffer in or upon the licensed premises the habitual presence of any known prostitute, gangster, racketeer, notorious criminal, or other person of ill repute.

(b) No licensee shall allow, permit or suffer in or upon the licensed premises any unlawful possession of or any unlawful activity pertaining to:

1. Narcotic drugs;
2. Controlled dangerous substances as defined by the New Jersey Controlled Dangerous Substances Act (N.J.S.A. 24:21-1 et seq.);
3. Controlled dangerous analogs as defined by the Comprehensive Drug Reform Act of 1987 (N.J.S.A. 2C:35-1 et seq.);
4. Any prescription legend drug, in any form, which is not a narcotic drug or a controlled dangerous substance or analog, as so defined; or
5. Drug paraphernalia as defined by N.J.S.A. 2C:36-1.

(c) No licensee shall allow, permit or suffer the licensed premises to be accessible to any premises upon which any illegal activity or enterprise is carried on, or the licensed premises or business to be used in furtherance or aid of or accessible to any illegal activity or enterprise.

Amended by R.1972 d.67, effective April 6, 1972.
See: 4 N.J.R. 50(a), 4 N.J.R. 105(c).
Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (b), added numbered paragraphs, "Controlled dangerous analogs ..." and "Drug paraphernalia ...".

Case Notes

Revocation of liquor license was improper. *County Hearth, Inc., v. Old Bridge Twp. Council*, 221 N.J.Super. 293, 534 A.2d 424 (App.Div.1987).

Law enforcement officers could not search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed activity, without a search warrant. *State v. Williams*, 168 N.J.Super. 359, 403 A.2d 31 (App.Div.1979), affirmed 84 N.J. 217, 417 A.2d 1046 (1980).

Following appeal of the ABC Director's earlier Final Order (2005 N.J. AGEN LEXIS 912) to the New Jersey Supreme Court (Division of Alcoholic Beverage Control v. Maynard's, Inc., 192 N.J. 158, 927 A.2d 525, 2007 N.J. LEXIS 913 (2007)), the Director, ordered by the Supreme Court to consider mitigating factors upon remand, allowed the appellant licensee to serve only 20 days of the 60-day suspension on drug charges (N.J.A.C. 13:2-23.5) and make a monetary compromise offer, thereby requiring the licensee to pay \$15,000 in lieu of 40 days of suspension. However, as the liability and penalty imposed for the underage violations (N.J.A.C. 13:2-23.1(a)) were not before the Supreme Court, the licensee was required to serve 10 days of suspension, with 20 days held in abeyance for two years, for those violations. *Division of Alcoholic Beverage Control v. Maynard's Inc.*, OAL DKT. NOS. ABCDS 0442-03 and ABCDS 0443-03, 2008 N.J. AGEN LEXIS 37, Final Decision (January 4, 2008).

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Stockholder's crime of distribution of a controlled dangerous substance was one of moral turpitude; retail consumption license properly revoked. *Division of Alcoholic Beverage Control v. Doug-Kar Corp.*, 92 N.J.A.R.2d (ABC) 21.

Employees selling drugs and guns and delivering liquor for off-premises consumption after legal hours of sale; suspension of license. *N.J.S.A. 33:1-3.1. Director of the Div. of Alcoholic Beverage Control v. Vanmar Liquors, Inc.*, 92 N.J.A.R.2d (ABC) 9.

Sale of cocaine on premises warranted revocation of liquor license. *Fischer v. Mayor and Council of the City of Garfield*, 92 N.J.A.R.2d (ABC) 1.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Violation found for employee's possession of narcotics paraphernalia on premises. *Canal Street Pub, Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

License suspended due to employee's sale of marijuana on premises; licensee must bear responsibility for employee's action; penalty mitigated by licensee's serious efforts to stop during trafficking on premises; 30 day suspension ordered (Division's Final Decision). *Div. of Alcoholic Beverage Control v. Red Klotz Enterprises, Inc.*, 6 N.J.A.R. 13 (1982).

License revoked for cocaine trafficking on premises by majority stockholder; minority stockholders' lack of knowledge of activity not excusable in mitigation of penalty. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

License suspended for allowing, permitting and suffering possession of controlled dangerous substance on premises; good faith effort to stop activity not found. *Div. of Alcoholic Beverage Control v. Ty-Dan Corp.*, 5 N.J.A.R. 273 (1980), affirmed.

13:2-23.6 Prohibition against immoral activities; disturbance; nuisance on premises

(a) No licensee shall engage in or allow, permit or suffer on or about the licensed premises:

1. Any lewdness or immoral activity or
2. Any brawl, act of violence, disturbance, or unnecessary noise.

(b) Every licensee shall operate its business in an orderly and lawful fashion, so as not to constitute a nuisance. A licensee's responsibility under this subsection includes the conduct of the licensee, its employees and patrons, if such conduct is contrary to the public health, safety and welfare.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised heading.

Amended by R.2005 d.212, effective July 5, 2005.

See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote the section.

Case Notes

Tavern owner duty-bound to summon police if reasonably foreseeable that patron may otherwise be harmed by criminal acts of another. *Dubak v. Burdette Tomlin Memorial Hosp.*, 233 N.J.Super. 441, 559 A.2d 424 (A.D.1989), certification denied 117 N.J. 48, 563 A.2d 817.

Violation finding upheld against challenge that regulation invalid due to lack of standard for lewdness; contested case decisions provide conduct illustrations or precedents for lewdness available to any licensee. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Violation of regulation by tavern owner does not give rise to action by policeman for injuries sustained in answering call for assistance. *Entwistle v. Draves*, 200 N.J.Super. 1, 490 A.2d 313 (App.Div.1985), affirmed 102 N.J. 559, 510 A.2d (1986).

Petitioner charged with eight counts of allowing lewdness by way of topless dancing on the licensed premises, two counts of allowing lewdness in the form of sexual activity on the licensed premises, and one count of failure by the petitioner to maintain a complete and accurate employee list, failed to submit a requested post-hearing explanation of mitigating factors; thus, the ALJ was forced to conclude that no mitigating factors existed and upheld a 150-day liquor license suspension. *S.B. Lazarus, Inc. v. Borough of Bound Brook*, OAL DKT. NO. ABC 6468-06, 2007 N.J. AGEN LEXIS 579, Initial Decision (August 15, 2007).

Police officer's testimony of a dancer facing a patron with an exposed, erect penis and physical contact between the dancers' breasts and the patron's face was sufficient to establish that the activities carried out were "lewd," as even though the officer did not charge that prostitution had occurred, lewd and immoral conduct can occur without it amounting to prostitution; the acts described by the officer, even without actual contact of the pelvic areas being noted, sufficiently simulated sexual activity, particularly as the patron was exposed and clearly prepared for a climax. Because the Trenton City Council was well within its rights to determine that the officer's testimony was credible and that lewd and immoral conduct was established by a preponderance of the credible evidence, there was nothing arbitrary or capricious about the Council's decision. Accordingly, because the determination of the Council that lewd and immoral conduct occurred within the licensed premises was fully supported by the record made before it, the finding against the licensee must be upheld and revocation of the licensee's plenary retail consumption license was likewise affirmed. *J-Kal, Inc. v. City of Trenton*, OAL DKT. NO. ABC 06834-05S, 2006 N.J. AGEN LEXIS 424, Initial Decision (July 19, 2006).

Licensee loses liquor license for operating business as a nuisance. *Antoine Services, Inc. v. City of Linden*, 97 N.J.A.R.2d (ABC) 9.

Prior suspension of club's plenary retail consumption license for acts of lewdness by club's dancers supported new license suspension for repeat violation. *Jensa, t/a Club Phoenix v. The City of Asbury Park*, 96 N.J.A.R.2d (ABC) 76.

Suspension of club's liquor license was warranted by multiple and flagrant violations of state law, including alleged incidents of lewd conduct by club's dancers and patrons. *Alcoholic Beverage Control v. Jayson, Inc.*, 96 N.J.A.R.2d (ABC) 71.

Incidents of lewdness on business premises warranted suspension of liquor license. *D & Z Realty v. City of Asbury Park*, 96 N.J.A.R.2d (ABC) 41.

Liquor license renewal denied where bar owners failed to comply with special condition and operated bar as a public nuisance. In the *Matter of Nathan's Realty, Inc.*, 96 N.J.A.R.2d (ABC) 25.

Lewd conduct by dancers within sight of licensee warranted revocation of liquor license. *Alcoholic Beverage Control v. Quesada*, 95 N.J.A.R.2d (ABC) 88.

Illegal drug activity on licensed premises with licensee's knowledge warranted revocation of license. *Township of Nutley v. Rockyn Juke Box*, 95 N.J.A.R.2d (ABC) 81.

Lewdness of female go-go dancer warranted 45-day suspension of liquor license. *Jonilo v. Municipal Board*, 95 N.J.A.R.2d (ABC) 1.

Go-go bar's license revoked upon showing of lewd or immoral activity. *Division of Alcoholic Beverage Control v. Wemar, Inc.*, 94 N.J.A.R.2d (ABC) 82.

License suspended for allowing lewd and immoral conduct on premises ("Go-Go" dancers); good faith effort to stop activity not found. *State of N.J. v. G. & J.K. Enterprises, Inc.*, 8 N.J.A.R. 588 (1985).

License suspended for allowing lewd and immoral conduct on premises (topless dancers); while constitutionality of ordinance and regulation must be reviewed by court of plenary jurisdiction, regulation examined and found constitutional; violative activity not protected free speech. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

13:2-23.7 Prohibition against lottery and gambling; exceptions

(a) No licensee shall engage in or allow, permit or suffer on or about the licensed premises:

1. The conduct of any lottery;
2. Any ticket or participation right in any lottery to be sold or offered for sale;
3. Any pool-selling, bookmaking or any unlawful game or gambling of any kind;
4. Any slot machine or device in the nature of a slot machine or any other gambling device which may be used for the purpose of playing for money or other valuable thing;
5. Any gambling paraphernalia including, but not limited to, any slip, ticket, book, record, document, memorandum or other writing pertaining in any way to any

lottery, pool-selling, bookmaking or unlawful game or gambling of any kind;

6. Any video device, which resembles a game of cards, dice, roulette, or any other game of chance or crane device, which device has not been approved by the Director. In approving a device, the Director must be satisfied that the specific device is an entertainment device and not a gambling device. In reaching this determination, the Director shall consider all factors relating to the operation of the device, including, but not limited to, whether the device can easily be used for or adapted to gambling. A licensee wishing to place such a device on a licensed premises shall request written confirmation from the Director, prior to placement, that the specific device has been previously approved or, if the specific device has not been previously approved, shall request that the Director make such a determination. The approval letter shall be kept on the licensed premises at all times or the device may be deemed to be unapproved; or

7. Any raffle, drawing, lottery or contest, etc., the prize for which is an alcoholic beverage, without the appropriate permit.

(b) This rule shall not apply to bingo, raffles or New Jersey State Lottery, or tickets or participation rights therein, being conducted pursuant to appropriate license under the Bingo Licensing Law (N.J.S.A. 5:8-24), Raffles Licensing Law (N.J.S.A. 5:8-50), State Lottery Law (N.J.S.A. 5:9-11) or other activity authorized by State law. However, in any instance of bingo at licensed premises, no licensee, during the period between the commencement of the first and the conclusion of the last game, shall sell, serve, or deliver or allow, permit or suffer the sale, service, delivery or consumption of any alcoholic beverage in or upon any part of the licensed premises where the bingo or any part thereof is being conducted.

(c) All licensees which have approved video games on their licensed premises shall notify the Division within 48 hours of the placement thereof.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Revised heading.

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Prohibited gambling paraphernalia on licensed premises.

Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

Rewrote (a); added (c).

Case Notes

Video poker, blackjack, dice, roulette and other electronic forms of traditional gambling games or devices are slot machines within the meaning of this regulation and, therefore, are prohibited on licensed premises. *Rosenkranz v. Vassallo*, 193 N.J.Super. 319, 473 A.2d 991 (App.Div.1984) on remand 9 N.J.A.R. 297 (1984).

Warrant needed to search the nonpublic areas of a licensed tavern for evidence of general criminality, unrelated to the operation of the licensed

activity. *State v. Williams*, 168 N.J.Super. 359, 403 A.2d 31 (App.Div.1979), affirmed 84 N.J. 217, 417 A.2d 1046 (1980).

Warrantless searches of persons and tavern for lottery slips upheld (citing former N.J.A.C. 13:2-21.7). *State v. Carangelo*, 151 N.J.Super. 138, 376 A.2d 596 (Law Div.1977).

Liquor license was suspended for various violations, including possession of illegal gambling device on premises. *Division of Alcoholic Beverage Control v. Deleon Inc.*, 96 N.J.A.R.2d (ABC) 95.

Video machine easily adapted to actual gaming cannot be placed upon liquor-licensed premises unless exception to the proscription have been issued for the machine. *Rosenkranz v. Div. of Alcoholic Beverage Control*, 9 N.J.A.R. 297 (1984).

13:2-23.8 Eastern Standard Time change

(a) On the first Sunday of April of each year, at 2:00 A.M., the clocks in each licensed premises will be advanced one hour in observance of Eastern Daylight Savings Time. The official time will then become 3:00 A.M., and in any municipality having a closing time later than 2:00 A.M., the remaining hours of sale will be calculated accordingly.

(b) On the last Sunday of October of each year, at 2:00 A.M., the clocks in each licensed premises will be turned one hour back in observance of Eastern Standard Time. The official time will be 1:00 A.M., and in any municipality having a closing hour later than 2:00 A.M., remaining hours of sale will be calculated accordingly.

(c) In either case, (a) or (b) above, licensed premises having closing hours of 2:00 A.M. or earlier, will be unaffected.

Amended by R.1980 d.304, effective July 3, 1980.
See: 12 N.J.R. 343(b), 12 N.J.R. 494(b).

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

In (a), "first Sunday" was "last Sunday".

Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Added provisions for the "Official Time".

13:2-23.9 Prohibition against adulterated alcoholic beverages

(a) No licensee shall manufacture, transport, possess, sell, barter, give away, offer for sale or furnish any alcoholic beverages adulterated with any foreign or harmful substance or containing any visible fruit flies or other insect matter. Notwithstanding, to the extent permitted by Federal law, tequila containing the agave worm shall not be deemed in violation of this provision.

(b) If, at the time that a violation of (a) above is discovered by an enforcing agency, the violative container is either sealed or equipped with a pouring spout containing a screen designed to prevent the ability of fruit flies and/or other insects from entering the container, then the enforcing agency shall direct the licensee to empty the violative container. Licensees shall immediately comply with this directive. Compliance with the directive shall result in no administrative charges for this violation.

(c) Nothing in this section shall prohibit licensees from storing and temporarily retaining such beverages for purposes of returning same to a manufacturer or wholesaler provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added (b).
Amended by R.2000 d.342, effective August 21, 2000.
See: 32 N.J.R. 1717(a), 32 N.J.R. 3162(a).
Rewrote the section.

13:2-23.10 Restriction upon receiving prohibited deliveries of alcoholic beverages

No licensee shall receive, possess or sell any alcoholic beverage transported into this State in violation of N.J.A.C. 13:2-20 and 13:2-21.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Added reference to 13:2-20.

13:2-23.11 Consumption of alcoholic beverages and possession of open containers prohibited upon retail distribution licensee's premises; exception

(a) No retail distribution licensee shall allow, permit or suffer any alcoholic beverage to be consumed in or upon the licensed premises nor shall such licensee possess or allow, permit or suffer any open containers of alcoholic beverage in or upon the licensed premises.

(b) Nothing in this provision shall prohibit opened bottles of alcoholic beverages returned by a customer as allegedly defective from being possessed by such licensee pending return to the manufacturer or wholesaler; provided the container is immediately resealed and labeled with the name and address of the customer and the date of return by the customer.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Revised and designated existing text as (a) and (b).

13:2-23.12 Receiving alcoholic beverages from prohibited source

(a) No retail licensee shall purchase or obtain any alcoholic beverage except from the holder of a New Jersey manufacturer's or wholesaler's license or pursuant to a special permit first obtained from the Director.

(b) The purchase of alcoholic beverages by one retailer from another and sale of alcoholic beverages by one retailer to another are prohibited; provided, however, that the passage of title in any alcoholic beverages from transferor to transferee of a license may be authorized by special permit obtained from the Director.

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Designated existing text as (a) and (b).
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).
Stylistic changes.

Case Notes

Licensee's failure to comply with purchase and hiring regulations and statutes supports suspension. *Division of Alcoholic Beverage Control v. Chestnut, Inc.*, 97 N.J.A.R.2d (ABC) 31.

13:2-23.13 Maintaining copies of current license certificate; application; list of employees on the licensed premises

(a) No licensee holding a Class C license shall conduct the licensed business unless:

1. The current license certificate is at all times conspicuously displayed on the retail licensed premises in such plain view as to be easily read by all persons visiting such premises, with Permit for Off-Premises Storage of Business Records sticker affixed, if applicable;

2. A photostatic or other true copy of the application for the current license as well as the last filed long-form application (if current application is the short form), is kept on the licensed premises; and

3. A list, on a form prescribed by the Director, containing the names and addresses of, and required information with respect to, all persons currently employed on retail licensed premises, is kept on the licensed premises. A licensee shall be deemed to have complied with this requirement if this information is contained in a computer system, accessible from the licensed premises, and the information can be immediately produced.

(b) Such application copy and such list shall be available for inspection by the Director, the Director's deputies, inspectors and investigators, and by any officer defined by N.J.S.A. 33:1-1(p).

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
In (a)3, specified form "promulgated" by the Director.
Amended by R.1995 d.450, effective August 21, 1995.
See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

In (a), substituted "prescribed" for "promulgated" and added (c).
Amended by R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).
Rewrote the section.

Case Notes

Violation finding upheld; failure to keep list of employees cannot be excused by attempting to classify "exotic dancers" as independent contractors, as they were working in furtherance of the licensed premises. *G. & J.K. Enterprises, Inc. v. Div. of Alcoholic Beverage Control*, 205 N.J.Super. 77, 500 A.2d 43 (App.Div.1985).

Petitioner charged with eight counts of allowing lewdness by way of topless dancing on the licensed premises, two counts of allowing lewdness in the form of sexual activity on the licensed premises, and one count of failure by the petitioner to maintain a complete and accurate employee list, failed to submit a requested post-hearing explanation of