

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

BULLETIN 1144

DECEMBER 20, 1956.

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

BULLETIN 1144

DECEMBER 20, 1956.

1. APPELLATE DECISIONS - GALLOWAY TOWNSHIP BEVERAGE ASSOCIATION, INC. v. GALLOWAY TOWNSHIP AND POIRIER.

GALLOWAY TOWNSHIP BEVERAGE  
ASSOCIATION, INC.,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF GALLOWAY, and  
DENERI POIRIER, trading as  
TALLY HO,

Respondents.

Cases No. 1 and No. 2

William T. Cahill, Esq., Attorney for Appellant.

Glenn and Glenn, Esqs., by Alfred T. Glenn, Jr., Esq., Attorneys  
for Respondent Township Committee.

Robertson and Robertson, Esqs., by Joseph E. Robertson, Esq.,  
Attorneys for Respondent Deneri Poirier.

BY THE DIRECTOR:

Appellant filed two appeals, both entitled as hereinabove set forth. They have been consolidated and will be determined on the appeal herein.

The first appeal in this matter was taken from the action of the respondent Township Committee on May 23, 1956 when it granted a place-to-place transfer of the plenary retail consumption license held by respondent Poirier from 1478 White Horse Pike to 2471 White Horse Pike. It appears that subsequent to the filing of the aforesaid appeal, it was ascertained that the published notice of application for transfer incorrectly stated the street number of the proposed premises and did not include the required statement that a building was to be erected and that plans and specifications thereof could be examined at the office of the Municipal Clerk pursuant to Rule 4 of State Regulations No. 6.

It has been decided in a number of cases that there must be strict compliance with the provisions prescribed in the rules and regulations of the Division as to the advertising of notices of application before jurisdiction may be conferred upon the issuing authority. Cf. Kay v. Linden, Bulletin 525, Item 4, and cases cited therein. Thus, it is obvious that the respondent Township Committee erred in granting the transfer of the license in question. However, the aforesaid appeal will be considered moot in view of the fact that respondent Poirier filed a later application for a place-to-place transfer of his license from 1478 White Horse Pike to 2741 White Horse Pike and for the renewal thereof and in the respective notices of application published set forth that plans and specifications for the premises to be constructed might be examined at the office of the Township Clerk. At a meeting held on June 25, 1956 of the respondent Township Committee, the following motions were adopted:

"Motion of Morgenweck and upheld by Chairman to grant license transfer subject to the express condition that the premises as described in the plans and specifications

prepared and submitted by the applicant and found acceptable by the Township Committee shall first be completed.

"Motion of Morgenweck and upheld by Chairman that motion granting transfer of License C-11 from 1478 White Horse Pike to 2741 White Horse Pike -- subject to completion as per plans etc. is amended that the place to place transfer is endorsed effective immediately for the sole purpose of permitting a renewal.

"Motion of Morgenweck and upheld by Chairman that application of Deneri Poirier for renewal of license C-11 at 2741 White Horse Pike is hereby approved, provided however, that the license shall not actually be issued unless and until the premises as described in plans and specifications prepared, submitted to and found acceptable by this issuing authority shall first be completed."

Appellant contends in its petition of appeal now under consideration that the action of respondent Township Committee was erroneous for the following reasons: (a) notice of application for the transfer of the license was improperly advertised and not pursuant to Rule 4 of State Regulations No. 6, (b) respondent Township Committee had no authority to grant said renewal, (c) there was no need or necessity for a liquor license at the proposed premises, and (d) the respondent Township Committee acted arbitrarily, capriciously and in disregard of the Alcoholic Beverage Law and the rules and regulations of the Division.

Respondents in their answer have denied the allegations set forth in the petition of appeal.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15.

The uncontroverted proof in the instant case discloses that the building, 1478 White Horse Pike, for which a plenary retail consumption license had been issued to one Carl Tienkin was damaged by fire. Thereafter, on October 3, 1955, the respondent Township Committee approved an application filed by respondent Poirier for a transfer of the license to him for the same location with the proviso that the license would not be actually issued unless and until the building which had been damaged by fire was properly repaired. No appeal was taken from the action of the respondent Township Committee in granting the transfer of the license from Tienkin to Poirier.

With respect to appellant's contention that the special condition requiring completion of the premises has not been met, it has long been held that the issuing authority may grant a place-to-place transfer of a license for the sole purpose of permitting a renewal thereof and may renew the license subject to a completion of the premises, but that the license may not actually be issued until there has been compliance with the special condition. The Director promulgated a release dated April 25, 1956 with reference to place-to-place transfers and the renewals of licenses for premises not yet constructed wherein he reiterated the procedure to be followed as set forth in Bulletin 934, Item 3. It seems clear that the respondent Township Committee with respect to the respective conditional grantings and authorizations of immediately effective issuance were in proper form and substance and that the 1955-56 license to respondent Poirier was, pursuant to the motion of June 25, 1956, sufficiently and legally in being to support a transfer.

Atlantic County Licensed Beverage Association et al. v. Hamilton et als., Bulletin 879, Item 5; Balzer v. Pennsauken et als., Bulletin 1064, Item 2. Therefore, I find appellant's grounds in this respect to be without merit.

An examination of the notice of application for a place-to-place transfer and the notice of application for renewal of the license at the new location appears in all respects to be in conformity with the rule pertaining thereto. With respect to the question of the need for a license at the proposed location, a finding that such need existed is implicit in respondent Township Committee's action. The factual situation disclosed by the record in the instant case based on the testimony of Clarence W. Morgenweck, a member of respondent Township Committee, reveals that the Township has four voting districts and that in the district in which the proposed premises will be located, there are no other licensed premises although said district contains approximately one-fourth of the population of the Township; that the nearest tavern to the proposed premises is in another municipality at about a distance of one-half mile; that the sentiments of the residents pro and con for the erection of a licensed premises at the location sought were about equally divided; that Committeeman Morgenweck stated that in his opinion there is a definite need for the license at the premises to which transfer is sought.

Appellant attacks the validity of the procedure of the respondent Township Committee in approving the aforesaid transfer and renewal of respondent Poirier's license contending that at the meeting of June 25, 1956 when the matter was considered, two of the three members of respondent Committee were present; that one made a motion to approve the application for transfer and renewal, respectively; that the acting Chairman failed to second said motion and, in lieu thereof, stated that the motion was upheld. The occurrences outlined by the testimony as to what actually occurred at the meeting appears to be in conflict. Assuming appellant's contention is accurate, it has been held that when a viva voce vote is taken in a legislative body, the whole body is counted as the Chair announces, and when the declaration that a motion was carried was not challenged when made, and the minutes of the meeting showing that the motion was carried was approved, the motion should be considered as properly carried as against an objection subsequently made that an insufficient number of votes were heard in favor of the motion. Hicks v. Long Branch Commission, 69 N. J. L. 300.

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

On the record before me I do not find that the respondent Township Committee's action was arbitrary, unreasonable or otherwise in abuse of its discretionary authority. Furthermore, there is nothing herein which in any manner indicates that the members of the respondent Township Committee were improperly motivated.

Under all the facts and circumstances of this case, I find that appellant has failed to carry the burden imposed by Rule 6 of State Regulations No. 15 of establishing that the action of the respondent issuing authority was erroneous and should be reversed. I shall, therefore, affirm the action of the respondent Township Committee.

Accordingly, it is, on this 5th day of November, 1956,

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

WILLIAM HOWE DAVIS  
Director.

2. APPELLATE DECISIONS - MARKET STREET MERCHANTS ASSOCIATION v. PASSAIC AND KUTER.

MARKET STREET MERCHANTS )  
ASSOCIATION, )

Appellant, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, and FRANK )  
KUTER and BARBARA KUTER, t/a )  
BARBARA'S TAVERN, )

Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Nicholas Martini, Esq., Attorney for Appellant.  
William N. Gurtman, Esq., Attorney for Respondent Board of  
Commissioners.  
Robert M. Kronman, Esq., Attorney for Respondents Frank Kuter  
and Barbara Kuter.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board on June 12, 1956, whereby it granted to respondents Frank Kuter and Barbara Kuter a transfer of their plenary retail consumption license (for the 1956-57 licensing year) from 2 Third Street to 47 Market Street, Passaic, and also granted a renewal of said license (for the 1956-57 licensing year) for premises at 2 Third Street, Passaic. The transfer and renewal were granted subject to special conditions hereinafter set forth.

The petition of appeal alleges in substance that said action was arbitrary, unreasonable and contrary to the public interest because a large number of licenses are already in existence on Market Street and because there was no showing that public necessity or convenience required the transfer to 47 Market Street. The petition further alleges that the conditions set forth in the resolution granting the transfer have not been met or complied with by respondent licensees.

The evidence herein discloses that on June 1, 1956, respondent licensees filed with respondent Board an application to transfer their license as hereinabove set forth. On June 12, 1956, they filed with the Board an application for renewal as hereinabove set forth. On June 12, 1956, respondent Board unanimously adopted the following resolution:

"WHEREAS, Frank Kuter and Barbara Kuter have filed an application for a transfer of License #C-136 from #2 Third Street, Passaic, New Jersey, to #47 Market Street, Passaic, New Jersey, and have made application for a renewal of the existing license.

"BE IT RESOLVED, that the application for a 1956-57 transfer is hereby granted subject, however, to the

special condition that such transfer shall not be endorsed and effective unless and until the new premises shall first have been brought into compliance with the City Health regulations and requirements, subject to the further condition that the transfer shall not be endorsed and effective until the 1956-57 license certificate shall have been presented and the transfer endorsed thereon;

"BE IT FURTHER RESOLVED that the application for such renewal is hereby granted subject, however, to the special condition that the license shall not be issued unless and until forty-eight hours shall have passed following the second publication of notice of application and if within such period any written objection to such renewal is filed, further action thereon shall await the further determination of this issuing authority."

No one had objected to the transfer and renewal of the license at the meeting held on June 12 or prior thereto. However, on the morning of June 25 (the day following the second publication of notice of application) two letters objecting to the transfer were received in the City Clerk's office. Both letters were on the stationery of appellant Association and were signed by Arnold Barta, Secretary. These letters were before respondent Board at its meeting held on June 26, but no one then objected to the transfer or renewal of said license although it appears from the testimony that Mr. Barta was present at said meeting. At its meeting held on June 26 respondent Board took no further action on the application for transfer, but renewed a large number of licenses including renewal (without any special condition) of the license in question for 2 Third Street. Apparently, appellant has no objection to renewal for the old premises and, hence, the only issue to be determined herein is whether the action of the Board in transferring the 1956-57 license was proper. Appellant, having filed its appeal within time, is entitled to be heard on that issue irrespective of the question as to whether it, by its Secretary, failed to object at the meeting held on June 26. Cf. Watson v. Camden and Valentine, Bulletin 1010, Item 1.

The premises known as 2 Third Street are at the corner of South and Third Street, one block east of a large plant occupied by U. S. Rubber Co., which has several thousand employees, and near a plant occupied by Okonite Company, which has in excess of a thousand employees. The premises known as 47 Market Street are about two and one-half blocks from 2 Third Street and slightly more than one-half block north of the plant of the U. S. Rubber Co. Appellant contends that the old and the new premises are in different areas because the old premises are located on a mixed residential and business street whereas the new premises are located on one of the principal retail business streets of Passaic. Ordinarily this would be material because of the large number of existing licenses on Market Street (a "D" license in premises adjoining 47 Market Street; four additional "D" licenses and nine "C" licenses within an area of six blocks) and an existing "C" license issued for premises facing on Passaic Street and extending along Market Street to within two hundred thirty-five feet of 47 Market Street. Irving E. Harris, who conducts a hardware store at 119 Market Street, testified that, in his opinion, Market Street is more than adequately served by present licensees, and that "we have had right through the past years trouble with a lot of so-called smokies and we are constantly calling the police." On

cross-examination he admitted that he knows of no complaints against respondent licensees. Asher Hopmeyer, a merchant on Market Street, testified that in his opinion the old and new premises are in different neighborhoods. Both of the aforesaid witnesses are members of appellant Association. Rev. Myron M. Nadnerosky, Assistant Pastor of St. Michael's Church, testified that the Pastor of his Church is opposed to the transfer because "it would be a serious harm to the children of the school as well as to the general members of the parish." St. Michael's School is approximately seven hundred feet from 47 Market Street. Three liquor licensees who conduct business on Market Street testified that there are more than enough licensed places in the vicinity. Captain Palko, of the Passaic Police Department, was subpoenaed as a witness by appellant and testified from records of the Department that there were approximately thirty-three arrests for disorderly conduct on Market Street during July 1956 and August 1956.

On behalf of respondent licensees, the owner of the property at 2 Third Street testified that the licensees' lease expired on July 1, 1956; that she desires possession of her premises in order to open a restaurant, and that she has permitted the licensees to remain as tenants but wants them to move as soon as possible. Frank Kuter testified that he and Barbara Kuter have conducted business at 2 Third Street for the past five years and have a clear record as licensees; that they have entered into a conditional contract with the owners of the property at 47 Market Street to purchase the property, which has a vacant store, if they can obtain a transfer of their license; that they desire to stay in the same vicinity "because of my customers. I get them from U. S. Rubber, Okonite and most of the people from around the area I'm in." He further testified that they are ready and willing to comply with the City health regulations and requirements.

In his memorandum, attorney for appellant contends that the present case is similar to Perry v. Passaic and Olear, Bulletin 840, Item 1, wherein Director Hock reversed the action of respondent Board in transferring a license from 49 Market Street to 127 Third Street. However, the cited case is clearly distinguishable because in that case the transfer was from a principal business street to a mixed residential and business street whereas in the present case the transfer is from a mixed residential and business street to a principal business street. It has long been held that the number of licenses which should be permitted in any particular area is a matter within the sound discretion of the issuing authority. This is particularly so where the proposed location is in an area devoted to business, and the mere fact that other licensed premises also serve the same area is not necessarily dispositive. Baker v. Newark et al., Bulletin 1018, Item 1. Moreover, it appears in the present case that, whether or not the two premises be deemed to be in the same neighborhood, respondent licensees plan to serve in their new location substantially the same customers they served in their old location. As to unsatisfactory conditions on Market Street, the following language from Kupay v. Passaic, Bulletin 803, Item 9, would seem to apply:

"\*\*\*If conditions are as bad as respondent's witnesses claim, it would seem apparent that there is need for a closer supervision by the local police in this section of the city. However, in the absence of convincing evidence that appellant is responsible for, or substantially contributed to, the unsatisfactory conditions, he should not be penalized. \*\*\*"

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

The burden of establishing that the action of respondent Board was erroneous rests with appellant. Rule 6 of State Regulations No. 15. After considering the evidence and the briefs filed herein, I find that appellant has failed to sustain that burden. Atlantic County Tavern Owners Assn. v. Egg Harbor City and DeClementi, Bulletin 1129, Item 4.

Accordingly, it is, on this 5th day of November, 1956,

ORDERED that the action of respondent Board of Commissioners be and the same is hereby affirmed, and respondent Board is directed to transfer License C-136 from 2 Third Street to 47 Market Street, Passaic, upon compliance with the special conditions set forth in its resolution adopted on June 12, 1956.

WILLIAM HOWE DAVIS  
Director.

### 3. APPELLATE DECISIONS - DeCARLO v. CLIFFSIDE PARK.

FRED DeCARLO, trading as  
MOORE'S TAVERN, )

Appellant, )

-vs- )

ON APPEAL  
CONCLUSIONS

MAYOR AND BOROUGH COUNCIL OF  
THE BOROUGH OF CLIFFSIDE PARK, )

Respondent. )

-----  
Fox and Schackner, Esqs., by Donal C. Fox, Esq., Attorneys  
for Appellant.

Edward A. Smarak, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it denied appellant's application for transfer of his 1955-56 Plenary Retail Consumption License C-3 from 201 Palisade Avenue to 783 Palisade Avenue, Cliffside Park.

The petition of appeal filed by appellant alleges that respondent's action in denying the transfer was erroneous and sets forth various grounds for reversal thereof, which grounds may be summarized as follows:

1. Its action was arbitrary and constituted an abuse of discretion.

2. It ignored the pertinent statutes and regulations in denial of the transfer.

3. It failed to notify appellant of the time for hearing in the matter.

4. It acted upon information improperly presented.

5. The reasons for its action have no basis in fact.

6. It gave undue consideration to a written protest filed against the transfer in question.

A resolution dated June 11, 1956 contains the reasons given by respondent for the denial of appellant's application



for the place-to-place transfer of his license. These reasons have been incorporated in the answer filed by the respondent herein and may be summarized as follows:

1. There are sufficient licensed establishments in the area of 783 Palisade Avenue.
2. There are not sufficient parking facilities for another licensed premises in the area.
3. The establishment of another licensed premises in the area would increase traffic congestion endangering the safety and welfare of the residents of that area.
4. The public need and convenience would not be served by the transfer of the license to 783 Palisade Avenue.

The vote of the members of the respondent Council was unanimous to deny the transfer of the license in question.

The testimony of appellant discloses that the present location of his licensed premises is approximately 1 1/4 miles from the proposed location; that his brother owns the building containing the premises to which the license is sought to be transferred; that one of the reasons why he desires to move is "that the rent would be a little cheaper than where it is now where we are not doing so much business"; that the store for which he has applied for transfer of his license prior to 1951 was occupied by a holder of a plenary retail consumption license; and that to the rear of the proposed location there is parking space available for the parking of ten or fifteen cars.

Dominick DeCarlo, brother of the appellant, testified that he owns the building containing the store to which the transfer of appellant's license is sought and that to the rear of his and the adjoining building there is ample space to park 40 or 50 cars. Another witness, Herman Weinstein, a real estate broker, testified that he is familiar with the neighborhood in question; that it is a business area in which are "gas stations, garages, taverns, restaurants"; that he is aware that there are four taverns in the area at the present time but in his opinion the addition of another tavern in the vicinity would not adversely affect the values of the properties in the neighborhood.

Mayor Francis J. Murphy testified that he formerly lived in the neighborhood where the proposed premises are situated and that in his opinion "there are sufficient licensed establishments in the area"; that although he did not vote in the matter he was opposed to "a fifth tavern" in the area because "another tavern going in there definitely would cause greater congestion there, and also did not see any reason of what value or convenience it would serve the people."

Appellant contends, as a ground for reversal, that the denial of the transfer by respondent was improper because no hearing was held in the matter. Rule 10 of State Regulations No. 6 provides that:

"No hearing need be held if no such objections shall be lodged (but this in nowise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to grant the transfer applied for."

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on a reasonable ground, such action will be affirmed. Fafalak v. Bayonne, Bulletin 95, Item 5; Van Schoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Masarik et al. v. Milltown, Bulletin 283, Item 10; Biscamp et al. v. Teaneck, Bulletin 821, Item 8. See also Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949).

The question of whether or not a place-to-place transfer is to be granted is in the first instance within the sound discretion of the Council and on appeal to this Division the appellant has the burden of showing that the Council abused its discretion. Rule 6 of State Regulations No. 15; Bock Tavern Inc. v. Newark, Bulletin 952, Item 1; Segal et als. v. Clifton et al., Bulletin 732, Item 5; Christian v. Passaic, Bulletin 928, Item 2. Moreover, the number of licensed premises to be permitted in any particular area has been held to be a matter confided to the sound discretion of the issuing authority. Longyear v. Jefferson, Bulletin 972, Item 4; Di Gioacchino v. Atlantic City, Bulletin 1030, Item 3.

Appellant contended that his rent would decrease if he were permitted to occupy the proposed premises. In a conflict, however, between private interests and the interests of the community at large, the latter must prevail. Lingelbach v. North Caldwell, Bulletin 180, Item 8; Moraitis v. Lower Penns Neck, Bulletin 839, Item 11.

After careful consideration of the evidence adduced herein and the fact that there are at present four plenary retail consumption licensed establishments located near the proposed premises and that the transfer of the license in question would move the license a considerable distance from its present location, I find that the action of the respondent in denying the application was neither arbitrary nor an abuse of discretion. I have examined the reasons advanced by appellant for reversal of respondent's action and also the memorandum filed by appellant's attorney and find nothing therein which would warrant a reversal of the respondent's action. Under the circumstances of this case, I find that appellant has not sustained the burden of proof in showing that the action of respondent Mayor and Council was erroneous and, hence, I shall affirm said action.

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

The license sought to be transferred expired at midnight, June 30, 1956. The appellant has obtained a renewal of his license for the current licensing year for premises 201 Palisade Avenue. Therefore, the decision herein is merely advisory and there will be no order entered in this case. (Pistilli v. Bernardsville, Bulletin 1030, Item 2.)

WILLIAM HOWE DAVIS  
Director.

Dated: November 13, 1956.

## 4. APPELLATE DECISIONS - MAGLIACANE &amp; ZWERIN v. PASSAIC.

ANTHONY MAGLIACANE & SUE ZWERIN, )  
t/a SUE & TONY'S TAVERN, )

Appellants, )

-vs- )

BOARD OF COMMISSIONERS OF THE )  
CITY OF PASSAIC, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Nicholas Martini, Esq., Attorney for Appellants.  
William N. Gurtman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on June 26, 1956, whereby it denied an application to transfer appellants' License C-22 from 18-20 Essex Street to 294 Broadway, Passaic.

The petition of appeal alleges in effect that said action was unreasonable and beyond the exercise of sound discretion because there was a showing that public necessity and convenience would be served by said transfer and because appellants are endeavoring to move from an area which is more than amply served by many other retail consumption licenses.

The evidence shows that for a period of nineteen months prior to the hearing appellants conducted their licensed business at 18-20 Essex Street, in a section of the City containing many licensed premises. They applied to transfer their license to 294 Broadway, in a different section of the city. A written objection to the transfer having been received, respondent held a public hearing at which the attorney for the objector and attorney for the applicants (not the attorney appearing for appellants herein) were given an opportunity to be heard. There was also presented to respondent at said hearing a petition containing the names of ninety-six persons residing in the vicinity of 294 Broadway who objected to the transfer. Subsequent to said hearing a motion to grant the transfer was defeated when two Commissioners voted in favor of the motion and three Commissioners voted against the motion.

The premises known as 294 Broadway are located between Linden Street and Liberty Street. There is a drug store on one side and a parking lot of National Electric Co. on the other side of said premises. The plant of National Electric Co. is located to the rear. On the same side of Broadway between these two streets there is a service station and a municipal fire house. On the opposite side of Broadway are a number of stores, including a tavern at 317 and a package store two doors therefrom. A short distance from the premises to which appellants seek to transfer their license, Broadway is carried over a railroad by a viaduct. The surrounding area is of a mixed residential and industrial character. Appellants testified that they intend to open a restaurant at their new premises if the transfer is granted. It has been emphasized throughout the testimony that it is admitted that each Commissioner acted in good faith in voting for or against the motion.

While it might be advisable to transfer this license from a crowded area, it does not follow that the action of

respondent was erroneous in denying transfer to the premises at 294 Broadway. The transfer of a license in a municipality from one section to another section containing other licenses may result in unsatisfactory conditions sufficient to warrant denial of the transfer. Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1; Market Liquor Store Corp. v. Newark, Bulletin 1005, Item 2; L. B. Co., Inc. v. Newark, Bulletin 1111, Item 8. The weight to be accorded to petitions for or against a transfer is entirely within the discretion of the issuing authority. Rothman v. Hamilton, Bulletin 1091, Item 1. It is not my function on appeal to substitute my opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal views. Guarino v. Newark et al., Bulletin 1069, Item 2.

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

In an appeal to the Director, the burden of proof to establish that the action was erroneous rests with appellant. Rule 6 of State Regulations No. 15. Considering the testimony herein and the oral argument at the close of the hearing, I conclude that appellants have not sustained the burden of proof in showing that the action of respondent was erroneous.

Accordingly, it is, on this 13th day of November, 1956,

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

WILLIAM HOWE DAVIS  
Director.

5. APPELLATE DECISIONS - GEORGE'S CLUB 28, INC. v. WEEHAWKEN  
(CASE NO. 1).

Case No. 1		
GEORGE'S CLUB 28, INC., trading	)	
as GEORGE'S BAR,	)	
	)	
Appellant,	)	
	)	ON APPEAL
-vs-	)	CONCLUSIONS AND ORDER
	)	
TOWNSHIP COMMITTEE OF THE	)	
TOWNSHIP OF WEEHAWKEN,	)	
	)	
Respondent.	)	

-----  
Stephen Mongiello, Esq., Attorney for Appellant.  
Theodore I. Botter, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's license for a period of fifteen days, effective June 11, 1956, upon a finding of guilt that it sold; served and delivered an alcoholic beverage to a minor and permitted the consumption of such beverage by said minor in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20. Upon the filing of the appeal an order was entered on June 8, 1956, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31. A transcript of the testimony of certain witnesses

who appeared before respondent at a hearing on June 5, 1956, was submitted in lieu of producing said witnesses at the hearing on appeal, and additional testimony was taken pursuant to Rule 8 of State Regulations No. 15. Appellant alleges that the action of respondent was erroneous in that it was contrary to the weight of the evidence.

At the hearing herein respondent produced two police officers who, in substance, testified that at or about 11:45 p.m. Friday, April 20, 1956, they visited appellant's licensed premises wherein they observed an apparent minor approach the bar, place a bill thereon, receive from the bartender (who made no inquiry as to his age) two bottles of beer, one of which he passed to another person, and proceeded to consume the contents of the other bottle; that they approached the suspect, identified themselves, and that one of them seized the unfinished bottle of beer; that the youth refused to give them any information and ran from the premises; that on the following evening the youth appeared at Police Headquarters and gave a signed sworn statement in which he revealed that he was Richard --- (age 18 years) and admitted his participation in the violation charged herein.

Appellant produced two patrons, its bartender, the president of appellant corporate licensee, and Richard. The patrons testified that they were companions of Richard on the night in question; that one of them purchased the two bottles of beer which they both consumed; and that Richard neither ordered nor consumed any beer during their stay with him. The bartender denied ever having seen Richard on the licensed premises on the date alleged, and the aforesaid corporate officer, while admitting that she saw Richard when the police officers approached him, denied that he was served any alcoholic beverages. Richard sought to corroborate the testimony of his two companions and, when confronted on cross-examination with his prior sworn statement, he testified that it was partly true but inaccurate as to the essentials which, as stated therein, corroborated the police officers' version of what occurred.

The Hearer in this matter filed a report in which, after setting forth the above facts, he found that appellant had not sustained the burden of proof in establishing that the action of respondent was erroneous and recommended that respondent's action be affirmed. Thereafter, pursuant to Rule 14 of State Regulations No. 15, written exceptions and argument thereon were filed by the attorneys for the respective parties.

Having carefully considered the entire record herein, I concur in the findings of the Hearer and adopt his recommendation.

On June 28, 1956 respondent, in a separate action, refused to renew appellant's license for the 1956-57 licensing term. Appellant appealed from said action and the matter having been heard "de novo" I am entering my Conclusions and Order with respect thereto concurrently with the Conclusions and Order herein.

Accordingly, it is, on this 13th day of November, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed and that the fifteen-day suspension heretofore imposed by respondent be and the same is hereby reimposed and reinstated to commence at 2:00 a.m. November 26, 1956 and to terminate at 2:00 a.m. December 11, 1956.

WILLIAM HOWE DAVIS  
Director.

6. APPELLATE DECISIONS - GEORGE'S CLUB 28, INC. v. WEEHAWKEN  
(CASE NO. 2).

Case No. 2

GEORGE'S CLUB 28, INC , )  
trading as GEORGE'S BAR, )

Appellant, )

-vs- )

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WEEHAWKEN, )

Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
Stephen Mongiello, Esq., Attorney for Appellant.  
Theodore I. Botter, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby on June 28, 1956, it denied appellant's application for renewal of its plenary retail consumption license for the present licensing year. The licensed premises are located at 2800 Palisade Avenue, Weehawken.

Appellant is presently operating the licensed premises pursuant to an extension of its license granted upon the filing of the appeal herein. See R. S. 33:1-22.

Appellant alleges that respondent's action was erroneous in that it was arbitrary, capricious and unreasonable.

Respondent contends that its action was predicated upon the undesirable conduct existing in and about the licensed premises and because on June 3, 1956 it found appellant guilty in disciplinary proceedings on a charge alleging that appellant sold, served and delivered an alcoholic beverage to a minor and permitted the consumption of such beverage by said minor in and upon its licensed premises. An appeal was taken from said disciplinary action and an order with respect thereto will be entered simultaneous with the Conclusions and Order herein.

It appears from the record herein that the application for renewal was denied by a four-to-three vote. While the appeal herein proceeded to a full hearing and the facts adduced might justify an affirmation of respondent's action in denying appellant's application for renewal, nevertheless, it appears from the statements of respondent's attorney (which are part of the record) that the undesirable conditions alleged to have existed in and about appellant's licensed premises have been ameliorated by eliminating "rock 'n roll" music and by better control of patrons' conduct; that two of the four Committeemen (present at the hearing on appeal) who voted to deny appellant's application for renewal are now favorably disposed toward appellant; and that respondent Committee is not averse to a renewal of appellant's license. Because of the representations made by respondent's attorney it is obvious that respondent now desires that appellant's license be renewed.

Since no exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15, I shall adopt the Hearer's recommendation.

Accordingly, it is, on this 13th day of November, 1956,

ORDERED that the action of respondent be and the same is hereby reversed and respondent is directed to renew appellant's license in accordance with the application heretofore filed.

WILLIAM HOWE DAVIS  
Director.

7. APPELLATE DECISIONS - GEORGE'S CLUB 28, INC. v. WEEHAWKEN  
(CASE NO. 1) - ORDER DENYING REHEARING AND DEFERRING SUSPENSION.

Case No. 1

GEORGE'S CLUB 28, INC., trading )  
as GEORGE'S BAR, )

Appellant, )

-vs- )

ON PETITION

O R D E R

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF WEEHAWKEN, )

Respondent. )

-----  
Stephen Mongiello, Esq., Attorney for Petitioner.

BY THE DIRECTOR:

By order dated November 13, 1956, I affirmed respondent's action whereby it suspended appellant's license for fifteen days for sale of alcoholic beverages to a minor and reimposed said suspension to commence at 2:00 a.m. November 26, 1956, and terminate at 2:00 a.m. December 11, 1956.

Appellant has filed a petition requesting a rehearing upon the ground of newly discovered evidence or, in the alternative, that the suspension be deferred to commence January 2, 1957.

I have carefully considered the allegations as to newly discovered evidence and conclude that they are not sufficient to warrant a rehearing of the case. The request for the rehearing will, therefore, be denied.

As to the request for deferment of the suspension, the petition sets forth that invitations and notices have been sent out for affairs to be held on the licensed premises on December 1, 1956, and December 8, 1956, and that other affairs are scheduled to be held on the licensed premises on December 14, 1956, and December 27, 1956. Since it appears to my satisfaction that numerous innocent persons would be inconvenienced if the license were suspended during the period fixed in my original order, I shall grant the request to defer the suspension.

Accordingly, it is, on this 21st day of November, 1956,

ORDERED that the petition for rehearing be and the same is hereby denied; and it is further

ORDERED that the fifteen-day suspension be and the same is hereby reimposed and reinstated to commence at 2:00 a. m. January 2, 1957, and terminate at 2:00 a.m. January 17, 1957, in lieu of the dates fixed for said suspension in the previous order.

WILLIAM HOWE DAVIS  
Director.

8. DISCIPLINARY PROCEEDINGS - AGGRAVATED SALES TO MINORS -  
PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR  
PLEA.

In the Matter of Disciplinary )  
Proceedings against )

CHARBERT, INC. )  
T/a THE MAD HOUSE )  
River Styx Road )  
Hopatcong, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-4, issued by the )  
Mayor and Common Council of the )  
Borough of Hopatcong. )

-----)  
Edward F. Smith, Jr., Esq., Attorney for Defendant-licensee.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic  
Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on September 8, 1956, it sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to six minors and allowed, permitted and suffered said minors to consume such beverages in and upon its licensed premises, in violation of Rule 1 of State Regulations No. 20.

The licensed premises is a two-story building with a bar on the first floor (basement) and two bars and a dining room with space provided for dancing on the floor above.

On Saturday, September 8, 1956, at about 9:25 p.m., two ABC agents entered the upper floor of the premises and observed the same to be occupied by a barmaid, bartender, waitress and about thirty patrons, some of whom were seated at one of the bars and others at the tables in the dining room. At about 11:00 p.m., the agents descended to the lower level of the premises, took seats at the bar and noticed it was occupied by twelve patrons and a bartender. At 11:15 p.m., the agents saw the bartender serve Richard W. ---, age 18, William G. ---, age 18, and Ronald N. ---, age 20, each with a glass of beer and accept 45¢ in payment thereof. After the minors had consumed part of their beer, the agents approached them and identified themselves. Upon questioning these minors, the agents learned that earlier in the evening they, together with John P. ---, age 18, James P. ---, age 19, and Judith A. ---, age 19, were seated at a table in the dining room aforementioned where they were served two rounds of alcoholic beverages by a waitress who accepted \$7.45 in payment thereof.

During the course of the agents' examination, James P. joined the group. George Sutton was then identified as the bartender who had served the three glasses of beer and Marilyn McCardle as the waitress who had served the other alcoholic beverages at the table on the upper floor. Sutton admitted the aforesaid sale of the three glasses of beer.

The aforementioned facts referring to the sales of the alcoholic beverages and their related incidents were incorporated in sworn statements given by the minors.



Defendant has a prior adjudicated record. Effective October 6, 1952, its license was suspended by the local issuing authority for fifteen days for sales to minors. It also appears that Charles G. Buttlet, president and holder of 80% of the stock of the corporate-licensee herein, individually held a license for premises at 148 Crooks Avenue, Clifton, and that said license was twice suspended for an "hours" violation, once by the local issuing authority for two days, effective November 16, 1941, and the second time by this Division for ten days, effective February 25, 1946. In addition thereto, the records further disclose that Charles G. Buttlet was president and director of Gleneagle Realty Co., t/a Madhouse, River Styx Road, Hopatcong, a licensee which suffered three suspensions by the local issuing authority, to wit: Effective October 15, 1945 for ten days for an "hours" violation; effective October 4, 1948 for seven days for sales to minors; and effective March 20, 1950 for twenty-five days for sales to minors and an "hours" violation. On June 3, 1950, the Gleneagle Realty Co. transferred its license to Charbert, Inc., the licensee herein.

Considering all the facts and surrounding circumstances in this case, I shall suspend defendant's license for forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 29th day of October, 1956,

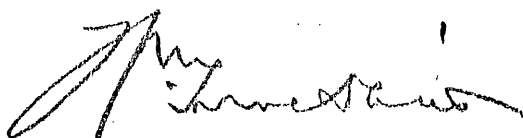
ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Common Council of the Borough of Hopatcong to Charbert, Inc., t/a The Mad House, River Styx Road, Hopatcong, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. November 5, 1956, and terminating at 3:00 a.m. December 15, 1956.

WILLIAM HOWE DAVIS  
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Porto Transport Incorporated  
600 So. Colony Road, Wallingford, Connecticut.  
Application filed December 17, 1956 for Transportation License.

Canada Dry Ginger Ale, Incorporated  
100 Park Avenue, New York 17, N. Y.  
Application filed December 18, 1956 for place-to-place transfer of salesroom to 744 Broad St., Room 1127, Newark, New Jersey, on Plenary Wholesale License W-32.



William Howe Davis  
Director.