

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

November 21, 1967

BULLETIN 1762

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - TIED, INC. v. ASBURY PARK.
2. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS BETS) - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 70 DAYS.
3. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
4. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.
5. DISCIPLINARY PROCEEDINGS (Winslow) - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FOUL LANGUAGE - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

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

November 21, 1967

BULLETIN 1762

1. APPELLATE DECISIONS - TIED, INC. v. ASBURY PARK.

TIED, INC., t/a LINCOLN )  
HOTEL - CANDY CANE LOUNGE, )  
Appellant, )  
v. ) On Appeal  
City Council of the City of ) ORDER  
Asbury Park, )  
Respondent. )

-----)  
M. Lester Lynch, Esq., Attorney for Appellant.  
James M. Coleman, Esq., by Norman Mesnikoff, Esq., Attorney for Respondent.

BY THE DIRECTOR:

Appellant appeals from respondent's action suspending its license for ten days effective 3:00 a.m. August 24, 1967, for sale to a minor. Upon filing of the appeal, I entered an order staying the suspension pending the determination of the appeal.

The suspension had been effectuated at the time of its commencement and, pursuant to the stay, the license certificate was returned to the licensee at 8:30 p.m. August 25, 1967.

Prior to the hearing on appeal, by letter of September 13, 1967, appellant's attorney advised me that the appeal was withdrawn. No reason appearing to the contrary,

It is, on this 19th day of September, 1967,

ORDERED that the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the ten-day suspension be reinstated and Plenary Retail Consumption License C-65, issued by the City Council of the City of Asbury Park to Tied, Inc., t/a Lincoln Hotel-Candy Cane Lounge, for premises 200 Fourth Avenue, Asbury Park, be and the same is hereby suspended for the balance of the ten days, viz., commencing at 8:30 p.m. Monday, September 25, 1967, and terminating at 3:00 a.m. Wednesday, October 4, 1967.

JOSEPH P. LORDI  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR SIMILAR AND DISSIMILAR RECORD - LICENSE SUSPENDED FOR 70 DAYS.

In the Matter of Disciplinary Proceedings against )

LOUIS PAULA )  
t/a LOUIS PAULA'S CAFE )  
683 Montgomery Street )  
Jersey City, New Jersey )

*Messano*  
*4/17/66*

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-19 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City )

Messano and Messano, Esqs., by Ralph P. Messano, Esq., Attorneys for Licensee, and William A. O'Brien, Esq., of Counsel. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On March 22, 31, April 4 and 11, 1966, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On March 22, 31, April 4 and 11, 1966, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises and on said dates and on April 28, 1966, you allowed, permitted and suffered such tickets and participation rights in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

At the hearing herein, the charges were amended, with the consent of the licensee's attorney, to include the date of April 28, 1966 as one of the dates alleged therein.

I

Certain jurisdictional and procedural matters were raised by the licensee's attorney, both at the hearing and in his memorandum submitted in summation. While some of them are palpably frivolous, the sincerity of the attorney for the licensee is presumed and so these matters will be resolved.

Licensee first asserts that the Alcoholic Beverage Law is unconstitutional because R.S. 33:1-73 states: "This chapter is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." His reasoning is that since a statute dealing with intoxicating liquors must be strictly construed

because it is penal in nature, therefore the entire law is invalid.

The general authorities treating this subject are manifold. A challenge to the validity of statutes and ordinances can only be adjudicated by a civil court of competent jurisdiction since statutes are presumed to be valid on their face. Cf. Klein and Tucker v. Fairlawn and Schweder, Bulletin 1175, Item 3; Blanck v. Magnolia, 73 N.J. Super. 306. This contention must be rejected.

Licensee next asserts that the Director is without authority to hear and determine disciplinary matters and that this matter should have been heard by the municipal issuing authority.

The Alcoholic Beverage Law, to the contrary, invests the Director with the right to institute disciplinary proceedings by R.S. 33:1-31, which recites:

"Any license, whether issued by the director or any other issuing authority, may be suspended or revoked by the Director, or the other issuing authority may suspend or revoke any license issued by it, for any of the following causes:

"g. Any violation of rules and regulations."

State Regulation No. 16 implements the statute, and relates to such disciplinary proceedings. Thus, this contention is without merit.

Licensee then argues that since this proceeding relates to a license which has been renewed, the action terminates upon the termination of the licensing period.

Attention is directed to Rules 1 and 2 of State Regulation No. 16.

"Rule 1. Disciplinary proceedings shall not be barred or abated by the expiration, transfer, surrender, renewal or extension of the license or permit.

"Rule 2. Any license or permit may be suspended or revoked for proper cause, notwithstanding that such cause arose prior to transfer or extension of the license, or during the term of a prior license held by the licensee or his predecessor in interest or during the term of a prior permit held by the permittee."

This contention is similarly without merit.

Licensee further argues that the Hearer should not apply the rule requiring "preponderance of the evidence," but rather should consider whether or not these charges have been proved beyond a reasonable doubt.

The law is quite clear that this is a disciplinary action, which is civil and not criminal in nature. Kravis v. Hock, 137 N.J.L. 252. Disciplinary cases require proof by a preponderance of the believable evidence only and the strict principles of criminal practice are inapplicable. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373; Freud and Pittala v. Davis, 64 N.J. Super. 242. There is no reason to consider this

matter in any other way than that given to other disciplinary matters and the measure of proof herein is the same.

Licensee further contends that consideration should have been given to the disposition of certain criminal proceedings against individuals, including the bartender, and that those proceedings would be dispositive of the instant action against the licensee.

With that we are in total disagreement. These proceedings are directed against the licensee for "allowing, permitting and suffering" illegal activity on the premises. The disposition of criminal proceedings against any participants has no bearing on the case. It should also be noted that the measure of proof in criminal proceedings is different from that in disciplinary proceedings and what transpired in the criminal proceeding, both as to the licensee's agents or the patrons of his tavern, is without relevancy hereto.

Another contention of the licensee is that state troopers made an investigation of his premises on April 28 under authority of a search warrant which related to general criminal activity and, therefore, the officers had no right to conduct an investigation of alleged violations of the Alcoholic Beverage Law.

The law is to the contrary. R.S. 33:1-35 provides in part: (second paragraph):

"Investigations, inspections and searches of licensed premises may be made without search warrant by the director, his deputies, inspectors or investigators, by each other issuing authority and by any officer."  
(emphasis supplied)

Concern for the strict enforcement of the Alcoholic Beverage Law is further reflected in the statute by Section 71:

"To the end that local police and other enforcing agencies shall enforce this chapter in the interest of economy and effective control, all officers shall use all due diligence to detect violations of this chapter and shall apprehend the offenders..."

As the court pointed out in Guill v. Hoboken, 21 N.J. 574, 584 (1956):

"...the sale of intoxicating liquor at retail 'is not one of the privileges or immunities of citizenship protected by the United States Constitution or the Fourteenth amendment thereto,' but is rather a business subject to prohibition or regulation..."

Furthermore, in order to qualify for a license, the licensee expressly consented to the inspection and search of his licensed premises at all hours by agents of the Director and all other officers. Such consent has uniformly been held to be voluntary even though it was a prerequisite to his obtaining a license. See State v. Zurawski, 89 N.J. Super. 488; aff'd id.nom. o.b. 47 N.J. 160.

Finally, the licensee maintains that "he never permitted them or acquiesced in the alleged violations," and that he is not responsible for the alleged acts of his agents or employees.

The short answer to this is that there is a well established and fundamental principle that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities during their employment on licensed premises. Kravis v. Hock, supra; In re Schneider, 12 N.J. Super. 449; Rule 33 of State Regulation No. 20. The responsibility of the agent becomes the responsibility of the licensee and does not depend upon his personal knowledge or participation. It has been held that the licensee is not relieved even if the employee violates his express instructions. Greenbrier, Inc. v. Hock, 14 N.J. Super. 39; F. & A. Distributing Co. v. Div. of Alcoholic Beverage Control, 36 N.J. 34; cf. Mazza v. Cavicchia, 28 N.J. Super. 280, reversed on other grounds, 15 N.J. 498.

## II

Bearing these principles in mind, the testimony will be analyzed to determine whether or not the licensee, his agents and employees participated in or allowed, permitted or suffered gambling on the premises in the form of numbers betting.

New Jersey State Police officers conducted the investigation leading to the charges preferred, two of whom testified at the hearing. Trooper Raymond Feldherr, attached to the Criminal Investigation Division, with a substantial background of experience in the investigation of bookmaking, numbers and gambling activities, gave the following account: Pursuant to a specific assignment to investigate such activities, he visited the licensed premises on March 22, March 31, April 4, April 22 and April 28, 1966. On March 22, at approximately 1:45 p.m., he entered the premises and seated himself at the bar. A bartender referred to as Tony (later identified as Anthony Lanna) was on duty. Shortly thereafter, a person identified as Dominick DeGeorge entered and an unidentified patron walked up to DeGeorge and handed him some coins. DeGeorge went to the telephone booth and wrote something on a slip of white paper which he then put into his pocket. At 2:55 p.m. on that day a person identified as George Sanderson entered the tavern and one of the male patrons shouted to him, "328, George, for a buck," simultaneously handing Sanderson a dollar bill. Sanderson wrote the number on a slip of paper which he returned to his pocket. Lanna at that time was behind the bar about five or seven feet from this witness. Thereafter, Lanna accompanied DeGeorge to the rear of the bar and was heard to say, "165, Dominick," at the same time handing him some coins. Another patron also was heard, but indistinctly, to give a number to DeGeorge.

In the opinion of this experienced witness, both Sanderson and DeGeorge were numbers writers and the patrons were placing numbers bets with them. The witness explained in detail the significance of "728, George, for a dollar," stating that this indicated to him that the number was being bet as a straight bet. These activities were carried on in an open manner without any attempt to conceal them.

On March 31, this witness entered the tavern at 1:30 p.m. and observed Lanna again on duty as bartender. Sanderson was also present. A patron handed Sanderson a dollar bill, immediately upon which Sanderson entered the telephone booth and wrote something on a small piece of paper which he took from his pocket. About 1:45 p.m. DeGeorge entered the tavern and Lanna gave him several numbers to play and handed him some bills and coins with the following instruction: "All three are for 60 and 10." The witness interpreted this to mean that he played three separate

numbers with DeGeorge "and he wanted to play all three for sixty cents straight and ten cents in a box. It is a form of a combination."

On April 4, at approximately 2:45 p.m., Feldherr returned to the tavern and noted several patrons there, with Lanna on duty as bartender. The witness placed a numbers bet with Sanderson. When DeGeorge entered the tavern, one of the patrons placed a bet with him and handed him several coins. An unidentified elderly man approached Sanderson and said to him, "This is for the rest of the week," handing him several dollar bills. Although Feldherr heard several numbers mentioned, he could not determine what numbers were played. At this point, the trooper went to Sanderson and said, "I feel lucky. Give me 614 straight for a dollar." Sanderson said, "Okay kid" and took his dollar, adding "If you ever hit, keep it to yourself, because things are red hot." Lanna was in the immediate vicinity of this transaction and could hear the conversation without difficulty.

On April 11, Feldherr followed Sanderson into the tavern at about 1:10 p.m. One of the patrons walked over to Sanderson, whispered to him, and Sanderson entered the telephone booth and made a notation on a slip of paper. Lanna was also on duty on this occasion. At 1:25 p.m. DeGeorge entered the tavern and seated himself immediately to the left of this witness. Another patron handed DeGeorge a slip of paper and six dollars saying, "The first one is for a dollar a week until Friday. That's five dollars, and the second one is a dollar just for today." Lanna approached DeGeorge and said, "I got 079 from two guys for you. One wants it for a dollar straight, and the other for seventy-five and a quarter." He handed DeGeorge two dollars. The trooper turned to DeGeorge and said, "Give me 614 for a dollar straight." Lanna, addressing himself to DeGeorge, looked at the witness and said, "He is okay, Dominick", whereupon DeGeorge took his money and said, "If you hit, you come around the same night. I pay off as soon as the number comes out." To Lanna, DeGeorge said, "That's right, ain't it, Tony?" and Lanna answered, "Yah."

On April 28, the witness was joined in the continuing investigation of these premises by two other State Police officers. Entering the tavern at 1:10 p.m. with a marked one dollar bill, he seated himself at the bar in front of Lanna. Sanderson, who had been in the tavern, left, but DeGeorge was seated nearby. The witness handed the marked bill to DeGeorge, saying, "Give me 614 for a buck straight." DeGeorge took the bill repeating "614 on the nose, right?" and shortly thereafter left the tavern.

Vigorous cross examination failed to change any of the essential facts testified to by this witness. It was emphasized that during all these transactions, Lanna was within hearing distance and, in fact, participated in some of the episodes.

State Trooper Frank Kolodzieski participated in this investigation on April 28, together with Feldherr and two other State Police officers. Upon entering the premises at 1:15 p.m. on that day, he was informed by Feldherr that the latter had just placed a numbers bet with DeGeorge. At that time DeGeorge was observed standing in the vicinity of the tavern, and the witness left the tavern and requested DeGeorge to return with him. Shortly after their return, Sanderson entered the premises. The witness, showing Lanna a search warrant issued by a judge of the Superior Court, immediately made a search of the premises. Search of a man's jacket hanging near the telephone revealed four slips bearing numbers bets. These slips (admitted into evidence) were identified as numbers bet slips reflecting about fifty-five bets

taken. The contents of DeGeorge's pockets disclosed a dollar bill bearing the previously recorded serial number of the bill given to DeGeorge by Feldherr when he placed a bet with him.

On cross examination, Kolodzieski admitted that he was under direct instruction to obtain a search warrant for the purpose of searching the said licensed premises. He also admitted that he did not know DeGeorge before he was pointed out by Feldherr. He recalled that the licensee entered the tavern during the search and demanded to know by what authority the search was executed.

Anthony Lanna, testifying on behalf of the licensee, gave the following account: He has been employed as a bartender and manager of this tavern for the past seven years. He identified DeGeorge and Sanderson as regular customers. He stated that a Mr. Daniel, who was employed as a porter prior to April 28, 1966, was the owner of the coat in which the slips were found; that he left the coat there several months before and the coat had been hanging there during all this time. He denied ever placing numbers bets with Sanderson or DeGeorge, or taking any bets for any of the patrons. He specifically denied playing a number with Feldherr or giving him a number to play for someone else; nor did he ever see or hear anyone playing a number with either DeGeorge or Sanderson.

On cross examination, Lanna was asked specifically about the activities of DeGeorge and Sanderson on the dates alleged and his repeated answer was "I can't remember a year ago" or "I don't remember." He was asked the following:

"Q Had you ever heard that they /DeGeorge and Sanderson/ took bets either on numbers or on horses?

A You could hear a lot of things in a saloon.

Q What did you hear about them?

A I don't--I hear a lot of things about people, but I don't believe everything I hear either."

He was asked further:

"Q All right, did some of the stories include that either or both of these men did some numbers or some bookmaking?

A I don't know about their business.

Q You don't know about their business, all right. On that afternoon did you hear someone say to George Sanderson, '728, George, for a buck?'

A I can't remember if he did or not. I can't remember that afternoon or any other afternoon.

Q On that particular afternoon did you see George write something on a piece of paper?

A I can't pinpoint every one of them days."

Asked whether he had given DeGeorge any money on the dates charged herein, his repeated answer was "I don't remember." He was asked:

"Q ...Did you see anyone else on March 22 hand anything to Dominick?

A I told you I can't remember them, pinpoint them days, no."

He was then asked the following:

"THE HEARER: Do you know what the expression 'sixty and ten' means?

THE WITNESS: Part of the number game, I guess.

Q Did you say that to Dominick DeGeorge on that day, 'All three are for 60 and 10'?

A I don't remember.

Q You don't remember what? You don't remember whether you said it or not?

A That day. No, I didn't say it."

When questioned about certain betting expressions, he replied that he had heard these expressions but, while in the bar, "I don't want to hear... Because it's not allowed in there." He was further asked:

Q Do you find out whether they ~~the~~ customers are taking number bets or placing number bets, or don't you try to listen to that?

A I don't listen. I have enough to do behind the bar."

With respect to the jacket in which the slips were found, the witness admitted that he had examined the jacket a few days before April 28 and found absolutely nothing in the pockets. Asked whether the pockets were used for depositing betting slips, he answered, "Who knows?" He explained that the reason he looked in the pockets of the jacket was because it was hanging near the telephone booth and "Anybody could go in there and put something in there."

Louis Paula, the licensee, testified that he has been in business at the present address for thirty years and that Lanna is employed as his manager. He visited the premises once a week on Sunday morning. He denied any knowledge of any alleged gambling activity.

I have set forth in considerable detail the testimony in the record in order to obtain an objective perspective of the actions which transpired on the dates charged herein. It is important to restate the basic principle that no testimony need be believed in these cases but, rather, the Hearer must credit as much or as little as he finds reliable. 7 Wigmore Evidence, sec. 2100 (1940); Greenleaf Evidence, sec. 201 (16th Ed. 1899). Evidence, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546; Gallo v. Gallo, 66 N.J. Super 1. The accepted standard of persuasion relating to testimony governing the trier of the facts is that the determination must be founded in truth. Riker v. John Hancock Life Ins. Co., 129 N.J.L. 508.

Using the above principles as a guide, I am persuaded that the testimony of Trooper Feldherr was forthright, credible, unshaken on cross examination, and fully supportive of the charges. His testimony was corroborated with respect to the episode on April 28; and the testimony of the corroborating witness was equally credible and forthright. Nor has there been any serious challenge to the testimony that the "marked" dollar bill found in the possession of DeGeorge was the money given to him by Feldherr in the licensed premises for the purpose of placing a bet. The betting slips found in the coat pocket were of recent vintage.

I am, on the other hand, unimpressed and find incredible and transparent the testimony of Lanna. He pleads total inability to recall any of the activities in the tavern on any of the dates alleged although it would seem, on the basis of common experience, that after the confrontation and his arrest on April 28, these activities would have become vivid in his memory. His assertion that he cannot remember anything that happened in 1966 and his constant answers of "I don't remember" do not generate any confidence in his testimony.

He further pleaded that he made it his business not to listen to conversations, even if they related to numbers bets and gambling. As the manager of the licensed premises, it was his clear obligation to check any illegal activities on the premises and to nip them in their inception. It has been consistently held that licensees and their agents must use their eyes and ears, and use them effectively, to prevent improper use of the premises. Re Ehrlich, Bulletin 1441, Item 5; Re Costanzo, Bulletin 1599, Item 3.

It is conceded by the Division that the licensee was not present at the times of the alleged violations. As was stated before, it is a well established and fundamental principle in these administrative proceedings that a licensee is responsible for the misconduct of his employees and is fully accountable for their activities during their employment on licensed premises. As the Appellate Division pointed out in Mazza, the licensee's knowledge of the violations was unnecessary, that the mere fact of a violation of a rule there involved was sufficient. The Chief Justice added (p. 509):

"...it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the law an impossibility."

Finally, the licensee's attorney could not resist the temptation to charge entrapment. In his memorandum in summation, he contends that "the dollar bill episode injected by the troopers was a cheap scheme on the part of the State Troopers, and is a clear case of entrapment."

It is crystal clear from the record herein that there is no slightest suggestion of entrapment in any of the activities. The betting was carried on openly and notoriously; nor has there been any refutation of the fact that the marked dollar bill was accepted without any inducement or unsavory scheme perpetrated upon the licensee or his agents by the state trooper. See State v. Rosenberg, 37 N.J. Super. 197; cert. den. 20 N.J. 303 (1956). This contention must be rejected.

Under all the circumstances, I find that the licensee permitted acceptance of bets in a lottery commonly known as the "numbers game", as charged. I conclude that the Division has established the truth of these charges by a fair preponderance of the believable evidence and, indeed, by substantial evidence.

The licensee has a prior adjudicated record. Effective December 23, 1959, his license was suspended by the municipal

issuing authority for ten days for permitting bookmaking on the licensed premises, and effective August 24, 1964, by the Director for fifteen days for sale during prohibited hours. Re Paula, Bulletin 1582, Item 3. Considering the previous record of suspension of license for similar violation occurring more than five but less than ten years ago, it is recommended that the license be suspended for sixty-five days (Re Gallipoli, Bulletin 1597, Item 4), to which should be added five days for the record of suspension for dissimilar violation within the past five years (Re Harris, Bulletin 1739, Item 6), or a total of seventy days.

#### Conclusions and Order

Exceptions to the Hearer's report with supportive argument were filed by the attorneys for the licensee pursuant to Rule 6 of State Regulation No. 16.

The licensee's attorney contends that the Director is restricted in his power to make rules and regulations under Title 33 to "matters pertaining to the manufacture, sale and distribution of alcoholic beverages, i.e., nonpayment of any excise tax, failure to have at all times, a valid license or special tax stamp, sale to minors, hours of sale, violation of any ordinance, resolution or regulation of any other issuing authority, etc., etc. To state it in another way, the Division is not concerned with the enforcement of the laws against crime."

This law is to the contrary. As the court said in Liptak v. Division of Alcoholic Beverage Control, 44 N.J. Super. 140, 143:

"Under the act he is empowered to supervise the 'manufacture, distribution and sale of alcoholic beverages in such a manner as to promote temperance \*\*\*.' N.J.S.A. 33:1-3; to 'administer and enforce this chapter \*\*\* and to do, perform, take and adopt all other acts, procedures and methods designed to insure ~~its~~ fair, impartial, stringent and comprehensive administration \*\*\*,' N.J.S.A. 33:1-23; to make 'such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the \*\*\* sale and distribution of alcoholic beverages and the enforcement of this chapter.' And such rules may relate to 'matters ~~that~~ are or may become necessary in the \*\*\* comprehensive administration of' the act. N.J.S.A. 33:1-39."

Thus the Director is given the power under R.S. 33:1-31 to suspend or revoke a license for violation of rules and regulations promulgated by him. See Franklin Stores Co. v. Burnett, 120 N.J.L. 596; Greenspan v. Division of Alcoholic Beverage Control, 12 N.J. 456. Regulation No. 20, under which the charges against this licensee were preferred, was promulgated under and by virtue of such authority.

In Mazza v. Cavicchia, 15 N.J. 498, 505, the court stated:

"... it must be remembered that a license to sell intoxicating liquor is not a contract nor is it a property right. Rather it is a temporary permit or privilege to pursue an occupation which otherwise

is illegal. In re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951) .... 'The sale of intoxicating liquor is in a class by itself.' Bumball v. Burnett, 115 N.J.L. 254, 255 (Sup. Ct. 1935). 'As it is a business attended with danger to the community it may \*\*\* be entirely prohibited, or be permitted under such conditions as will limit to the utmost its evils.' Crowley v. Christensen, 137 U.S. 86, 91, 11 S. Ct. 13, 15, 34 L. Ed. 620, 624 (1890).

"The right to regulate the sale of intoxicating liquors, by the Legislature, or by municipal or other authority under legislative power given, is within the police power of the state, and is practically limitless.' Meehan v. Board of Excise Commissioners, 73 N.J.L. 382, 386 (Sup. Ct. 1906), affirmed 75 N.J.L. 557 (E. & A. 1908)."

The Director has the power to regulate activities upon the licensed premises and such regulation will be accorded liberal judicial support. Mazza v. Cavicchia, supra. In the course of such regulation the statute authorizes search without warrant of premises licensed for the sale of alcoholic beverages. It should also be noted that the licensee, in order to qualify for a license, signed and acknowledged a form wherein he consented to the inspection and search without warrant at all hours by the Director, his duly authorized inspectors, investigators and agents, and all other officers. See State v. Zurawski, 89 N.J. Super. 488, aff'd 47 N.J. 160 (1966), wherein the court held that the Director's rules and regulations authorize the promulgation and enforcement of State Regulation No. 20 (the regulation dealing with the activities herein charged).

Furthermore, the Director's authority to regulate the activities on licensed premises includes action against licensees for crimes both malum prohibitum as well as malum in se, and is not limited to violations of the Alcoholic Beverage Law. See Re Costanzo, Bulletin 1599, Item 3; In re 17 Club, Inc., 26 N.J. Super. 43; In re Larsen, 17 N.J. Super. 564; Appeal of Schneider, 12 N.J. Super. 449; R.S. 33:1-31.

The licensee's attorney further argues that, in order to charge the licensee with any violation, "it must be shown that the activity was open and notorious and that it went on for such a period of time that the licensee should have known what was going on in the tavern."

The Hearer found from the evidence that the licensee's agent actually participated in some of the proscribed activities. According to the testimony of Trooper Feldherr, on March 22 the bartender accompanied DeGeorge (one of the persons engaged in numbers writing) to the rear of the bar and was heard to say, "165, Dominick", at the same time handing him some coins. According to this witness, who has had long experience in the investigation of betting activities, DeGeorge was a numbers writer and the patrons were placing numbers bets with him.

The witness further testified that on March 31 the bartender gave DeGeorge several numbers to play and handed him some bills and coins with the following instructions: "All three are for 60 and 10." The witness interpreted this to mean that "he wanted to play all three for sixty cents straight and ten cents in a box. It is a form of combination." Similar activities in which the bartender participated occurred on April 4 and

April 11. Other betting activity took place in the bartender's presence on April 28.

While there is no requirement that these activities be "open and notorious", the evidence which the Hearer found credible and substantial unmistakably demonstrates that the licensee's agent knew or should have known, and indeed participated in, such proscribed activity. In Mazza the court held that the knowledge of the licensee is not necessary to sustain a conviction on the charge. Said the court (at p. 509):

"The rule in question comes clearly within the delegated authority of the Director as a reasonable regulation in the field of alcoholic beverage control. The Director has the power to make the licensee responsible for the activities upon the licensed premises. In fact, it is difficult to see how the Division could properly maintain discipline in this field if in each case it had to show knowledge by the licensee of all the activities upon the premises. This would leave the door open to evasion of the Alcoholic Beverage Law and the many rules of the Director promulgated thereunder and would make the enforcement of the law an impossibility."

See Essex Holding Corp. v. Hock, 136 N.J.L. 28; Grant Lunch Corp. v. Driscoll, 129 N.J.L. 408, aff'd 130 N.J.L. 554; Benedetti v. Trenton, Bulletin 1040, Item 1.

The attorney for the licensee further maintains that there is no proof offered that Sanderson and DeGeorge were part of a lottery business.

It is not necessary to establish those facts. It is necessary only to show that such activity took place on the licensed premises and that the licensee or his agent permitted or "suffered" these activities to take place therein. Kravis v. Hock, 137 N.J.L. 252.

Another exception challenges the testimony with respect to certain slips found in a jacket hanging on a wall near the telephone booth. Licensee argues that there is no proof that these slips were in fact betting slips. However, Trooper Feldherr, an experienced investigator in these activities, identified them as such. It is significant that the bartender testified that, when the jacket was last examined by him several days before the date of confrontation, there were no slips of paper in the jacket. When the slips were examined, one of them contained the number 614, which the trooper stated was a numbers bet. Rather coincidentally, this same number was placed as a bet on April 28 by Trooper Feldherr. All of these circumstances establish the logical inference that these slips were placed in the jacket within a few days before the date upon which they were discovered and that they in fact represented bets placed in the licensed premises.

Finally, the licensee's attorney argues that the Hearer, in recommending the penalty, took into consideration a prior adjudicated record and thus deprived the licensee of the opportunity of objection, explanation or cross examination. It has been long established that, in the imposition of penalty, a prior record of suspension of license is a matter properly to be considered by the Director, who has the responsibility strictly

and impartially to administer the Alcoholic Beverage Law. R.S. 33:1-31 invests the Director with the power to suspend or revoke licenses, after hearing, for certain enumerated violations, including violation of the law or of State or local regulations. In the reasonable exercise of his discretion he may take into consideration such factors as the prior adjudicated record of the licensee in the imposition of penalty. See Tumulty v. Dunellen et al. (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1. The Hearer is authorized to make recommendations with respect thereto, but the Director ultimately decides and imposes the penalty in these matters. The licensee has been afforded a full and fair hearing and is not entitled to offer an "explanation" of his prior record on the matter of penalty to be imposed. R.S. 33:1-31.

I have examined the other exceptions advanced by the licensee's attorney and find that they have either been considered in the Hearer's report or are without substantial merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the memorandum of the attorney for the licensee, the Hearer's report and the exceptions with supportive argument thereto, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 20th day of September 1967,

ORDERED that Plenary Retail Consumption License C-19, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Louis Paula, t/a Louis Paula's Cafe, for premises 683 Montgomery Street, Jersey City, be and the same is hereby suspended for seventy (70) days, commencing at 2 a.m. Wednesday, September 27, 1967, and terminating at 2 a.m. Wednesday, December 6, 1967.

JOSEPH P. LORDI  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

RALPH & JOHN'S TAVERN, INC. )  
384 Monmouth Street )  
Jersey City, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-123 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City )

Licensee, by Ralph Faccione, President, Pro se. Edward J. Sheils, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on July 29, 1967, it sold six cans of beer and a pint bottle of wine for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the Director for thirty days effective January 9, 1956, for sale off the licensed premises and during hours prohibited by State Regulation No. 38 and local regulation, and for twenty days effective August 29, 1961, for permitting acceptance of numbers bets. Re Ralph & John's Tavern, Inc., Bulletin 1094, Item 4; Bulletin 1414, Item 3. In addition, the license of Old Spot Clambroth Tavern, Inc. for premises 352 First Street, Jersey City, of which Ralph Faccione, president of the licensee corporation, was then secretary-treasurer, was suspended by the Director for twenty days effective February 13, 1952, for sale during prohibited hours in violation of State Regulation No. 38 and local regulation and false statement in the license application. Re Old Spot Clambroth Tavern, Inc., Bulletin 927, Item 3.

The prior record of suspensions of license for similar violations more than ten years ago and for dissimilar violations more than five years ago disregarded, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Big Red's, Inc., Bulletin 1751, Item 14.

Accordingly, it is, on this 25th day of September, 1967,

ORDERED that Plenary Retail Consumption License C-123, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ralph & John's Tavern, Inc., for premises 384 Monmouth Street, Jersey City, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, October 2, 1967, and terminating at 2:00 a.m. Thursday, October 12, 1967.

JOSEPH P. LORDI  
DIRECTOR

4. STATUTORY AUTOMATIC SUSPENSION - ORDER STAYING SUSPENSION.

Auto. Susp. #310	)	
In the Matter of a Petition to Lift	)	Case #11,963
the Automatic Suspension of Plenary	)	
Retail Consumption License C-4	)	
issued by the Common Council of	)	
the City of South Amboy to	)	On Petition
	)	
ROBERT DORAN, INC.	)	O R D E R
t/a CORNER PUB	)	
117 No. Broadway	)	
South Amboy, New Jersey	)	

-----  
Friedland, Schneider & Friedland, Esqs., by David Friedland, Esq.,  
Attorneys for Petitioner.

BY THE DIRECTOR:

It appears from the petition filed herein and the records of this Division that on September 12, 1967, Theresa Trygar, president and secretary of the licensee-petitioner, was fined \$100 and \$10 costs in the South Amboy Municipal Court after being found guilty of a charge of sale of alcoholic beverages to a minor on June 26, 1967, in violation of R.S. 33:1-77. The conviction resulted in the automatic suspension of petitioner's license for the balance of its term. R.S. 33:1-31.1. Because of the pendency of this proceeding, the statutory automatic suspension has not been effectuated.

It further appears that disciplinary proceedings are in contemplation but have not yet been instituted by the municipal issuing authority against the licensee because of said sale of alcoholic beverages to the minor. In fairness to petitioner, I conclude that at this time the effect of the automatic suspension should be temporarily stayed. Re Dopart, Bulletin 1733, Item 7.

Accordingly, it is, on this 22d day of September, 1967,

ORDERED that the aforesaid automatic suspension of license C-4 be stayed pending the entry of a further order herein.

JOSEPH P. LORDI  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - FOUL LANGUAGE - LICENSE SUSPENDED FOR 40 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

HARRY J. SR. & ELIZABETH HOFFMAN )  
t/a HOFFMAN'S FARM TAVERN )  
S/s Winslow Road, 1000' W. Blue )  
Anchor Road )  
Winslow, New Jersey )

CONCLUSIONS AND ORDER

----- )  
Holders of Plenary Retail Consumption License C-6 issued by the Township Committee of the Township of Winslow )

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

BY THE DIRECTOR:

Licensees plead guilty to charges alleging that on Sunday, July 23, 1967, they (1) sold six bottles of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) permitted foul, filthy and obscene language by a patron directed to Division agents then conducting the investigation, in violation of Rule 5 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Big Red's, Inc., Bulletin 1751, Item 14) and on the second charge for twenty-five days (Re Joseph Sandor Bar, Inc., Bulletin 1725, Item 7), or a total of forty days, with remission of five days for the plea entered, leaving a net suspension of thirty-five days.

Accordingly, it is, on this 26th day of September, 1967,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of the Township of Winslow to Harry J. Sr. and Elizabeth Hoffman, t/a Hoffman's Farm Tavern, for premises south side Winslow Road, 1000' W. Blue Anchor Road, Winslow, be and the same is hereby suspended for thirty-five (35) days, commencing at 2:00 a.m. Tuesday, October 3, 1967, and terminating at 2:00 a.m. Tuesday, November 7, 1967.

*Joseph P. Lordi*  
Joseph P. Lordi  
Director