

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

March 27, 1967

BULLETIN 1721

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1. DISCIPLINARY PROCEEDINGS - NUISANCE (APPARENT HOMOSEXUALS) -
PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS.

In the Matter of Disciplinary Proceedings against

PAUL'S SHORE LIQUORS, INC.
t/a Chez'l Cocktail Lounge
429 - 433 Cookman Avenue
Asbury Park, New Jersey

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-1, issued by the City Council of the City of Asbury Park.

George M. Eichler, Esq., Attorney for Licensee.
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 charge:

"On Saturday night February 19 into early Sunday morning February 20, Saturday night February 26, early Saturday morning March 5, Friday night March 11 into early Saturday morning March 12 and Friday night March 18 into early Saturday morning March 19, 1966, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons who appeared to be homosexuals, e. g., females impersonating males and males impersonating females, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

Five ABC agents participated in the investigation leading to the preferment of the charge.

Agent B testified that, pursuant to specific assignment to investigate the allegation that the licensed premises was frequented by lesbians, he and Agent C arrived in the vicinity thereof on Saturday, February 19, 1966, at approximately 11:40 p.m. Agent C entered upon arrival. Agent B entered the licensed premises (which he described as a tavern) shortly after midnight and positioned himself at the bar away from where C was seated. Tending bar were Marilyn Trygar and Margaret Hogan (also known as "Frankie")

who were officers and stockholders of the corporate licensee. Ten females were seated at the bar. Three were escorted by males.

When asked to describe the appearance of a group of three females that had gained his attention, the agent responded:

"One female was attired in regular men's gray flannel slacks. She was attired with black loafers, white sweat socks, white wool socks. She wore a gray ski sweater. And underneath the ski sweater was a white collar, very similar to my shirt, that was exposed at the top. This female wore no jewelry whatsoever and I could observe no makeup on her. She was seated with two other females, one dressed very feminine in that she had a striped polo shirt-type of blouse on, bell bottom trousers with the tie in the front, and she had on these soft leather boots and regular feminine jewelry. The third member of this trio had on black slacks. There was a zipper front fly in these slacks. Loafers, and she had on a blue short-sleeve sweater. This was a female-type sweater, sleeveless sweater, I should say. She had long hair and she had feminine jewelry on. And she wore a pendulum watch from a chain."

In describing their conduct, the agent testified:

"They -- the more masculine of the three, the girl in the gray slacks and gray sweater, was attracting her attention to the girl sitting in the middle, the more feminine of the three, in that she purchased all of the drinks; she was very attentive to her; she directed her conversation to her; she lit her cigarette and appeared to be the more aggressive of the three."

Continuing, he stated:

"I observed them go to the dance floor and these two people danced cheek to cheek, hugging each other close. And when they finished their dance, the more masculine of the two, the female in the gray slacks and ski sweater, held the other's hand and led her back to the bar; held her chair for her."

The agent's attention was attracted to a specific incident which he described as follows:

"This particular group, the third female, who was attired with the black slacks, the zipper fly and the sleeveless sweater, got up from her position there and started walking towards the men's restroom. And as she got to the front of the door, she made a joking motion with her hand. And the first female, whom I described as wearing the gray slacks and gray sweater, turned around and hollered, 'Now you're going to the right place.' And they all laughed."

Concerning two females seated to the agent's immediate left, he testified:

"Although both were attired in feminine clothes, one was more aggressive to the other, who was more passive. She lit her cigarette; she paid for all the drinks that were served. And in one incident the barmaid, whom I overheard referred to as, I believe, Frankie, came and served them a drink and she asked, 'Is there enough money there?' And then she proceeded to take a wallet from her back pants pocket. She had on slacks."

The agent expressed an opinion that, "although they appeared to be females, they -- their actions and demeanor were that of a male. They led me to believe they were trying to impersonate men." Later he stated that they appeared to be homosexuals, commonly referred to as lesbians.

Agent H testified that he participated in the investigation of the licensed premises and in the course thereof entered the licensed premises on three occasions. On the occasion of his last visit on March 18, 1966, accompanied by ABC agent M, they entered the barroom at 11 p.m. and positioned themselves at the bar closest to the door. Tending bar was Agatha Ann McGuire.

The patronage consisted of approximately thirty, approximately twenty were males and ten females. Almost all of the male patrons were seated on the left-hand side of the bar, and the females were seated on the right-hand side of the bar.

Eight of the females seated in a group attracted the agent's attention because five of them were dressed in "extremely masculine-appearing clothes, primarily using male slacks, fly front, low-cut shoes or desert boots, the ankle high suede boots, white shirts, very wooly sweaters or bulky knit sweaters, both pull-over types and button fronts all wore their hair in very much the same manner or fashion, very short cut, combed straight back ending in what is called a duck tail in the back. None of this particular group attired in this manner wore makeup, facial makeup, at all or jewelry."

Continuing his observation of that group, the agent testified:

"Their actions gave me the impression that they were trying to emulate the actions or mannerisms of a male. In smoking a cigarette, for example, the cigarette would be taken back-handed, more or less this way, and it would be flicked with the thumb rather than in a daintier fashion as a girl might do it. When walking to and from the ladies' room, these same females tried to suppress any swaying motion of the hips or any -- oh, you know, any feminine walk, and seemed to walk purposely and consciously flat-footed, or swaggered, the shoulders moving more than the hips, in the manner that a man would walk."

As to their actions and conduct towards each other, the agent observed that "two of the females were feminine appearing and they received quite a bit of attention from the other females there.... The masculine ones, lighting cigarettes; purchasing their drinks for them; well, dancing with them on one occasion, but talking."

Referring to the males, a group of eleven to twelve, seated together, attracted his attention. As to them, he testified as follows:

"... they were very dainty, very effeminate, very overplayed in that they used fem-- actions so feminine that most ladies don't even do that."

Continuing, he testified, "Well, they had the limp-wristed motions of drinking. Or in talking, they would talk in high-pitched voices using such terms as 'dearie', 'sweetie', 'honey.'"

When asked as to whom the terms were directed, the agent responded, "to each other; to each other." Continuing, he added:

"The limp-wristed motion; the extended pinky, we'll say, or last two fingers of either hand when drinking; the very dainty method of smoking a cigarette, of flicking the ash with the forefinger, things like this. When sitting holding the glass in front of them, they also would be tucked in very tight, very dainty, feminine manner.... At one time two males entered at one time, and, you know, referred to each other as 'dear' and 'sweetie' and joined the party.... They seemed to again play up the feminine mannerisms in walking, a swishing or rolling, a gait accentuation, hip motions."

In conversing to each other they would blink their eyelashes more or less rapidly. It was the agent's opinion that the females appeared to be impersonating males and the males were attempting to be feminine. They appeared to be homosexuals.

Shortly before 1 a.m. the agents called the barmaid Miss McGuire. Agent M said to her, "We have a bet going here. I think that girl over there is trying to pick up that other girl. What do you think?" Miss McGuire responded, "maybe the other one likes girls too. I don't know." In response to the question, "Do you always get this many fags in here", Miss McGuire responded, "We only get this crowd at night.... We don't usually get this crowd during the day, only on nights and weekends."

Continuing on the same subject, Miss McGuire said, "What are two normal looking guys like you doing in here? You ought to be out on dates instead of sitting around here looking at these clowns." Agent H responded, "Well, we're unlucky in love. We're thinking of picking up something, but I don't know whether to pick up a lesbian or a fag." Agent M interjected, "and that looks like all you got in here."

At this point Miss McGuire smiled and the agents then identified themselves to her.

Agent H, accompanied by a female companion, entered the licensed premises on February 26, 1966, at approximately 10:10 p.m. and sat approximately half-way down the right-hand side of the bar. Agent S, who had accompanied him to the premises, entered about five minutes later and sat almost directly opposite H. Tending bar was Marilyn Trygar, an officer and stockholder of the licensee corporation. Upon entry, the patronage consisted of six males and three females, which later increased to about ten males and seven females at about 11 p.m. The females were seated to the right and the males to the left. Margaret Hogan, who was also a stockholder and an officer, was seated at the bar on the patrons' side and on one occasion relieved Miss Trygar behind the bar.

Agent H noted that, of the seven females grouped together, four of them appeared to be females attempting to be masculine. They appeared to lower their voices in an attempt to achieve a baritone sound, they punctuated their speech with vulgarities in a normal manner of speaking which would be more typical of a male group. In drinking they suppressed feminine traits by drinking beer from the bottle instead of using a glass. The bottle would be put down with more force than necessary. The four masculine-appearing females paid for the drinks consumed by the group of

seven persons. It was the agent's opinion that females appeared to be homosexual females, commonly known as lesbians.

The agent noted two males enter the barroom walking very effeminately, hold hands at one point and deposit a package at the far end of the bar. They then joined the group of approximately eight males on the left-hand side of the bar. None of the group appeared to be "fully masculine" in their actions. They lisped and spoke in high-pitched voices. They called each other "baby", "honey" and "sweets". They would wink and bat their eyelashes. One male, referred to as "Ed", had his hair dyed and wore it very tall with one part over one eye. He appeared to be more feminine than masculine. It was the agent's opinion that the males were homosexuals and that they were "obviously trying to emulate the mannerisms of women." At one point, the male referred to as Ed purchased a drink for a male companion. When Miss Trygar delivered the drink, she said to Ed, "Well, looks like you bought yourself a blow job." The entire group of homosexuals giggled openly. The agent departed the premises at approximately 11:20 p.m.

Continuing, Agent H testified that he re-visited the licensed premises on Friday, March 11, 1966, accompanied by Agent S, at approximately 11:35 p.m., and sat at the bar. The agents remained in the barroom for a period of approximately one hour. Miss Hogan was tending bar, and Miss Trygar was seated on the patrons' side of the bar. The patronage consisted of six males on the left-hand corner and three females on the right-hand corner of the bar. His attention was attracted to the males because they appeared to be effecting the mannerisms of women. One male wore what appeared to be a charm bracelet ... which is allowed to slip down over half a hand." Continuing, the agent testified that the "actions of all the males on the premises at this time were extremely effeminate; extremely limp-wristed; very sissyish, more or less. The voices, again, were high-pitched." He heard the expressions "sweetie", "dear" and "honey" used among the males. Turning his attention to the females, the agent testified that they wore short haircuts and masculine-appearing clothes. They emulated a masculine style of talking and drinking. They would hold their glass with "all fingers closed and large gulps out of it, rather than small sips as women do." He saw Ed in the premises again on this visit. Ed's hair appeared to be dyed and set and waved in a feminine style. It was the agent's opinion that both the male and female groups appeared to be homosexuals.

On cross examination the agent reaffirmed his opinion that the persons whose actions and dress he had described were apparent homosexuals, although he did not witness any overt acts of a sexual nature or loud, boisterous or offensive talk.

Agent S testified that he visited the licensed premises on February 26, 1966, March 5, 1966 and again on March 11, 1966.

On the occasion of the visit of March 5, 1966, he entered the licensed premises alone at approximately 12:30 p.m. and positioned himself at the left-hand side of the bar. Tending bar were Misses Trygar and Hogan. The patronage increased from about seven males to about seventeen males. The female patronage of ten remained the same. The males were seated in a group on the left-hand side of the bar, rear section, and the females were seated on the opposite side.

In response to the question "Were there any other patrons in that place," the agent responded:

"...there were two females seated at a piano on a stool. One female appeared to be an apparent lesbian the way she was attired. She had a man's shirt, striped shirt. She had a short-sleeved shirt, man's haircut, no makeup; wore men's pants with a belt. She was playing the piano. Seated on the same bench with her enjoying the music -- she was a very good pianist -- was a straight appearing female, with lipstick, long hair."

The agent added that almost all of the seventeen males in the premises attracted his attention. He stated, "The action seemed to be centered around one male in particular with blondish hair; looked like Veronica Lake style. His name was Ed. He was the center of attraction. They giggled, and laughed and joked, and embraced one another on occasion. They were also joined by a colored male, who was about twenty-three years of age. And he had fluffy hair, like; definitely had to be teased. And he got into the group and they were very, very friendly with him. They embraced each other around the waist, kidding, joking, hugging. They also were very, very friendly with the females.... These males referred to each other as 'honey' and the endearing things, and 'sweetie', 'sweetie pie', 'love.'"

As to their actions towards each other, the agent testified that they were "very affectionate toward each other. Sang to each other; looked in each other's eyes. Occasionally, Ed fluttered his eyelids. They used limp wrist motion. He has a high-pitched voice and no beard whatsoever. First I thought he was a female. The colored boy was also fair-skinned. I mean smooth-skinned. He was on the type of Ed. Him and Ed were about the most apparent outstanding fags on the premises." As to their gait, the agent observed that they "swished and swayed. They walked on the balls of their feet."

When questioned as to his observations of the females, the agent responded:

"The females were also in a group together. Later on, the two that were seated at the piano joined this group and they were seated across the bar from me in the far right. Most of them appeared to be dressed in masculine fashion, while a couple of them were really dressed in female clothes but wore no makeup. There were two or three females who appeared to be straight inasmuch as they appeared to be partners or companions of the apparent lesbians. And a couple of pretty nice looking girls. A couple had makeup on. I saw several apparent lesbians place their arms around these girls with the long hair and lipstick; purchase drinks for them and play the part of the active and passive. One would be dating another and one would accept the charms of the other. The act of pressing the passive. And no question about it that there was a separation. There was a definite group on one side, a definite group on the other side. And both Marilyn [Miss Trygar] and Maggie [Miss Hogan] were very friendly with both groups. In fact, they seemed like one happy family."

It was the agent's opinion that the females were attempting to impersonate males and the males were attempting to impersonate females or homosexuals.

It was stipulated between the attorneys that the testimony of Agent S would be the same as the testimony given by Agent H as to the occurrences of February 26, 1966 and March 11 and 12, 1966, as to direct examination and cross examination. Additionally, Agent S testified on cross examination that the "sum and substance" of his testimony was that homosexuals were congregated at the bar and, aside from that, there was nothing unusual about the general conduct or atmosphere or sobriety of the patrons.

Agent M testified that he participated in the investigation of the licensed premises. He accompanied Agent H on March 18 into March 19, 1966. It was stipulated that Agent M's testimony would be the same as the testimony of Agent H on direct and cross examination.

Agent C testified that he accompanied Agent B in the investigation on the night of February 19 into Saturday morning February 20. His testimony substantially corroborated the testimony of Agent B.

In defense of the charge Miss Margaret Hogan and Miss Marilyn Trygar testified that they were the principal stockholders of the licensee corporation, denied that they were homosexuals and offered no other testimony.

Agatha Ann McGuire testified that she was the barmaid referred to in the testimony, had no financial interest in the licensee corporation, and denied that she was a homosexual.

Agents B, C, H, S and M were called for additional cross examination by the attorney for the licensee.

Agent B testified that he did not observe any overt acts of lewdness, immoral activity, brawl or act of violence in the licensed premises, nor did he hear foul, filthy or obscene language or hear any disturbance or unnecessary noise. He reiterated that on the occasion of his visit he saw females impersonating males and in his opinion they were apparent homosexuals.

The testimony of ABC Agents C, H, S and M on cross examination was substantially similar to the testimony of Agent B.

At the conclusion of the testimony the attorney for the licensee and the attorney for the Division stipulated that, if Dr. Gerda Schwartz, a psychiatrist (who was to testify in behalf of the licensee and who failed to appear at the adjourned day of the hearing, apparently not through her fault) appeared at the hearing, she would testify to the following: (1) that, if she saw a group of people conducting themselves in the manner testified to by the Division agents, it would be her opinion that the persons would be apparent homosexuals, (2) that homosexuals, aside from sexual deviation, have the same desire for food, drink and entertainment as a normal person, (3) that there are homosexuals who are readily apparent or identifiable and others who are not readily apparent, and (4) that homosexuals are found in all stations of humanity.

The attorney for the licensee argued that, inasmuch as the Division failed to prove that the licensee allowed, permitted or suffered in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise, the licensee has not violated Rule 5 of State Regulation No. 20 and therefore there should be a finding of not guilty as to the charge.

The attorney for the Division argued that a congregation of apparent homosexuals in licensed premises constitutes a nuisance and is violative of Rule 5 of State Regulation No. 20.

Rule 5 of State Regulation No. 20 reads as follows:

"No licensee shall allow, permit or suffer in or upon the licensed premises any lewdness, immoral activity, or foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise; nor shall any licensee allow, permit or suffer the licensed place of business to be conducted in such manner as to become a nuisance."

It was conceded that there were no overt acts of lewdness or immoral activity, nor was there foul, filthy or obscene language or conduct, or any brawl, act of violence, disturbance or unnecessary noise allowed, permitted or suffered upon the licensed premises.

However, I must emphasize that Rule 5 of State Regulation No. 20 is severable and disjunctive. A licensee may be found not guilty of violating that part of the Rule which precedes the semicolon and be found guilty of violating that part of the Rule which follows the semicolon.

The Division apparently based its case upon an alleged violation of the last part of the Rule. The gravamen of the charge is that the licensed premises were "conducted in such manner as to become a nuisance" in that the licensee allowed, permitted and suffered persons who appeared to be homosexuals (both male and female) in and upon the licensed premises.

It has been well established that overt acts need not be committed nor are they the true measure in determining whether the pertinent rule has been violated. It has been uniformly held, since the earliest days of the Division, that the congregation of such persons on liquor licensed premises constitutes a nuisance and, as such, is in violation of Rule 5 of Regulation No. 20. As was stated in Re Hoover, Bulletin 1521, Item 1:

"Proper liquor control, bearing in mind that our primary responsibility is to protect the public welfare, dictates that the congregating of homosexuals or apparent homosexuals or males impersonating females on licensed premises be staunchly prohibited. The situation disclosed by the records in this case constitutes a nuisance and, as such, is a clear violation of Rule 5 of State Regulation No. 20 as alleged in the charge."

See also Carelis v. Division of Alcoholic Beverage Control, Bulletin 1393, Item 2 (aff'd by Appellate Division on December 21, 1961, not officially reported; reprinted in Bulletin 1430, Item 1); also Murphy's Tavern, Inc. v. Davis, 70 N.J. Super. 87 (App. Div. 1961), reprinted in Bulletin 1395, Item 3, wherein the court stated:

"In the first place, the testimony outlined above undeniably demonstrates that an inordinate number of the patrons habitually congregating at the tavern displayed the dress, mannerisms, speech and gestures commonly associated with homosexuals. We have previously held that such concentrated mingling of persons manifesting these character-

istics is sufficient foundation for an inference as to their actual condition and tendencies, and warrants punishment of any licensee who acquiesces in their assemblage upon his premises, Paddock Bar, Inc. v. Alcoholic Beverage Control Division, 46 N.J. Super. 405 (App. Div. 1957). Such a result is justified by the Division's policy, supported in law and in its own long-term practice, of thwarting reasonably apprehended sexual misconduct upon licensed premises in its embryonic stages. Cf. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951)."

The licensee's attorney intimated during the hearing that a licensee may not legally bar homosexuals from a public barroom particularly where no overt acts are committed by this class of patrons and to do so would be a denial of their civil rights.

This argument was disposed of by then Commissioner Burnett in Re Plaza Hotel-O'Leary, Bulletin 188, Item 9. Commissioner Burnett ruled that this argument is groundless because it can only apply to an action under the Civil Rights Act where a person was refused liquor because of his race, creed or color, or previous condition of servitude, or for some cause or reason not "applicable alike to all citizens of every race, creed and color, and regardless of race, creed or color, or of previous condition of servitude". citing Shubert v. Nixon Amusement Co., 83 N.J.L. 101 (Sup. Ct. 1912). He concluded that a licensee has an absolute right to refuse to sell or serve liquor to anybody provided only that such refusal is not made on account of race, creed or color. He further cited his early decision in Re Dorflinger, Bulletin 136, Item 12, as follows:

"The reason for this is that tavern keepers, like all liquor licensees, have great responsibilities under the law...."

and further cited Re Rollka, Bulletin 142, Item 4:

"The licensee is Master of his tavern. He who is responsible for the conduct of it has the right to decide for himself what behavior he shall permit."

In Re Dorsey, Bulletin 226, Item 11, it was held further that there was nothing in the Alcoholic Beverage Law which defines licensed places as public places. Neither the term "tavern" nor "saloon" is used in the law (Re: Phillips, Bulletin 200, Item 5), let alone a definition as to whether or not they are public places. The Commissioner cited in that case State v. Lynch, 23 N.J.L.J. 45, wherein Judge, afterwards Justice, Fort held that a saloon was not a public place within the meaning of that term in "An Act Concerning Disorderly Persons." He said:

"A saloon is not a public place. No one has a right to be or remain therein if the proprietor objects to his being there. Persons there, as in any other place of business, are mere licensees, subject to be ejected at the will of the proprietor."

His ruling was followed by Justice Parker in State v. Colgan (Sup.Ct. 1919), 92 N.J.L. 307. The Commissioner then stated that, so far as the Alcoholic Beverage Law was concerned, he has consistently treated taverns as being "private places" and hence has held the proprietor responsible for whatever goes on therein and has sustained his power, commensurate with such responsibility, to maintain order and decency, citing Re Tait, Bulletin 188, Item 9; Re Craster,

Bulletin 198, Item 6. See Re Minetti, Bulletin 264, Item 14. A similar contention that apparent homosexuals cannot be barred from licensed premises has most recently been rejected in Re Jo Stem Corp., Bulletin 1625, Item 2, and in Re One Eleven Wines & Liquors, Inc., Bulletin 1656, Item 5, affirmed One Eleven Wines & Liquors v. Division of Alcoholic Beverage Control (App. Div. 1966), not officially reported, recorded in Bulletin 1695, Item 1. See also Re C. & S. Tavern Corp., Bulletin 1667, Item 3, affirmed C. & S. Tavern Corp. v. Division of Alcoholic Beverage Control, not officially reported, recorded in Bulletin 1701, Item 1; Re Val's Bar, Inc., Bulletin 1685, Item 1.

It is my view that the licensee is not barred by the provisions of the Civil Rights Act from excluding this type patronage. A licensee who prefers to either encourage this type patronage or acts in a pusilanimous manner and fails to maintain his premises free from such patronage does so at his peril.

The liquor business must be carefully supervised and tightly restrained in the public interest, in accordance with the manifest design of the Alcoholic Beverage Law. Re Olympic, 49 N.J. Super. 299, 307.

The court observed In re Schneider, 12 N.J. Super. 449, at p. 458:

"The object manifestly inherent in the rule with which we are here concerned is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indency on the licensed premises."

The court further went on to state:

"'Immorality' is not necessarily confined to matters sexual in their nature. In a given context the word may be construed to encircle acts which are contra bonos mores, inconsistent with rectitude and the standards of conscience and good morals. Its synonyms are: corrupt, indecent, depraved, dissolute; and its antonyms are: decent, upright, good, right. Webster's International Dict. (2nd ed.)."

A review of the evidence and the law applicable thereto convinces me that the Division has established the truth of the charge, and I therefore recommend that the licensee be found guilty of said charge.

Licensee has a previous record of suspension of license by the Director for twenty days effective October 12, 1965, for sale to an intoxicated person. Re Paul's Shore Liquors, Inc., Bulletin 1646, Item 3.

I further recommend that the license be suspended for sixty days (Re One Eleven Wines & Liquors, Inc., supra, to which should be added five days by reason of the record of suspension for dissimilar violation occurring within the past five years (Re Manruff Corp., Bulletin 1691, Item 1), making a total suspension of sixty-five days.

Conclusions and Order

Written exceptions to the Hearer's report and argument thereto were filed by the licensee's attorney, pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been considered in detail by the Hearer in his report or are without merit.

Consequently, having considered the entire record herein, including the exceptions filed, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions. I shall therefore impose the penalty recommended by the Hearer, namely, a license suspension of sixty-five days.

Accordingly, it is, on this 11th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-1, issued by the City Council of the City of Asbury Park to Paul's Shore Liquors, Inc., t/a Chez'l Cocktail Lounge, for premises 429-433 Cookman Avenue, Asbury Park, be and the same is hereby suspended for sixty-five (65) days, commencing at 3:00 a.m. Wednesday, January 18, 1967, and terminating at 3:00 a.m. Friday, March 24, 1967.

JOSEPH P. LORDI
DIRECTOR

2. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to)
the Transfer of State Beverage)
Distributor's license SBD-97,)
issued to)

SANFORD KALB,)
t/a Kalb Beverage Co.,)
R.D. #3, Highway #9,)
Howell Township,)

CONCLUSIONS

to premises)

Highway 9, RR 3, Farmingdale)
(438 Addison Road))
Howell Township, N.J.)

Sanford Kalb, Applicant, Pro se.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee has filed an application for place-to-place transfer of his state beverage distributor's license from premises 436 Hulses' Road to premises 438 Addison Road, Howell Township.

Written objections were filed by Joseph H. Cook and Howard C. Julian, respectively, both of whom reside on Addison Road,

Howell Township. Although notified, neither of the said objectors appeared at the hearing herein.

Robert V. Carton, attorney for Howell Township, by letter dated August 25, 1966, advised that the municipality took no position in favor of or in opposition to the transfer of the license in question. However, he pointed out that there are certain zoning problems involved at the proposed location and, in compliance therewith or relief therefrom, the proper procedure should be required.

A certified copy of a resolution dated June 9, 1966, of the Board of Adjustment of the Township of Howell, was submitted by the Township Clerk wherein it discloses that application was made to the Board by the licensee herein to obtain a variance in order that the proposed premises may be used as a warehouse and garage for the storage of beer as well as soda. After a hearing in the matter, the application to extend a non-conforming use to permit storage of alcoholic beverages at the said premises, located in an agricultural zone which apparently prohibits such use, was denied. Licensee stated he appealed the case but then discontinued the matter.

Licensee testified that the building to which the transfer of the license is sought is 36 by 40 feet in size and constructed with cement blocks; that the area of the land upon which it is situated is 208 by 209 feet on Addison Road; that for many years past he has operated his soda business from that building.

Under R.S. 33:1-11(2c) state beverage distributor licensees may sell unchilled malt alcoholic beverages in quantities not less than 144 fluid ounces. Such licensees may sell and deliver these unchilled beverages both to licensed retailers and to consumers, with consumer sales and deliveries required to be made at prices which are not lower than the minimum prices filed. There may, of course, be no sale or delivery of alcoholic beverages for consumption upon the licensed premises.

The attorney for the municipality contends that the grant of the transfer of the license to the proposed site would result in a violation of the zoning ordinance. However, the obtaining of relief from a zoning restriction is not a condition precedent to the issuing of a liquor license. See Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 59 N.J. Super. 419 (App. Div. 1960), reprinted in Bulletin 1325, Item 1; aff'd. id nom 33 N.J. 428, reprinted in Bulletin 1365, Item 1. Zoning matters are left to the municipal authorities and, in the event that such business is impermissible under the local zoning ordinance, they may take action consistent with such ordinance. Re Mustardo, Bulletin 1654, Item 5. See also Lacqua v. Englewood, Bulletin 1657, Item 1, aff'd Englewood v. Lacqua and Div. of Alcoholic Beverage Control (App. Div. 1966), 92 N.J. Super. 493, reprinted in Bulletin 1705, Item 1. Inasmuch as there were no meritorious objections advanced at the hearing herein, it is my judgment that the application for transfer of the license should be approved. Cf. Re Leitereg, Bulletin 1654, Item 6.

I therefore recommend that the pending application for place-to-place transfer of the license in question be granted, but that no operation pursuant thereto be conducted at the proposed premises until there is compliance with all other necessary legal requirements.

Conclusions

No exceptions to the Hearer's report were filed in this matter.

I have given careful consideration to the evidence presented and to the Hearer's report. I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

JOSEPH P. LORDI
DIRECTOR

Dated: January 13, 1967

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

JOHN MOLOZZI)
t/a Pip's Tavern)
31-33 Bergen Street)
Passaic, New Jersey)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Passaic)
-----)

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

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, December 11, 1966, he sold a pint bottle of gin for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license by the municipal issuing authority for three days effective November 28, 1966, for sale to a minor.

The prior record of suspension of license for dissimilar violation within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Alejandro, Bulletin 1657, Item 5.

Accordingly, it is, on this 16th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-145, issued by the Board of Commissioners of the City of Passaic to John Molozzi, t/a Pip's Tavern, for premises 31-33 Bergen Street,

Passaic, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. Monday, January 23, 1967, and terminating at 3:00 a.m. Tuesday, February 7, 1967.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS -
LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)	
)	
JOE'S CAFE, INC.)	
t/a Joe's Cafe)	
1102 South 4th Street)	CONCLUSIONS
Camden, New Jersey)	AND ORDER
Holder of Plenary Retail Consumption License C-190, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.)	
-----))	
Licensee, by Joseph Brazdon, Secretary, Pro se.)	
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.)	

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 10, 1966, it permitted consumption of alcoholic beverages and failed to close the licensed premises after 2:00 a.m. during hours prohibited by municipal ordinance.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Cf. Re Corinthian Square Club, Bulletin 1681, Item 3.

Accordingly, it is, on this 17th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-190, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Joe's Cafe, Inc., t/a Joe's Cafe, for premises 1102 South 4th Street, Camden, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, January 24, 1967, and terminating at 2:00 a.m. Friday, February 3, 1967.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - MISLABELED BEER TAPS - LICENSE SUSPENDED FOR 20
DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

GAY NINETIES CLUB, INC.)
426 Bloomfield Avenue)
Bloomfield, New Jersey)

Holder of Plenary Retail Consumption)
License C-7, issued by the Town)
Council of the Town of Bloomfield)

CONCLUSIONS
AND ORDER

-----)
Frank A. Paglianite, Esq., Attorney for Licensee.)
David S. Piltzer, Esq., Appearing for Division of Alcoholic)
Beverage Control.)

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on July 19, 1966, it (1) possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20, and (2) permitted mislabeled beer taps on the licensed premises, in violation of Rule 26 of State Regulation No. 20.

With respect to the second charge, report of inspection discloses that a tap marked "Rheingold" was connected to a barrel of Piels beer and a tap marked "Schaefer" was connected to a barrel of Rheingold beer.

Absent prior record, the license will be suspended on the first charge for ten days (Re Jive Shack Bar, Bulletin 1706, Item 8) and on the second charge for ten days (Re G & E Enterprises, Inc., Bulletin 1647, Item 10), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 16th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-7, issued by the Town Council of the Town of Bloomfield to Gay Nineties Club, Inc. for premises 426 Bloomfield Avenue, Bloomfield, be and the same is hereby suspended for fifteen (15) days, commencing * at 2:00 a.m. Monday, January 23, 1967, and terminating at 2:00 a.m. Tuesday, February 7, 1967.

JOSEPH P. LORDI
DIRECTOR

* By order dated January 20, 1967, the suspension was deferred to commence at 2:00 a.m. Tuesday, February 7, 1967, and to terminate at 2:00 a.m. Wednesday, February 22, 1967.

6. DISCIPLINARY PROCEEDINGS - SALE OF DRINKS FOR OFF-PREMISES CONSUMPTION - LICENSE SUSPENDED FOR 5 DAYS, LESS 2 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MAC'S BAR & GRILL, INC.)
600 Bloomfield Avenue)
Bloomfield, New Jersey)

Holder of Plenary Retail Consumption License C-26, issued by the Town Council of the Town of Bloomfield.)

CONCLUSIONS AND ORDER

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Slifkin and Altwarg, Esqs., by Sheldon H. Altwarg, Esq., Attorneys for Licensee.)
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.)

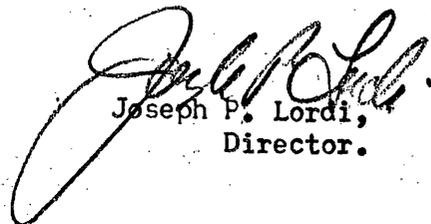
BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 8, 1966 it sold drinks of beer and mixed drinks of alcoholic beverages for consumption off the licensed premises, in violation of R.S. 33:1-2.

Absent prior record, the license will be suspended for five days, with remission of two days for the plea entered, leaving a net suspension of three days, Re Crimi, Bulletin 1693, Item 12.

Accordingly, it is, on this 23rd day of January 1967,

ORDERED that Plenary Retail Consumption License C-26, issued by the Town Council of the Town of Bloomfield to Mac's Bar & Grill, Inc., for premises 600 Bloomfield Avenue, Bloomfield, be and the same is hereby suspended for three (3) days, commencing at 2 a.m. Monday, January 30, 1967, and terminating at 2 a.m. Thursday, February 2, 1967.


Joseph P. Lordi,
Director.