MR. ZEMEL

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

BULLETIN 1606 March 17, 1965

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ITEM

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

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1. APPELLATE DECISIONS - SUN MOTEL, INC. v. NEPTUNE.

Sun Motel, Inc.,
Appellant,
v.
Township Committee of the Township of Neptune,
Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Teltser, Byrne & Greenberg, Esqs., by Martin L. Greenberg, Esq., Attorneys for Appellant.
Stout and O'Hagan, Esqs., by William J. O'Hagan, Esq., Attorneys for Respondent.
John A. Traynor, Pro se, Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

On August 20, 1963, respondent unanimously denied the appellant's application for a plenary retail consumption license for premises located at the s/w corner of State Highway 33 at the intersection of West Bangs Avenue in Neptune Township. The basis for such denial, as set forth both in the resolution and the answer filed in that appeal from such action, was that there were sufficient liquor outlets to supply the public needs within the vicinity of appellant's premises and that the proximity of appellant's motel to three churches made approval thereof undesirable. This denial was affirmed by the Director of this Division on January 7, 1964. Sun Motel, Inc. v. Township Committee of the Township of Neptune, Bulletin 1548, Item 3. In considering the evidence offered on appeal therein the Director concurred in the findings of the Hearer as follows:

> "Considering appellant's allegation and the testimony of its officer in support thereof, it is apparent that the only question to be determined herein is whether or not the economic interest of appellant is a factor warranting reversal of respondent's action.
>
> "The general rule respecting need and necessity for a liquor outlet at a particular locality is that its determination rests within the sound discretion of the issuing authority (Lykosh v. Perth Amboy and Krecz, Bulletin 1295, Item 1; Zicherman v. Driscoll, 133 N.J.L. 586) and where, as in the instant case, there is a conflict between private interests and the interest of the community at large the latter must prevail. Moraitis v. Lower Penns Neck, Bulletin 839,

Item 11; cf. Zicaro v. Newark and Home Liquors, Bulletin 1444, Item 2."

Thereafter, on May 19, 1964, the appellant filed an application for a plenary retail consumption license for the licensing period 1964-65 for its premises consisting of a motel of fifty-two rooms at the same location. The Township Committee, constituted the same as it was in its action on the prior application, again unanimously denied this application on May 19, 1964 by resolution which, in its pertinent part, reads as follows:

> "WHEREAS, the Township Committee has caused to be made the usual and customary investigation of the facts and circumstances involved; and
>
> "WHEREAS, The Township Committee, after considering the evidence presented by the applicant and the general public, has made the following findings and determinations:
>
> 1. There is no public necessity for the issuance of a license at the said location.
> 2. There are three (3) churches within a comparatively short distance from the applicant's premises.
> 3. The issuance of said license would be detrimental to the best interests of the Township.
>
> "THEREFORE, BE IT RESOLVED, That the application of the Sun Motel, Inc., for the issuance of a Plenary Retail Consumption License for the premises located at the southwest corner of New Jersey State Highway #33 and West Bangs Avenue be and the same is hereby denied."

In its petition of appeal from this said denial appellant alleges that the action of respondent was erroneous in that (1) it constituted a clear abuse of discretion, (2) it was unreasonable and illegally grounded, and (3) it was a manifestly mistaken exercise of discretion.

Respondent denies said contentions and asserts that a similar application, based on the same grounds, was unanimously denied by the respondent on August 20, 1963, and its action was affirmed by this Division on January 7, 1964. It further asserts (a) that there is no public necessity for the issuance of a license at the location applied for, (b) that there are three churches within a comparatively short distance of the applicant's premises, and (c) that the issuance of the said license would be "detrimental to the best interests of the Township of Neptune, County of Monmouth and its inhabitants."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross examine witnesses. Lethe, Inc. v. North Bergen, Bulletin 1537, Item 2. At this plenary hearing I advised counsel that I was interested in receiving into evidence those facts which counsel believes have so materially changed since the last order was entered as would indicate that the action of the respondent in unanimously denying this application was arbitrary and a abuse of its discretion. It was stipulated that the three churches are in existence and in operation within the same distance as set forth in the earlier Conclusions and Order. Also, that the Jumping Brook Country Club operates seasonally, although there was additional testimony introduced to indicate that this club, which has a plenary retail consumption license, has accommodations and banquet facilities in use throughout the year.

It was also stipulated that the same number of licenses are in operation as were at the time of the earlier application, namely, twenty consumption licenses, five distribution licenses, five club licenses in the Township which has a population of between twenty-one and twenty-two thousand people. The testimony offered by the appellant at this hearing was substantially the same as that offered by this Division at the prior hearing (Bulletin 1548, Item 3). Additionally, the appellant produced Thomas M. Brown, the past Deputy District Governor of the Lions Club, who testified in substance that the Neptune Lions Club could not find sizable places to hold public meetings which were also licensed. Therefore it was required to hold its meetings in Ocean Township, a neighboring community.

Ordwin Zagury, president of the appellant corporation, testified to the same effect as in the prior hearing, and added that he received numerous inquiries from organizations with respect to his facilities; that, because he cannot serve alcoholic beverages, these groups find his facilities inadequate and take their business elsewhere. He further insisted that there are no facilities other than his which can accommodate five to seven hundred persons at a banquet. On cross examination he admitted that his restaurant has not been operating and is not presently in operation because he does not have a liquor license. He further insisted that the Jumping Brook Country Club does not operate all year around although it has facilities that are at least equal to his own. However, he agreed that this club has a private membership group that meets throughout the winter and that its facilities are open to the public "for specific occasions only" throughout the year.

Joseph E. Bennett, Township Clerk, testified in a similar vein to his testimony at the prior appeal hearing, and stated that to his personal knowledge the Jumping Brook Country Club is open throughout the year and is available for functions. He also stated that there are adequate facilities in this Township for regular functions of the various organizations. In so far as special functions are concerned, there are several large facilities in the community which can accommodate three hundred persons and over.

Reverend Sherman Robinson also testified substantially to the same effect as in his prior testimony. He added that the granting of this application for a license at this corner, on the street leading to his church, would not be conducive to the best interests of the members of his congregation and particularly would be against the best interests of children attending Sunday school and other services in the church. Accordingly, the board of trustees of his church has gone on record in opposition to such issuance.

Mayor Joseph Wardell testified that each time application was presented for the issuance of this license it was unanimously denied by the respondent. On cross examination he reiterated that he and respondent took into consideration the substantial objectors consisting of representatives of the churches and private individuals. Respondent Committee also took into consideration the fact that there are other adequate facilities which can accommodate anywhere from three to five hundred persons. From his experience as a resident of this community for fifty-five years, he felt that there was no necessity for the issuance of this license based upon the number of licenses already in existence, the objections to its issuance and the availability of facilities in the community.

John A. Traynor, an attorney who is a local property owner, appeared pro se and as a representative of the trustees of the Holy Innocents Roman Catholic Church. He testified that he had discussed this matter with the other trustees and they joined wi him in his opposition to the said issuance. He felt that there was no need for such issuance because there were adequate facilities presently available and that the economic advantage to the applicant must be superseded by the public interests. He added that such license would have an adverse effect upon the parishioners who attend the neighboring churches. He further added that his church is engaged in a two million dollar building program for a new school, convent and pastor's house, and the introduction of this license would be against the public interest.

At the commencement of this hearing I suggested that, in view of the fact that a similar application had been considered by the respondent within the past year; and an appeal from its order denying said application was heard by this Division; and that by order of the Director dated January 7, 1964, the respondent's decision was affirmed; the appellant should limit itself on this appeal to the introduction of such substantial and new evidence which it cor sidered may materially affect our determination. I pointed out particularly that the prior appeal had been heard only a few months ago, and that there were no membership changes on the respondent Committee

Counsel for the appellant strenuously argued, both at the hearing and in his memorandum submitted in summation at the conclusic of the case, that under the authority of Lubliner v. Board of Alcohol Beverage Control for the City of Paterson, 33 N.J. 428, the doctrine res adjudicata has no application to an administrative determination which is concerned primarily with the public interest in its relation to the needs of the community. He further asserted that the court in Lubliner held that both the municipal issuing authority and the court are free to alter earlier policy determination where there is reasonable basis for the opinion that there is public interest to do so.

I think that appellant's attorney has misread the primary thrust of Lubliner. Mr. Justice Jacobs made an exhaustive examination of the cases involved in the doctrine of res adjudicata and pointed out that in practically all of these cases the issue is generally whether there had occurred "a sufficient change in the application itself or in the conditions surrounding the property to warrant entertainment of the application." Grundlehner v. Dangler, 29 N.J. 256, 271 (1959). He further concludes (at p.441):

> "Where the municipal issuing authority reasonably entertains the opinion that it is in the public interest to do so, it is free to alter an earlier policy determination and this is particularly true where it was made by predecessor members who no longer hold office." (emphasis added).

And further:

> "...it would seem that the doctrines of res judicata and collateral estoppel would generally attach to findings in such proceedings since the sound reasons underlying the proper use of the doctrines in the courts would be fully applicable." See 2 Davis, Adm. Law. at p. 559.

And further:

> "While properly looking with disfavor on the filing of vexatious repetitious applications which present no altered circumstances or policies, the Division has always recognized the right of municipal issuing authorities to alter, in the reasonable exercise of their discretion, their earlier policies particularly where there have been membership changes." See Whalan v. Township Committee of the Township of Mt. Olive, Bulletin 1103, Item 2; Tolen v. Kearny, Bulletin 880, Item 1; Hearty v. Township of Liberty, Bulletin 671, Item 5.

It should be particularly noted that the membership of the respondent Committee was exactly the same on the early appeal as it is on this appeal, and that in both instances the vote for denial was unanimous.

Notwithstanding the clear sense of the cited cases, I permitted the appellant to introduce such testimony as it desired in support of the appeal. My examination and evaluation of the record, however, convince me that there have been no substantial changes in the testimony or in the conditions and circumstances which existed at the time of the earlier application. The only additional witness produced by the appellant on this appeal was Thomas Brown, an officer of the Lions organization, whose testimony I have set forth hereinabove.

I am persuaded that this testimony has produced no substantial change from the impact of the testimony at the prior hearing. In the prior Conclusions of the Director he found that the only question to be determined was whether the economic interest of the appeal is a factor warranting reversal of the respondent's action. He determined that in that case, where there was a conflict in the private interests and the interests of the community at large, the latter must prevail (Bulletin 1548, Item 3).

From the testimony adduced before me I am additionally persuaded that many of the residents were opposed to the issuance of the license because of the close proximity of appellant's premises to four churches. Empire Liquor Co. v. Newark & Rajah Liquors, Bulletin 1031, Item 2; Trinity Methodist Church of Rahway v. Rahway, Bulletin 972, Item 3. As the court stated in Fanwood v. Rocco, 33 N.J. 404, in applying the same principles to an application for a transfer, the local issuing authority may properly in its discretion honor local sentiment in its consideration of an application for transfer:

> "Fanwood's package store and taverns along its outskirts have apparently been sufficient, in the opinion of the municipal governing body, to meet the needs of its people and satisfy the public interest (cf. Mauriello v. Driscoll, 135 N.J.L. 220, 221 (Sup. Ct. 1947)) and, while the transfer of the package store to its business center would presumably serve as an added convenience to some of its residents, this factor was fairly considered by the governing body to be outweighed by the sentiments in opposition to the transfer."

In its earlier decision in Fanwood v. Rocco, 59 N.J. Super. 306, at p. 320, the court had this to say:

> "Nor does the municipality need to have any articulated reasons for keeping the area inviolate. It is sufficient if in good faith and not with the intention of oppressing the individual applicant the governing body wants it that way. If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

And finally, the court, in Fanwood, 59 N.J. Super, 306, at p. 320, added:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken (135 N.J.L. 502). Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

It is well settled that the issuing authority (respondent herein) is vested with a sound discretion in the granting or refusing to grant licenses for the sale of intoxicating beverages. Bumball v. Driscoll, 115 N.J.L. 254; Zicherman v. Driscoll, 133 N.J.L. 586; Price v. Millburn, 29 N.J. Super. 103; and such discretion will not be disturbed in the absence of a showing of a clear abuse thereof. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484.

The Director's function on appeal is not to substitute his personal opinion for that of the local issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his own personal views. Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, 135 N.J.L. 502; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1; Fanwood v. Rocco, supra; cf. Florence Methodist Church v. Florence Township, 38 N.J. Super. 85.

There has been no suggestion made in this case that the respondent, or any of its members, have been improperly motivated.

In view of the aforesaid I conclude that the appellant has failed to establish that the action of the respondent was unreasonable or an improper use of its discretion and I, therefore, recommend that an order be entered affirming said action and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's Report and argument in support thereof were filed with me by the attorneys for the appellant within the time permitted by Rule 14 of State Regulation No. 15. Written answering argument was filed with me by the attorneys for the respondent within the time permitted by said Rule.

The exceptions take issue with the Hearer's statement on the applicability of the doctrine of res adjudicata, as set forth in the Lubliner case cited in the Hearer's Report, to administrative agency proceedings such as these, and also contend that the respondent abused its discretionary authority by failing to consider the growing needs of the Township for the licensed facilities proposed by appellant. Respondent's answering argument is that the Hearer did not, in fact, rely merely upon the doctrine of res adjudicata to support his recommendation of affirmance of the local action but, additionally, based his recommendation on the other factors found in the record of the present appeal.

As I read the Lubliner case, the Supreme Court in such decision held that a local issuing authority could, in the exercise of its discretion, grant a place-to-place license transfer notwithstanding its prior denial of the self-same transfer, provided that such change of policy was reasonable and motivated by good faith. Further, that a change in the composition of the membership of the local authority could well justify an alteration of an earlier policy decision, but that other considerations could also form the basis for such policy change. The Court was careful to differentiate disciplinary functions, to which the finality of res adjudicata would normally apply, from actions involving discretion.

As far as the instant appeal is concerned, it is well to note that there has been no change of policy by the respondent Committee. Consequently the effect of the application of the doctrine of res adjudicata to the Committee's most recent determination would merely be to reinforce its consistent action in denying the appellant's application.

However, respondent did not rely upon the finality of its prior denial in its rejection of the second application by appellant, nor does it, on appeal, now contend that it was thereby precluded from acting favorably on the second application. The record indicates that the application was decided on its merits after full hearing. In this posture it would appear that there is no necessity to deal in this case with the applicability of the doctrine of res adjudicata.

As to the appellant's assertion that respondent failed to consider the growing needs of the Township for a license at appellant's premises, I find that such contention is not supported by the record. While there is testimony in the record that the population of the Township has been increasing, there is nothing therein to establish that same was not considered by the respondent in arriving at its decision. In fact, Mayor Wardell testified at the instant hearing that he considered that the public needs were being adequately provided for by the existing licenses in the area of the proposed premises, albeit his primary motivation in voting against the grant of the license was the objections manifested by the church groups in the area in question. Moreover, it is one thing for the issuing authority on its own initiative to grant a license upon the basis of the growing needs of a community, but quite another to compel it to do so, especially in the face of local sentiment to the contrary. The number and location of licenses rest within the sound discretion of the local authority and will not be disturbed unless such discretion has been unreasonably exercised. Fanwood v. Rocco, supra.

I have carefully considered the entire record herein and, as a result, I concur in the Hearer's findings and conclusions and adopt his recommendation. I shall therefore enter an order affirming respondent's action.

Accordingly, it is, on this 3rd day of February 1965,

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

JOSEPH P. LORDI
DIRECTOR

2. APPELLATE DECISIONS - SMITH v. FRANKLIN TOWNSHIP AND SOMERSET LANES, INC.

APPELLATE DECISIONS - GLYNN v. FRANKLIN TOWNSHIP AND SOMERSET LANES, INC.

George Smith,)
Appellant,)
v.)
Township Council of the Township of Franklin (Somerset County), and Somerset Lanes, Inc.,)
Respondents.) ON APPEAL CONCLUSIONS AND ORDER

Elmer Glynn,)
Appellant,)
v.)
Township Council of the Township of Franklin (Somerset County), and Somerset Lanes, Inc.,)
Respondents.)

Johnson and Johnson, Esqs., by Robert S. Johnson Esq., and Samuel Chiaravalli, Esq., Attorneys for Appellant George Smith
Elmer T. Glynn, Appellant, Pro se
Stanley Cutler, Esq., Attorney for Respondent Franklin Township
Somerset Lanes, Inc., by Harvey Hoff, Secretary-Treasurer, Pro se

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Separate appeals were instituted by appellants against the Franklin Township Council (hereinafter Council) and Somerset Lanes, Inc. Since the issues involved are the same and are based upon the same action, the appeals have been consolidated for hearing and are the subject of a single report.

These appeals challenge the action of respondent Council whereby on September 23, 1964, it granted the application for a person-to-person and place-to-place transfer of a plenary retail consumption license from Max Rubenstein, t/a Pine Tree Hotel, to respondent Somerset Lanes, Inc., and from premises on State Highway #27 to 700 Hamilton Street, Franklin Township.

Appellant Smith in his petition of appeal contends that the action of the Council was an abuse of its discretion, improper and illegal for reasons which may be summarized as follows: (a) there was no public need or necessity, nor was it based on public interest; (b) said transfer was granted to relieve "one man's hardship (i.e. owner of Somerset Lanes)"; (c) the Council made an inadequate investigation of the said application; (d) there were sufficient liquor outlets in the area to which the license was transferred.

The petition of appellant Glynn substantially, albeit inartistically (in the form of a letter to the Director), repeats the allegations of the petition hereinabove referred to and adds the following grounds upon which he bases his contention that the Council acted improperly and in abuse of its discretion: (a) inadequate notice was given of the hearing on said application; (b) the hearing was improperly conducted; (c) transfer of the said license to the proposed area would create a "rum row" and would cause deterioration of the neighborhood; (d) minor bowlers would be exposed to the atmosphere of a licensed premises; (e) traffic congestion would increase; (f) removal of this license from its present location would cause a great inconvenience to the residents of that area.

Appellants therefore contend that the action of the Council should be reversed.

Respondent Council filed two separate answers in which it substantially denies the allegations of the petitions. It asserts that the notices of hearing complied with statutory requirements and that it acted within its discretion in granting the said application. It also specifically asserts that the allegation of appellant Glynn, that such transfer would have an adverse competitive effect upon the other bars in the area, is immaterial.

No answer was filed on behalf of respondent Somerset Lanes, Inc., although it produced its principal corporate officer, who testified in its behalf.

The appeals were heard de novo, pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony herein.

The genesis of this action is as follows: On July 14, 1964, the Council approved the application of respondent Somerset

Lanes, Inc. for person-to-person and place-to-place transfer as aforesaid. A license certificate was issued to the said Somerset Lanes, Inc. to operate at its premises. Appeals were taken by appellants herein to this Division from such action on the sole ground that no hearing had been held on objections to the application. After consultation with a representative of this Division, wherein it was pointed out that there had been inadequate compliance with the statutory provisions regarding hearing on objections, a new application was made by Somerset Lanes, Inc. on August 26, 1964. The appeals were thereupon withdrawn. This application was made apparently without any action by Council to rescind the prior application.

Notice of the new application was published in accordance with the statutory requirements and the matter was set down for hearing before the Council on September 22, 1964. On the morning of that date several written objections were received by the Township Clerk. She called them to the attention of the Council and, at its instruction, notified the objectors by telegram that the hearing was postponed until the following day (September 23, 1964).

At the hearing on that date the Council, by a vote of five to two, with two abstentions, granted the said transfer. According to the minutes of September 23, 1964, introduced into evidence, three persons appeared and spoke in objection to the said transfer, and three persons addressed the Council in support thereof.

George Gruber, testifying on behalf of appellants, stated that he sent a written objection to the Council on or about September 17. However, on September 22, when the hearing was noticed to be held, he did not appear. On the evening of September he received a telegram informing him that the hearing had been put off until September 23, but he did not appear at the postponed meeting.

Betty Van Derveer stated that she signed a letter which was typed by appellant Glynn and sent it to the Council on September 19. She also received a telegram informing her that the meeting had been adjourned to September 23 but did not attend that meeting because "I had a previous engagement, and I couldn't make it."

Elmer T. Glynn, called by appellant Smith, testified in support of both petitions of appeal. He attended the meeting and set forth his objections to approval of the application. He was primarily concerned with the fact that minors could be served at the proposed licensed premises because the entire premises would be licensed for the sale of alcoholic beverages. He insisted that the members of the Council did not make an adequate investigation and were not familiar with the premises at the time they voted.

Glynn was recalled and elaborated upon the reasons set forth in his petition. He testified that there is a distance of approximately ten to twelve miles between the Pine Tree Hotel and the proposed premises, and pointed to four package stores, thirteen taverns and three club licenses in the general area of the proposed premises. He stated that there are no other liquor licensed establishments in the area of the Pine Tree Hotel. Glynn also testified that the population of Franklin Township is approximately 23,000 or 24,000; that the population of the

Kingston area (in which the former license was located) is about 1,000, and that of the area where the proposed transfer is sought is about 2,000. He objected to the transfer because he felt there was no need for another liquor outlet in this area. He also felt that "most of the bars are neighborhood in character, this would tend to take away from their business. Although business in itself, I admit, has no direct consideration in this." He reiterated that the operation contains a bowling alley and a billiard hall which attract young people, and that the introduction of a liquor license would have an adverse effect upon them. He pointed out that there was a school located about two blocks from this facility but that there were no churches in the immediate area. Furthermore, he felt that the members of the Council had disqualified themselves because they had at one time considered the introduction of an ordinance limiting the issuance or transfer of liquor licenses, but admitted that the proposed ordinance had been defeated on second reading.

On cross examination this witness admitted that the greatest concentration of population in the Township is in the area of the proposed transfer, and that his estimate of the population, as testified above, was "strictly an estimate." He asserted, in addition, that the issuance of this license would not promote temperance as contemplated by the alcoholic beverage law.

George Smith, one of the appellants, testified that he attended the hearing on September 23 at the time of the approval of Somerset Lanes' application and stated that he heard discussion of the "hardship" for respondent to operate a bowling alley without a liquor license. He also asserted that respondent Somerset Lanes was actually operating under the license although this latter operation had not been finally approved by respondent Council. He testified that there are three "C" licenses and two "D" licenses within an area of one-half mile from Somerset Lanes, whereas there are no other licensed establishments in the Township in the general area of the Pine Tree Hotel, located about ten miles from Somerset Lanes.

On cross examination this witness stated that he is a tavern owner and the vice president of the Liquor Dealers' Association. He could not remember exactly at which meeting he heard the discussion with respect to the alleged "hardship" situation, but that was his general impression of the tenor of arguments before Council.

Mrs. Mercer D. Smith (Township Clerk) explained through her examination of the minutes what had occurred with respect to this application. She testified that, when the original application was approved by resolution of July 14, 1964, a license certificate was issued to respondent Somerset Lanes. An appeal was taken to this Division and was then referred back to the Council because of its failure to comply with the regulation relating to holding of a public hearing. The prior application and license were never rescinded. The subject application was granted on September 23, 1964. It was her understanding that Somerset Lanes had ceased operation of the liquor privilege during the hiatus, although it was conceded that that was not so and that in fact Somerset Lanes operated under the earlier license. She also clarified the matter with respect to the advertised meeting of September 22, stating that she first received the written objections on the morning of September 22 and, after discussing them with Council members that evening, was instructed to advise the objectors by telegram that the meeting would be postponed until September 23.

Joseph C. Pucillo (called by respondent Council) testified that he is a councilman from the Second Ward and that he voted in support of the resolution approving the transfer of the license. He took into consideration the problem of police protection and of traffic conditions, as well as the reports made by the health inspector and the chief of police. He asserted that he had personally made a physical inspection of the premises and concluded that the said license transfer would be "to the benefit of the Township."

On cross examination this witness elaborated upon the question of traffic in the following language:

> "...I believe this will confine people in the room where they are having their activities, rather than when their activity is over, have this traffic roaming through town, looking for a place to probably stop and have a drink or sandwich."

He did not believe that a traffic hazard would be created. He admitted considering the hardship to Mr. Hoff (principal stockholder of Somerset Lanes) but stated that his primary consideration was "the good and welfare of the people" of the community. He insisted that the mere fact that minors use the bowling and billiard facilities was not a detrimental factor, stating that his own children frequent the establishment and are not adversely affected.

Foster F. Burnett (Fourth Ward councilman) testified substantially to the same effect. He took into consideration "the expansion that might take place if this gentleman was allowed to compete with bowling alleys in surrounding communities who have bars, which would bring in additional revenue, which is in the interests of the public." And further:

> "I felt in the expansion of the town, that since this was a single bowling alley, that if his business was increased, it would also be able to expand and bring in additional revenue to the town itself."

He explained that the closest bowling alley was in New Brunswick, about two-and-a-half miles away from this establishment, and that the license transfer would be in the public interest. This witness expressed a considerable faith in teen-agers and in their general capacity for good. He expressed the sense of the majority of Council in stating that he did not think that a liquor license in a bowling establishment would have any detrimental effect upon them. He reasserted the fact that he voted for the transfer of the license because, in his judgment, there was a public need and necessity for the same.

At this point it was stipulated that Councilman Lisi had expressed himself on May 12, 1964, as opposed to the transfer of this liquor license because of "the proximity of so many taverns;" that at the meeting of September 23, 1964, he evidently changed his mind and voted in support of the resolution approving the transfer.

Harvey Hoff (secretary-treasurer of respondent Somerset Lanes) described the premises to which the transfer was sought.

He also described the area in which Somerset Lanes is located as a built-up area which draws from approximately 12,500 people or fifty per cent. of the total Township population. He explained that he has parking facilities for between eighty and ninety automobiles. He insisted that the business of his premises is bowling and that the introduction of a liquor license has not increased his over-all business. The license was obtained as a convenience to his patrons only. He admitted that he had been operating under the license originally transferred in July.

I have carefully examined and evaluated the testimony in this matter and feel that there are certain established principles which must be restated in arriving at a determination herein. In order for the appellants to prevail on this plenary appeal de novo they must establish by a preponderance of the evidence that the action of respondent Council was erroneous and an abuse of discretion. Rule 6 of State Regulation No. 15. To put it another way, they must show that reasonable men, acting reasonably, could not have reached the result which respondent Council reached in approving the application and granting the said transfer. Further, that such action was so unreasonable as to constitute an abuse of discretion and should be reversed.

No one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Township Council of Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred from person-to-person and to a particular locality rests within the sound discretion of the local issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et al., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by this Division in the event of manifest abuse. Passarella v. Board of Commissioners of Atlantic City et als., 1 N.J. Super. 313. And such action, based upon such discretion, will not be disturbed in the absence of clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484.

As Justice Jacobs pointed out in Borough of Fanwood v. Rocco et al., 33 N.J. 404, 414:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under the settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See also Essex County Retail Liquor Stores Assn. v. Newark et als., 77 N.J. Super. 70 (1962).

The Director's function on appeals of this kind is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for

its opinion and, if so, to affirm irrespective of his personal views. Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1. It is even conceivable that, if the Director were a member of the local issuing authority, he may have voted contrary to the majority; but, unless he concludes that under the facts and law reasonable members of the Council could not reasonably have voted therefor, he must abide by their judgment. In other words, the action of the municipal issuing authority may not be reversed by the Director unless he finds the "act of the board was clearly against the logic and effect of the presented facts." Hudson-Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, supra.

And further, in evaluating the action of respondent herein it might be well to state the view which was expressed in Ward v. Scott, 16 N.J. 16 (1954) wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle, at p. 23:

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance. And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

The majority of respondent Council acted with a sense of reality in appraising the totality of the circumstances involved in this application. It was its clear belief from the evidence presented that in this growing area a liquor license in this establishment would serve the public convenience. The Council had before it the police report testifying to the unchallenged moral character of the applicant's officers and stock holders. It had adequate evidence with respect to parking facilities and was undoubtedly convinced that the best interests of the municipality would be served by its action. It may also be, in addition to these factors, that some of the members of the Council considered the possible hardship which would result from a denial of the application. But I am satisfied that the Council's primary and overriding consideration was the best interests of the community.

The testimony reflects the fact that many minors use and will continue to use the bowling alley and billiard room in premises where alcoholic beverages are served, and that several objectors felt apprehensive of this temptation to the minors. Respondent Somerset Lanes to date has an unblemished record and its officers and stockholders are admittedly of good moral character. It is assumed, therefore, that its business will be operated in a decent and law-abiding manner. If that is done, the objectors have nothing to fear. If, on the other hand, the licensed business is operated in violation of the alcoholic beverage law, the licensee will subject its license to possible suspension or revocation. Cf. Monmouth County Retail Liquor Stores Assn. et als. v. Middletown, Bulletin 1572, Item 1.

There has been no evidence to establish that respondent Council was not aware of its responsibility, ignorant of the law, or insensitive to the public interest, as charged. Nor has there been any suggestion that any of its members has been improperly motivated.

After reviewing the evidence and having heard the competent oral summation of counsel and arguments therein, I conclude that appellants have failed to sustain the burden of establishing that the action of respondent Council was arbitrary, unreasonable or an abuse of its discretion. Rule 4 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that orders be entered in both matters affirming the action of respondent Council and dismissing these appeals.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the argument of counsel in summation, and the Hearer's Report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3d day of February, 1965.

ORDERED that the action of respondent Township Council be and the same is hereby affirmed and that the appeals be and the same are hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Sam Nelson and Herbert Nelson
t/a Bergen Square Delicatessen
877 Bergen Avenue
Jersey City, New Jersey

CONCLUSIONS AND ORDER

Holders of Plenary Retail Distribution License D-34, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.

Licensees, by Herbert Nelson, Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to charges alleging that on Sunday, January 31, 1965, at 12:25 p.m., they sold a pint bottle of whiskey (1) for off-premises consumption, in violation of Rule 1 of State Regulation No. 38, and (2) in violation of local hours regulation.

Absent prior record, 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 Friedenberg, Bulletin 1577, Item 4.

Accordingly, it is, on this 16th day of February, 1965,

ORDERED that Plenary Retail Distribution License D-34, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Sam Nelson and Herbert Nelson, t/a Bergen Square Delicatessen, for premises 877 Bergen Avenue, Jersey City, be and the same is hereby suspended for fifteen (15) days, commencing at 9:00 a.m. Tuesday, February 23, 1965, and terminating at 9:00 a.m. Wednesday, March 10, 1965.

Joseph P. Lordi
Director

4. STATE LICENSE - NEW APPLICATION FILED.

Richard C. Berardo
t/a Town Beverage
730 Irving Place
Secaucus, New Jersey

Application filed March 12, 1965 for place-to-place transfer of State Beverage Distributor's License SBD-10 from 263 Walker Street, rear and rear of 265 Walker Street, Fairview, New Jersey.

Joseph P. Lordi
Director