

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2175

MARCH 5, 1975

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1. NOTICE TO MUNICIPAL ISSUING AUTHORITIES - (1) REVISED SHORT FORM RENEWAL APPLICATION-MUNICIPAL RETAIL LICENSES - (2) REVISED FORM OF RENEWAL APPLICATION - CLUB LICENSES.

TO ALL MUNICIPAL ISSUING AUTHORITIES:

On December 19, 1973 you were advised that subsequent to a study and analysis of the effects resulting from the adoption of the use of a short form application, it was determined that each fourth year applicants for licenses would file long form applications. Samples of application forms showing the several statutory and regulatory changes were sent to municipal issuing authorities and in most instances municipalities complied by having applicants complete the revised long form application for license.

The study also indicated that the "short form" application has sufficient merit and has been beneficial to the Division, the municipal clerks and the licensees and should be continued for three successive years subsequent to which a long form again will be submitted.

Accordingly, short form applications will be submitted by all applicants for RENEWAL licenses for the years (1975-1976), (1976-1977) and (1977-1978).

The revised short form application is slightly different than previous short form applications and you are advised that the only short form application that may be used is the revised form, sample of which is attached hereto. If you should have any of the A-13 or A-14 forms which were revised during the year 1974, you may use them in lieu of the new short form application if you so wish.

In other words, only the new revised (1-75) short form or the (1-74) long form are the only forms that may be used by applicants for licenses for the year 1975-76. We suggest that you destroy all other forms that may be in your possession.

I urge that all License Issuing Authorities take immediate steps to obtain a sufficient supply of the revised short form applications, A-13 and A-14 (1975), at the earliest possible moment, so that they may be available when the time comes for the renewal of licenses for the next fiscal year (1975-1976). You should also be sure that you have a sufficient supply of the long four (4) page form revised in 1974, which will be used in instances involving new licenses or transfers of licenses.

Your attention is also directed to the requirement that applicants submit applications in triplicate to the municipal clerk, with the State's fee of \$25.00 (in addition to the municipal fee), for which the clerk will acknowledge receipt on the renewal application form. The municipal clerk will then forward one copy of the application and the \$25.00 fee accompanying such application to this office, and the applicant will retain one copy of the application form, which will be kept available for inspection at the licensed premises, ATTACHED TO THE LAST LONG FORM APPLICATION.

LEONARD D. RONCO
DIRECTOR

Dated: January 7, 1975

APPLICATION FOR RENEWAL OF ALL MUNICIPAL RETAIL LICENSES EXCEPT CLUB LICENSE

NJABC A-13R(1-75)

(THIS SHORT FORM RENEWAL APPLICATION MUST BE PREPARED AT LEAST IN TRIPLICATE. ORIGINAL AND ONE COPY TO BE FILED WITH THE MUNICIPAL ISSUING AUTHORITY WITH FULL MUNICIPAL FEE AND ADDITIONAL FEE OF \$25.00 MADE PAYABLE TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL. THE THIRD COPY TO BE ATTACHED TO A COPY OF THE LAST PRIOR LONG FORM APPLICATION FOR LICENSE KEPT AT APPLICANT'S LICENSED PREMISES.)

RECEIPT IS ACKNOWLEDGED OF FILING FEE OF \$25.00 ON _____ TO BE FORWARDED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

(MUNICIPAL CLERK OR SECRETARY, MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL)

Date application filed _____ Fee Deposited \$ _____
Date granted or denied _____ License fee \$ _____
Date of Refund _____ Amount of refund \$ _____

(DO NOT WRITE ABOVE THIS LINE)

(NAME OF MUNICIPALITY)

Pursuant to R.S. Title 33, c. 1, the undersigned hereby makes application for renewal of _____
(License number)

1. Application of _____
2. Trade name, if any _____
3. If individual or partnership, state names and residences of each:

<u>NAME</u>	<u>RESIDENCE</u>

4. Address of licensed premises _____
(Number and Street)

Municipality _____ Post office address _____ Zip Code _____

5. Description of premises to be licensed:

- (a) How many buildings in whole or in part to be licensed? _____
- (b) Describe in detail the premises in such building or buildings which applicant wishes to be licensed (where alcoholic beverages will be sold, served or stored), stating whether the entire or only a portion of such building or buildings is to be licensed. If only a portion of any building is to be licensed, state the floor or floors (including basements) to be licensed, or if less than an entire floor is to be licensed, state the particular room or rooms on such floor which are to be licensed. If a diagram showing portions of a floor or floors to be licensed is submitted with this application, such fact should be stated herein.

- (c) Are any grounds adjacent to any such building to be licensed? Yes () No ()
If so, diagram showing the location of such grounds, with the dimensions in feet, must be submitted with the application.

6. State anticipated dates when Notice of Application will be published on or after date of filing of this application.

First Insertion _____ Second Insertion _____

Name of Newspaper _____ Where published _____

APPLICATION FOR RENEWAL OF CLUB LICENSE

(THIS SHORT FORM RENEWAL APPLICATION MUST BE PREPARED AT LEAST IN TRIPLICATE. ORIGINAL & ONE COPY TO BE FILED WITH THE MUNICIPAL ISSUING AUTHORITY WITH FULL MUNICIPAL FEE AND ADDITIONAL FEE OF \$25.00 MADE PAYABLE TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL. THE THIRD COPY TO BE ATTACHED TO A COPY OF THE LAST PRIOR LONG FORM APPLICATION FOR LICENSE KEPT AT THE APPLICANT'S LICENSED PREMISES.)

RECEIPT IS ACKNOWLEDGED OF FILING FEE OF \$25.00 ON _____ TO BE FORWARDED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL.

(MUNICIPAL CLERK OR SECRETARY, MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL)

Date application filed _____
Date granted or denied _____
Date of refund _____

Fee Deposited \$ _____
License Fee \$ _____
Amount of Refund \$ _____

(DO NOT WRITE ABOVE THIS LINE)

(NAME OF MUNICIPALITY)

Pursuant to R.S. Title 33, c. 1, the undersigned hereby makes application for renewal of _____ (License Number)

1. Application of _____ (Print Name of Club in Full)

2. Location of premises to be licensed:

Street and number _____

Municipality _____

Post Office address _____ ZIP CODE _____

3. Describe in detail building or buildings containing the premises to be licensed:

- (a) Type of construction _____
- (b) For what purpose used _____
- (c) If licensed premises are to include more than one building, state the number of such buildings and also state whether any unlicensed areas will intervene between the buildings _____

4. Will the entire building or buildings constitute the licensed premises?

- (a) If not, specify in detail the floors and rooms or area which WILL constitute the licensed premises (where alcoholic beverages will be sold, served or stored) _____
- (b) Will any grounds adjacent to the above premises constitute part of the licensed premises (where alcoholic beverages will be sold, served or stored)?
If so, attach diagram showing boundaries, in feet, of such grounds. _____

5. State anticipated dates when Notice of Application will be published on or after date of filing this application.

First Insertion _____ Second Insertion _____
Name of Newspaper _____ where published _____

6. Names and addresses of all officers:

<u>NAME</u>	<u>ADDRESS</u>	<u>TITLE</u>

7. Names and addresses of all members of the governing body of club such as directors, trustees, etc.:

<u>NAME</u>	<u>ADDRESS</u>	<u>TITLE</u>

8. Are the names of all members as of date of this application submitted herewith? _____

- 9. The person signing this application is authorized to, and does, represent that the club will abide by and comply with the provisions of R.S. Title 33, c. 1, and any rules and regulations promulgated heretofore and hereafter by the Director of the Division of Alcoholic Beverage Control pursuant thereto, and with the provisions of all duly enacted municipal ordinances and resolutions.
- 10. The person signing this application is authorized to, and does, consent on behalf of the club, that the licensed premises and all portions of the building containing same, including all rooms, cellars, out-buildings, passage-ways, closets, vaults, yards, attics, and every part of the structure of which the licensed premises are a part and all buildings used in connection therewith which are in its possession or under its control, may be inspected and searched without warrant at all hours by the Director of the Division of Alcoholic Beverage Control, the Director of the Division of Taxation, their duly authorized inspectors, investigators and agents and all other officers.
- 11. The applicant has examined each and every answer to the questions appearing in the applicant's last prior long form application (Form A-14) filed for the above license and does represent that no change in the facts set forth therein has occurred which has not been reported in writing to the issuing authority and the Director of the Division of Alcoholic Beverage Control, except as follows: (if no exceptions, so state. Attach rider if additional space required):

Dated: _____, 19__ . _____ (Name of Club)

Witness: _____ By: _____ (Title)

STATE OF)
COUNTY OF) ss.

_____, being duly sworn according to law, upon his oath deposes and says that he is _____ of the applicant, is duly authorized by the _____ of the applicant to sign said application in its name and in its behalf; that he read and fully understands all questions pertaining to such applicant, and that all the foregoing answers, statements and declarations made thereto are absolutely true in all respects.

(Signature of Affiant)

(Signature of officer administering oath)

(Title of such officer)

2. APPELLATE DECISIONS - PIASECKI v. JERSEY CITY.

Walter F. Piasecki t/a)
 Walter's Cafe,)
 Appellant,)
 v.)
 Municipal Board of Alcoholic)
 Beverage Control of the City)
 of Jersey City,)
 Respondent.)

On Appeal
 CONCLUSIONS
 AND
 ORDER

Lepis, Lepis & Kline, Esqs., by Norman L. Kline, Esq., Attorneys
 for Appellant.
 Dennis L. McGill, Esq., by Bernard Abrams, Esq., Attorney for
 Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from a thirty-day suspension of appellant's plenary retail consumption license imposed by respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) on July 2, 1974, effective August 28, 1974, following a determination that appellant had, on March 28, 1974, sold alcoholic beverages to two minors. The suspension imposed was stayed by the Director of this Division on July 26, 1974, pending the determination of this appeal.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15, based upon a petition of appeal which contended that the Board's action was erroneous and against the weight of the evidence. This contention was denied by the Board. Full opportunity was afforded the parties to introduce evidence and cross-examine witnesses.

The Board offered the testimony of two police officers, and of two minors who were twins, and whose date of birth was established to be November 5, 1956. The officers, Detective John Harnett and Lieutenant Dennis McCormack, both of the Jersey City Police Department, testified that they were in appellant's

premises on the evening of March 28, 1974. Both saw the minors, twin girls, at the bar drinking beer. They observed glasses and money in front of them. The minors, Nancy and Donna, both testified and admitted consuming beer, although the extent of their consumption was markedly less than that indicated by the officers.

Nancy admitted that on a prior occasion, she exhibited a fraudulent drivers permit which she allegedly found. She affirmed that she was asked to produce nothing further nor did she sign any statement relative to her identification and age of birth. Donna denied being served directly alleging that she drank from a friend's glass.

The bartender, Charles L. Stiles, testified that on the date alleged herein, he was the lone bartender in the premises, and this was his second working night. He stated he had on a previous occasion asked Nancy for proof of age and was then shown a birth certificate. He admitted that the instrument he had been shown was a driver's permit for one Kathleen Dolan, age nineteen. He denied any service to Donna. He admitted he served Nancy three glasses of beer.

The statute applicable to a sale to minors charge, N.J.S.A. 33:1-77, requires that the sale be made in reliance upon a written representation at the time of said service; that the appearance of the minor was such that an ordinary prudent person would believe her to be of age; and that the sale was made in good faith, relying upon the written representation, appearance and belief that the minor was of age.

Having observed both Nancy and Donna, it was readily apparent that a mere glance would suffice to cast serious doubts that either of them were of sufficient age. Additionally, the exhibition of a driver's permit alone is no substitute for such proofs. See special note with regard thereto, on page 89 of Division Rules and Regulations.

As the Director has emphasized:

"Licensees should be further admonished that failure to support their action with such supplementary data derived from the documentation relied upon, such as driver's registration number and the physical characteristics indicated thereon, lead to the inescapable conclusion that such reliance was not made in good faith."

Blazer's Delicatessen, Inc. v. Teaneck, Bulletin 2110 Item I.

I find that the licensee sold alcoholic beverages to the minors on March 28, 1974, as alleged in the said charge.

I, therefore, conclude that appellant has failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that an order be entered affirming the action of the Board, dismissing the appeal and fixing the effective dates for the suspension imposed by the Board and stayed by the Director pending the determination of this appeal.

Conclusions and Order

No exceptions to the Hearer's Report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's Report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of January 1975,

ORDERED that the action of respondent, Municipal Board of Alcoholic Beverage Control of the City of Jersey City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my Order of July 26, 1974 staying respondent's Order of suspension herein, pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-293 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Walter F. Piasecki, t/a Walter's Cafe for premises 1717 Kennedy Boulevard, Jersey City, be and the same is hereby suspended for thirty (30) days commencing at 2:00 a.m. on Tuesday, January 21, 1975 and terminating at 2:00 a.m. on Thursday, February 20, 1975.

Leonard D. Ronco
Director

3. APPELLATE DECISIONS - NICHOLS PARK, INC. v. MONROE TOWNSHIP.

Nichols Park, Inc. Key)	
Club,)	
)	
Appellant,)	On Appeal
)	
v.)	
)	CONCLUSIONS
Township Committee of the)	and
Township of Monroe,)	ORDER
)	
Respondent.)	

 Samuel G. De Simone, Esq., by P. Jeffrey Wintner, Esq., Attorney
 for Appellant
 Herman, Pearson, Dubler & Crass, Esqs., by William R. Pearson, Esq.,
 Attorneys for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein;

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Monroe (hereinafter Committee) which denied appellant's application for a club license. In its petition of appeal, appellant alleges that the Committee's action was erroneous because (1) appellant complied with all legal requirements; and (2) the grant of the license would have been in the best interests of the community.

The Committee, in its answer, denied the substantive allegations contained in the petition of appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

Certain stipulations and exhibits were offered in evidence which served to crystallize the factual aspect of this matter. The Committee, on April 3, 1974, adopted an ordinance which permitted it to issue club licenses to not more than four organizations that would qualify therefor, within the intendment of the applicable law and Division rules and regulations.

Applications were submitted by five organizations including appellant. By resolution, adopted on July 17, 1974, the Committee issued club licenses to four organizations, not including the appellant club.

I

In order to arrive at a determination herein it is necessary to cite the statute and the rules and regulation relevant thereto.

N.J.S.A. 33:1-12.5, in its pertinent part, reads as follows:

"Club licenses may be issued only to such corporations, associations and organizations as are operated for benevolent, charitable, fraternal, social, religious, recreational, athletic, or similar purposes, and not for private gain, and which comply with all conditions which may be imposed by the Commissioner [Director] of Alcoholic Beverage Control by rules and regulations."

Rule 1 of State Regulation No. 7 defines a "club" as "An organization, corporation or association consisting of sixty (60) or more persons operating solely for benevolent, charitable, fraternal, social, religious, recreational, athletic or similar purposes, and not for private gain." (Emphasis added)

Rule 6 of State Regulation No. 7 provides:

"No club license shall be issued to any corporation, association or organization unless all officers and members of the governing body qualify as individual applicants in all respects except as to residence or age or citizenship."

Rule 7 of State Regulation No. 7, in its pertinent part provides:

"A list containing the names and addresses of all members of the club as of date of filing a club license application shall be submitted together with the application....".

II

Not only was it stipulated, but also, in his testimony, Edward V. Nichols, the owner of the premises wherein the appellant club was located and the Chairman of its Board of Trustees, candidly admitted that he was convicted of a crime which involved moral turpitude. On March 8, 1962, Nichols was convicted of an ABC violation, was fined \$250.00 and placed on probation for one year. On April 7, 1972, he was convicted on a charge of income tax evasion, was fined \$1,000.00 and placed on probation for one year. It is also noted that the record of Nichols' convictions was properly disclosed in the application for a club license submitted by appellant.

Appellant cannot validly argue that the Committee's action was unreasonable or that it constituted an abuse of its discretionary power. Rule 6 of State Regulation No. 7 clearly prohibits the issuance of a club license to any organization unless all officers and members of its governing body would qualify as individual applicants.

It is apparent that Edward V. Nichols, Chairman of the club's Board of Trustees, the sole spokesman for the appellant at the appeal hearing held herein, owner of and who maintained his residence at the premises in which the club maintained its headquarters, and who appeared to be a dominant figure in the club's existence and activities was disqualified from holding any liquor license by reason of his record of convictions of crime. Since he could not personally qualify as an applicant, his disqualification mandates a denial of appellant's application.

In view of the above, I reject as totally unwarranted Nichols' assertion that the governing body's action was dictated by prejudice.

III

Although the reason expressed above is sufficient basis for affirming the Committee's action, I also find that the appellant failed to furnish proof that it had a membership of at least sixty persons as required by Rule 1 of State Regulation No. 7, set forth hereinabove.

IV

Finally, I observe that the records in this Division disclose that in a seizure hearing (Division Case No. 13,108), the Director, by Order dated November 20, 1974 found the appellant club guilty of permitting the sale of an alcoholic beverage on August 4, 1974 without a license or permit. Significantly, two members of the club who testified in its behalf and who identified themselves as trustees thereof, asserted that the club had a membership of "about fifty-six".

V

Accordingly, for the reasons stated above, I find that appellant has failed to sustain the burden of establishing that the action of the respondent issuing authority was erroneous and should be reversed. Rule 6 of State Regulation No. 15. Therefore, it is recommended that an order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed on behalf of the appellant, pursuant to Rule 14 of State Regulation No. 15.

In its exceptions, the appellant contends that, notwithstanding the fact that Nichols, the Chairman of its Board of Trustees was convicted of a crime involving moral turpitude, the appellant should not be "absolutely barred from obtaining the license." In support thereof he cites Paul et al v. Brass Rail Liquors, Inc., 31 N.J. Super. 211.

Appellant apparently misreads Paul because Paul does not involve the issuance of a club license, and is inapplicable to the issue herein. Paul was an action by purchasers against the seller seeking the return of a deposit made under a contract for the purchase of a retail liquor business. The court held, inter alia, that since the applicant's record, under the facts therein, "did not constitute an absolute disqualification of him as a licensee under R.S. 33:1-25", the denial of the license to him and the other plaintiff was "in the discretion of the Board".

In the instant matter Nichols is presently statutorily disqualified from holding a license under the aforementioned rule. Therefore, since Rule 6 of State Regulation No. 7 specifically prohibits the issuance of a club license to an organization unless all officers and members would qualify as individual applicants, the respondent could not validly approve appellant's application.

Furthermore, as Paul emphasizes, the issuance of the license rests in the sound discretion of the issuing authority and its action will not be disturbed in the abuse of discretion, N.J.S.A. 33:1-26. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 8 N.J. Super. 172. Cf. Blanck v. Magnolia, 38 N.J. 484 (1962). See also, Fanwood v. Rocco, 33 N.J. 404 (1960).

It is clear that, in selecting the four applicants for four available licenses, from the five applicants who applied, the respondent exercised its discretion circumspectly. The Director should not, absent clear abuse of discretion, substitute his judgment for that of the issuing authority. Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

I have considered all of the exceptions submitted by appellant, and find them lacking in merit.

Having carefully considered the entire matter herein, including the transcript of the testimony, the exhibits, the Hearer's report, and the written exceptions with respect thereto,

I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 8th day of January 1975,

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

LEONARD D. RONCO
DIRECTOR

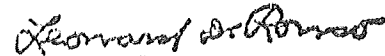
4. STATE LICENSES - NEW APPLICATIONS FILED.

Lobar Fine Foods, Inc.
300 North Alley
Trenton, New Jersey

Application filed February 7, 1975
for place-to-place transfer of
Limited Wholesale License WL-10
from 3128 Bridge Avenue, Point
Pleasant, New Jersey.

Boller Wine and Liquor, Inc.
4 St. Marks Street
Linden, New Jersey

Application filed February 14, 1975
for place-to-place transfer of
Plenary Wholesale License W-7 from
438-441 East Jersey Street,
Elizabeth, New Jersey.


Leonard D. Ronco
Director