

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

BULLETIN 1801

July 30, 1968

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1. APPELLATE DECISIONS - THE TRUSTEES OF THE ASBURY A.M.E. CHURCH
v. WILDWOOD and LIQUOR MART.

The Trustees of the Asbury)
A.M.E. Church, et als.,)
Appellants,) On Appeal
v.) CONCLUSIONS
Board of Commissioners of the) and
City of Wildwood, and Liquor)
Mart, a New Jersey Corp.,) ORDER
Respondent.)

-----)
Charles Henry James, Esq., Attorney for Appellants
Nathan C. Staller, Esq., Attorney for Respondent Board of
Commissioners
Morton I. Greenberg, Esq., Attorney for Respondent Liquor Mart

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal addresses itself to the action of the respondent Board of Commissioners of the City of Wildwood (hereinafter Board) whereby on October 24, 1967 it granted a person-to-person and place-to-place transfer of a plenary retail consumption license from Syl-Fran Associates Inc. to Liquor Mart, a New Jersey Corp., and from premises 3201-03-05 New Jersey Avenue to premises to be constructed at 4116-18-20 New Jersey Avenue, Wildwood, for the period expiring June 30, 1968.

The adopted resolution reads as follows:

"WHEREAS, application was filed with this Authority for the transfer of Plenary Retail Consumption License C-43 from Syl-Fran Associates, Inc., 3201-03-05 New Jersey Ave., Wildwood, N.J. to Liquor Mart, a New Jersey Corp. for premises to be constructed 4116-18-20 New Jersey Ave., Wildwood, N.J., and

"WHEREAS, the application was in good form, was accompanied by the proper fee and all other proofs required by law, and

"WHEREAS, three letters and petitions opposing transfer were filed with the Clerk, and public hearing was held on October 19, 1967, and

"WHEREAS, the Issuing Authority has given consideration to all comments, objections and circumstances regarding the application and in its discretion has determined that there is need and necessity for such license to be transferred.

"NOW THEREFORE, BE IT RESOLVED, by the Alcoholic Beverage License Issuing Authority of the City of Wildwood, in the County of Cape May, N.J. that Plenary Retail Consumption License C-43 be transferred to Liquor Mart, A New Jersey Corp. for premises 4116-18-20 New Jersey Ave., Wildwood, N.J. The effective date of transfer being October 24, 1967, subject to completion-of-premises and issuance of a certificate of occupancy by the Building Inspector."

The petition of appeal challenges the said action for reasons which may be briefly summarized as follows:

- (1) The site to which the license was transferred is within 200 feet of a church; thus the said transfer violates the pertinent law and statute;
- (2) There is no need or necessity for said transfer since the area is sufficiently serviced by other licenses;
- (3) The transfer would result in "deterioration of what is now a residential neighborhood;" would result in an increase in crime and juvenile delinquency; and it would also reduce property values;
- (4) The Board failed to "adhere to the proper order of proof" at the hearing before it. At that hearing the appellants produced seventeen witnesses who testified against the transfer, whereas no witnesses were produced on behalf of Liquor Mart;
- (5) The municipal Clerk "has an interest in the license owned by respondent, Liquor Mart, and therefore should have disqualified himself from receiving objections concerning this license."

Separate answers were filed by both the Board and Liquor Mart in which they deny the substantive allegations of the petition. Both answers further assert that the appellants "expressly admitted before the City Commission that the location of the license was not within two hundred feet of a house of worship, and admitted that the transfer was not in violation of the appropriate restriction with respect thereto." A statement of reasons for the grant of the transfer, in further elaboration of the said resolution which was offered in evidence, reads as follows:

"In addition to the fact that the application by Liquor Mart was in good form accompanied by the proper fee and other proofs required by law, other reasons for approving the transfer were that the premises were within the same zone of Highway and automotive Commercial designated as C-4 of the revised Zoning Ordinance of the City; that the area to which transfer was sought was a new business street recently taken over as a part of the County Road system by the Board of Chosen Freeholders of Cape May County, newly paved, well lighted and carrying a complete traffic signal

system and in the Master Plan of the City, will be considered as a major business street in the community; that there was public need and necessity to have such licensed premises, which, it is represented, will carry on the business of sale of alcoholic beverages in original containers for off premises consumption, the nearest such other exclusively package goods store being seven (7) city blocks to the South. Moreover, under the proposed Urban Redevelopment Program contemplated by the City, the present license is one of approximately 18 others in the area to be redeveloped, which number is to be reduced when the Urban Redevelopment program is completed over a five year period. In reducing the number of licenses, those to be cut out will have to be either transferred out of the area or purchased by the City and retired. In anticipation of this development and the reasons aforesaid, it was deemed, in the discretion of the local issuing authority, in the best interest of the City and the area to which this license was sought to be transferred, to approve the application and grant the transfer."

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

I

Two threshold issues were raised by the appellants - first, with respect to the conduct of the hearing held before the Board and, second, as to the statutory requirement prohibiting transfers within 200 feet of a church or school.

Appellants objected to the order of proof of the testimony offered before the Board. It appears that the Mayor directed the witnesses for the appellants testify before the Liquor Mart presented its case.

The manner and order of receiving evidence before a local Board is a matter entrusted to the local issuing authority so long as it comports with fairness and the right to be heard. It is quite evident that the Board gave full breadth to this principle and permitted all the witnesses who desired to express their views. Liquor Mart did not call any witnesses, and its position was advocated by its attorney. No prejudice is obviously manifested by this procedure, and the Board ultimately arrived at its determination at the conclusion of an extended public hearing. Having given the objectors the opportunity to present such objections, the Board has observed the traditional safeguard against arbitrary action or what Chief Justice Hughes has termed "the rudimentary safeguards of fair play." Morgan v. U.S., 298 U.S. 468, 56 S. Ct. 906 (1936). In any event, appellants have not been prejudiced since the action of the Board was subject to full review at this plenary de novo hearing. Cino v. Driscoll, 130 N.J.L. 535 (Sup. Ct. 1943); Neiden Bar and Grill v. Municipal Bd., etc., of Newark, 40 N.J. Super. 24 (App. Div. 1956); cf. Essex Co., etc., Stores Ass'n v. Newark, etc., Bev. Cont., 64 N.J. Super. 314.

In my consideration of this matter I have examined the entire record, including the testimony adduced before the Board, as well as the testimony taken at this plenary hearing.

The record also clearly indicates that the premises to which this license was transferred is more than two hundred feet from the nearest church, and this is indeed admitted by the appellants. Accordingly, appellants' contention with respect thereto is unsupportable and must be rejected.

II

The crucial assault on the action of the Board is rooted on the thesis that it was not based upon considerations of the public interest. We pause here to observe that this issue was rather emotional, which particularly aroused the parishioners of the Asbury A.M.E. Church as well as some neighborhood residents. Six witnesses gave sworn testimony before the Board and fourteen other witnesses who were not sworn offered brief statements. In addition, several of these witnesses also testified before me.

The testimony of Rev. William J. Faulkner seems to express the primary objections and may be summarized as follows: He objects to the grant of this transfer because the proposed site would be within a block-and-a-half of a public school and many of the students who go to the school would pass the corner where the store is located. The transfer would also "work against a religious program of the church itself" which is located diagonally across the street from where the entrance of the liquor store would be. Further, there have been several instances where drunken drivers caused assaults on local residents. It was his feeling that there was no need for another liquor store since this neighborhood already had "nine saloons or liquor dispensaries." He pointed out that there were fifty-two liquor licenses in the City of Wildwood to serve 5,000 citizens, although he admitted that the population of this community increases to over 100,000 during the summertime. He noted that, before the Board took action on this application, Mr. Baker (the City Clerk) visited him at his home and urged him to support the application on the ground that it would increase the value of real estate. He informed Baker that he could not do so, and would oppose such action. He expressed the apprehension that, although the applicant stated that he intended to operate a package store under its broad package privilege and did not contemplate operating a bar or a night club, Liquor Mart might, in the foreseeable future, expand this operation to include a bar or night club.

On cross examination this witness agreed that the site in question is zoned "commercial;" that the street has recently been repaved, and that there are now very bright lights on New Jersey Avenue. The witness also admitted that he is basically opposed to "liquor, period."

Rev. Edward E. Burkman, Sr. supplemented the testimony of Rev. Faulkner to the effect that the trustees of his church were unanimously opposed to this transfer because, in addition to the aforementioned reasons, this transfer would interfere with the efforts of the people of Wildwood to "lift themselves culturally, morally and spiritually to a higher plane;" that their views should be respected.

Frank H. Foster (a motel owner) also objected to this transfer because he was fearful that people who purchased whiskey would throw their empty bottles in the street. It was his experience during the past year that people purchased whiskey in the outlets in his area and would stand outside of the stores and drink.

Walter J. Cottman, Jr. (a recreation supervisor at the Woodbine Mental Retarded Institution), who worked as a special patrolman during the summer months, objected to this transfer because he felt that, with the addition of this outlet at this location, people will have further opportunity to buy more liquor.

Edward Baker (the City Clerk) testified that he is a major shareholder of New Homes Construction Company which owns the site to which this license was transferred. He submitted building plans and specifications to show that the building to be constructed on this site will house his own real estate office as well as several other commercial enterprises. He does not have any interest or connection, financially or otherwise, with Liquor Mart. His wife, who is an experienced operator, is a ninety-eight per cent. stockholder thereof, and is in full control of its operation.

Questioned about his activities as a City Clerk in so far as they related to the proceedings before the Board, he stated that he designates his Deputy Clerk to sit in at hearings at which applications for liquor licenses are entertained. His Deputy Clerk was actually present and so engaged at the time of the public hearing, but Baker was present at the meeting of October 24, 1967, when the resolution granting the application was passed. He did not participate in any of the discussions, and his acts were ministerial as required by law. Finally he added that the license of Liquor Mart is his wife's license, "her money and her license", and "her full intent and purpose" is to operate it "as a liquor store."

Respondent called several neighborhood residents, including an adjoining property owner, who testified that they have no objection to the location of this license at the new site. They also corroborated the earlier testimony that the site is in a growing commercial area and, as Earl Calloway, an experienced realtor stated, "the current trend in Wildwood through its urban renewal program has created much moving of the business area and the spreading of business along the main arteries." He noted that New Jersey Avenue is a commercial artery which contains, near the site, such businesses as a "miniature golf range course ... a motel", a drive-in ice cream store, hardware store. Further, there has not been any new home construction on New Jersey Avenue in the last five years.

Edward Baker was recalled by the respondent to add the following significant testimony. The site from which this license was transferred is in a so-called urban renewal development area. In that area there are presently fourteen liquor licenses. Eight of these, according to the plan, will remain where they are if they are a component part of a motel or restaurant. The others would have to be relocated outside of the urban renewal area to other locations in the municipality.

Molly Baker (president of Liquor Mart) testified that she had had experience as an operator of a package liquor store and intends to be in active management of this business. She felt that there was need for a liquor store at the contemplated site because it was a growing business area on a main thoroughfare.

Mayor Ralph G. James articulated the reasons which motivated his vote in favor of the said transfer. He explained that New Jersey Avenue had been improved because it was being developed as one of the leading thoroughfares in that municipality; it has now become a county road. "We had in mind that the City should

receive upwards to ten million dollars worth of ratables on this street within the next five, ten years." The street was widened, well illuminated, and is "the most modern street in South Jersey today." The former location of this license, he continued, was about five blocks from the new location, in a proposed urban renewal area which contained about fifteen licenses. Some of these licenses had to be relocated, and such action would "eliminate a lot of problems in the future;" that, further, in so far as the economy is concerned, the relocation of this license would be an asset to this street. He pointed out that the closest package liquor store was about eight blocks from the new site and, in his opinion, the transfer would serve the best interests of the community.

With respect to his consideration of the application, he insisted that, while he knew that the Clerk was the principal stockholder of the corporation which owned the site, the application merely stated that a corporation was the holder of the license. Further, he did not discuss this matter with Baker at any time prior to his vote on the transfer. He concluded by saying that it was his understanding that this license would be operated solely as a package liquor store and not as a bar or a night club.

In considering the facts and circumstances herein and the contentions raised in the pleadings, it would be helpful to restate the basic principles applicable thereto. No one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949). The decision as to whether or not a license shall be issued rests within the sound discretion of the local issuing authority in the first instance. However, its action is subject to appeal to the Director of the Division of Alcoholic Beverage Control. On such appeal the Director conducts a de novo hearing 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. Fanwood v. Rocco, 33 N.J. 404, pp. 414, 415.

The question in every case is whether a reasonable man, acting reasonably, could have reached the administrative agency decision under review, from the evidence found in the entire record, including the inferences to be drawn therefrom, Cooley's, etc., Foundation for Children, Inc. v. Legalized Games, Etc., Comm'n, 78 N.J. Super. 128, 140 (App. Div. 1963), certification denied 40 N.J. 212 (1963); Hightstown v. Hedy's Bar, 86 N.J. Super. 561, 563 (App. Div. 1965).

In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco, 59 N.J. Super. 306, 322, the following general principles were stated:

"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 application 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)."

In the Fanwood case, supra, it was stated at p. 321:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfer thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board 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 Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L., at page 511."

As Mr. Justice Jacobs pointed out in Fanwood v. Rocco, 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 a tavern or package store 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 determination on the record before him Under his 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."

Thus, the Director must determine whether or not the Board properly and reasonably exercised its discretion in approving Liquor Mart's application for the said transfer. Discretion must be based on right judgment, governed by reason fair and suitable in the circumstances. 75 C.J.S. 634, and cases therein cited. As the court pointed out in Blanck v. Magnolia, 38 N.J. 484, 491:

"The test in the establishment and issuance of liquor licenses is whether the public good requires it."

My examination and assessment of the entire record persuade me that the Board acted reasonably in the public interest in granting Liquor Mart's application. The Board took into consideration the fact that the transfer was to be made to a site in a newly developed and developing commercial area; that the proposed urban renewal area had too many licenses, some of which had to be transferred in the best interests of the community to other areas; and that the proposed site was a suitable site for such transfer. The Mayor pointed out that the City could benefit from the development of this area through increased ratables and that there were no other similar package liquor stores within eight blocks from that site. The Board further took into consideration the unquestioned good character of the officers of Liquor Mart.

I was impressed with the sincerity and conviction of witnesses who testified on behalf of the appellants, particularly of

the ministers who testified that they were opposed generally to the dispensing of liquor in any form. While such expressions give sustenance to their religious and moral beliefs, they are quite irrelevant to the determination on this appeal.

Another critical objection is grounded in the apprehension that the Liquor Mart, despite its present representation and intention to operate a package liquor store, will in the future expand its operation to include a bar and perhaps even a night club. Such expansion would, of course, involve the potential of loud noises during the night and nuisances often occasioned by such operations. It must be assumed, however, that this facility will be operated in accordance with the present representation and understanding. It must be further assumed that Liquor Mart will conduct its premises in an orderly manner.

A well-ordered management of a package liquor store on this commercial artery is, in my opinion, not likely to attract drunkards, create noises or promote the objectionable conditions to which the appellants' witnesses have alluded. I am mindful particularly of the fact that such facility, under the law, is required to discontinue sales at 10 p.m. and on Sundays, so that there would be a minimal interference, if any, with the church activities.

There has been no affirmative showing that the establishment of this facility at the new site would reduce property values; the contrary, the feeling of the Board was that the introduction of this facility, together with other commercial units, would substantially increase the ratables and in other respects serve the public interests. I might add that the contention that this facility would increase crime and juvenile delinquency in this area is wholly without foundation and is palpably absurd.

Petitions were introduced into evidence on behalf of the appellants at this plenary de novo hearing which contained a list of objectors to the said transfer. Petitions are always influential and persuasive. However, the mere counting of noses cannot serve as a substitute for the considered determination of the Board in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Dunster v. Bernards, Bulletin 99, Item 1; Cunningham and Drew v. Vernon et al., Bulletin 1737, Item 2. In this connection it is significant to note that the petition contained the following paragraph:

"1. That the location of a retail liquor store in the block above mentioned would be in violation of the letter and spirit our City Ordinance _____, which forbids the location of such a dispensary within 200 feet of an established house of divine worship. The Asbury A.M.E. Church is located across the street, on premises running 100 feet South from the S.E. corner of New Jersey and Young's Avenue"

This is an obvious misstatement since the said church is more than two hundred feet distant from the site. Thus the effect of the petition is diluted by such misstatement since it is impossible to ascertain how many of the petitioners signed the same upon such misrepresentation.

I therefore conclude under all of the facts herein that the action of the Board was not clearly against the logic and effect of the presented facts. Hudson Bergen, &c., Assn. v. Hoboken, 135 N.J.L. 502. Indeed, in my opinion the Board understood its full responsibility and acted circumspectly and in the reasonable exercise of its discretion in said action.

III

Finally, appellants contend that "The Municipal Clerk of the City of Wildwood, Edward Baker, has an interest in the license owned by respondent, Liquor Mart, and therefore he should have disqualified himself from receiving objections concerning this license." In the memorandum submitted in summation, counsel for the appellants argues, additionally, that, since the Clerk has a major interest in the stock of the corporation which is the record owner of the land on which this license was sought to be located and "in the license itself", there was a conflict of interest which requires a reversal of the action of the Board. The record, however, clearly establishes that Baker has no interest in the corporate licensee although he is a major stockholder in the corporation which owns the site.

The general rule is that municipal officials are fiduciaries and trustees of the public interest and they must demonstrate not only in fact but also in deed an exclusive loyalty to the community they serve and a judgment in municipal matters which is unfettered by anything which might redound to their interest as individuals. Driscoll v. Burlington-Bristol Bridge Co., 10 N.J. Super. 545, 567 (Ch. Div. 1950), modified 8 N.J. 433, 474-75 (1952).

The question of self-interest on the part of municipal officials was fully explored, and an analysis of the cases was set forth at length in LaRue v. East Brunswick et al., 68 N.J. Super. 435, 448 (App. Div. 1961). LaRue examined prior cases in which the temptation to act in prejudiced fashion was so strong that, even in the absence of proof of actual prejudice, the legislative actions were set aside as a matter of principle. Thus, in Ames v. Montclair, 97 N.J. Eq. 60 (Ch. 1925), a sale of board of education to the son of one of the board members was held unenforceable in equity. In Pyatt v. Mayor and Council of Dunellen, 9 N.J. 548 (1952), zoning ordinances were set aside where deciding council votes were cast by employees of company principally benefiting by the enactments. In Aldom v. Roseland, 42 N.J. Super. 495 (App. Div. 1956), a zoning ordinance was held voidable due to the participation in its passage by a councilman whose employer stood to benefit therefrom. And in Griggs v. Princeton Borough, 33 N.J. 207 (1960), the borough council's designation of area owned in large part by Princeton University (as principal stock and bondholder of municipal improvement corporation) as "blighted area" was held invalid where two of the voting councilmen were professors at the university.

Said the court (68 N.J. Super. at p.449):

"These holdings merely reflect a judicial understanding of human nature: faced with the opportunity to further his own interests, or with a sharply drawn conflict between his own interests and the public welfare, an individual may, if continually tempted, at some point be swayed, to the detriment of the public"

The court in LaRue held that, absent a showing of fraud, personal interest or corruption, an authorized legislative enactment by a properly empowered municipal body is not subject to attack merely on the ground that the motive of the governing body was questionable.

As was decided in Aldom v. Borough of Roseland, supra, the question will always be whether the circumstances could reasonably be interpreted to show such direct interest as would cause him to depart from his sworn duty. No comparable temptation as delineated in the above cases exists in this matter.

There is no contention herein that members of the Board gained either directly or indirectly from their action herein. Appellants merely advocate that the Clerk stood in a position to influence them because of his relationship as a Clerk and thus they were disqualified.

In support of this thesis appellants cite the case of Scott v. Town of Bloomfield, 94 N.J. Super. 592, where the court voided the action of a Town Council in granting a lease of municipal lands to a boys club on the ground that the clerk (as well as the Mayor) was a director of the boys club and attended a conference meeting of the Town Council in October, and spoke at a meeting in November 1965, at which "at all times" he urged the grant of a lease to the said club. The court there drew on his own experience as a former municipal attorney and councilman in observing that a clerk is called upon by the members of a governing body which in most cases result in a spirit of camaraderie. The court stated that the clerk's "position of interest and his presence and actions tainted the action of the Town Council because of the conflicting interest of the Municipal Clerk." It should be noted that this was a decision in the Superior Court, Law Division, by a County Court Judge temporarily assigned.

I do not consider that Scott is comparable to or dispositive of the situation sub judice. Here the Clerk was acting in his ministerial capacity; received objections in that capacity, and performed the duties lawfully assigned to him under State Regulation No. 6. Unlike Scott, he did not participate in any of the deliberations nor did he express any point of view or try to influence the members of the Board. Indeed, Mayor James testified that he never discussed this matter with the Clerk prior to the vote on this application. (Commissioner Maxwell, who cast the other vote in favor of the grant of the said application, did not testify at the appeal hearing since he was hospitalized; he has since become deceased.)

Furthermore, the Clerk is not in a position to influence the Board; he is an employee of the City. He has no vote and there is no affirmative evidence to show that he asserted any kind of influence, or that he acted in a manner other than required under the mandate of his office.

Finally, it is significant to note that the decision to transfer was by a split vote (two to one) which would indicate quite clearly that the Board acted unbiasedly in accordance with its conscience and without any improper motivation. Hence this contention is unmeritorious.

After reviewing the entire record and the argument of counsel as presented in the memoranda submitted in summation, I conclude that the appellants have failed to sustain the burden of

establishing that the action of the Board was erroneous, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

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

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written memoranda of counsel in summation, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 14th day of May, 1968,

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

JOSEPH M. KEEGAN
DIRECTOR

2. SEIZURE - FORFEITURE PROCEEDINGS - SPEAKEASY ON FISHING BOAT, AND AT MARINA - CLAIM OF OWNER REJECTED - SUMS DEPOSITED ON STIPULATIONS REPRESENTING RETAIL VALUE OF PERSONAL PROPERTY, AND SEIZED ALCOHOLIC BEVERAGES AND CASH ORDERED FORFEITED.

No. 11,947)
In the Matter of the Seizure)
on August 13, 1967 of a quantity)
of alcoholic beverages, \$23.03)
in cash, and a fishing boat,)
"Sea Cloud", at the Bivalve)
Marina, Shell Road Extension,)
Bivalve, Commercial Township,)
County of Cumberland and State)
of New Jersey,)

and)

On Hearing)

No. 11,948)
In the Matter of the Seizure)
on August 13, 1967 of a quantity)
of alcoholic beverages, \$28.92)
in cash, various fixtures,)
furnishings, equipment, and food-)
stuffs in a two-story frame)
building, Bivalve Marina, Shell)
Road Extension, Bivalve, Commercial)
Township, County of Cumberland and)
State of New Jersey.)

CONCLUSIONS)

and)

ORDER)

-----)
Edward C. Batemen, Pro Se.)

I. Edward Amada, Esq., Appearing for the Division of Alcoholic)
Beverage Control)

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

These two matters are interrelated, involve the same persons and the same claimant, and will be the subject of a single Hearer's report. These matters came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28, and, further, pursuant to two stipulations, each dated November 17, 1967, signed by Edward C. Bateman, to determine whether 41 bottles of beer, 24 bottles of soda and \$23.03 in cash, seized on August 13, 1967 on a fishing boat known and designated as "Sea Cloud" at the Bivalve Marina, Shell Road Extension, Bivalve, Commercial Township, New Jersey (Case No. 11,947) and 446 bottles of alcoholic beverages, one juke box, one refrigerator, one coca-cola vending machine, one pepsi cooler, various furniture, fixtures, foodstuffs and miscellaneous personal property and \$28.92 in cash, seized on August 13, 1967 in a two-story frame building at the Bivalve Marina, Shell Road Extension, Bivalve, Commercial Township, New Jersey (Case No. 11,948), all of which were set forth in inventories hereinafter referred to, attached hereto and marked Schedule "A" and "B", constitute unlawful property and should be forfeited; and, further, to determine whether the sums of \$1,000.00 and \$200.00, deposited under protest by Edward C. Bateman, under stipulations, with the Director, representing the appraised retail value of the "Sea Cloud" and the retail value of a pool table, set forth separately in the aforesaid stipulation, should be forfeited, or returned to him.

The seizures were made by ABC agents because of alleged unlawful sales of alcoholic beverages on the said fishing boat, and at a speakeasy conducted in the above-described two-story frame building. At the said hearing, Edward C. Bateman appeared pro se and sought return of the sums, deposited under the said stipulations, and the balance of the personal property seized.

The file of this Division was admitted into evidence with the consent of the said claimant and contained the affidavit of mailing, affidavit of publication, the inventories, the original stipulations, the copies of the cash receipts, the chemist's report, the "marked" money and the record of the "marked" bills, all of which are part of the file. The said Division file, which contains the reports of the ABC agents and other documents established the following: At about 8:30 on August 13, 1967, two ABC agents proceeded to the Bivalve Marina, where they observed the "Sea Cloud", a 55 foot wooden fishing boat docked at the said Marina. Discussing arrangements with Bateman for a fishing party, they were advised by Bateman that he could accommodate two more parties and that the fare was \$8.00 per person. Upon paying \$16.00 to a third party who acted as a collector, they boarded the boat.

The party on the boat consisted of eight males and one female, in addition to the two agents. Shortly after leaving the dock, the agents observed some of the male members consuming beer. The beer was taken from a wooden box filled with ice.

The agents then asked Bateman who owned the beer and Bateman said, "Just take 1 and pay Captain Ed." Thereupon, the agents helped themselves to the beer on three separate occasions and paid Bateman for them with a "marked" \$1.00 bill on each occasion. The price charged for each bottle was 35¢.

During the course of the fishing trip, the agents observed Bateman serving bottles of beer to the other passengers and accepting payment from them, which he placed in a cigar box located in the pilot house of the boat. At about 2:30 P.M., the boat returned to the dock, following which the agents asked Bateman for two bottles of beer. Bateman handed them the two bottles, removed the caps and accepted payment of a "marked" \$1.00 bill, which he similarly placed in a cigar box, and returned change to the agents.

Emerging from the boat, the passengers, followed by the ABC agents, went to the Bivalve Marina by means of a side staircase, and they approached the screen door which was opened by means of a buzzer by a male, later identified as Edward Cox. Cox, who acted as bartender at these premises, served beer to the patrons and to the agents; the agents paid for their purchases with "marked" money.

Bateman was present during the course of these transactions, and assisted Cox in selling beer to approximately 30 patrons.

Bateman then left the premises for a few minutes and upon returning announced, "The police are here" and requested that the patrons remove their money from the bar. Cox came from behind the bar, discarded his apron, and forthwith removed the monies from a cigar box underneath the bar and put it in his pocket. Upon confrontation, Cox emptied his pockets and a "marked" \$5.00 bill which had previously been given to him by one of the agents, was found in his possession. An examination of the box

revealed another \$1.00 bill which Cox had apparently overlooked.)

Immediately thereafter, the agents returned to the "Sea Cloud", seized the property and found the metal box containing the \$1.00 bills in the pilot house of the boat together with other monies, totalling \$28.92.

Bateman was thereupon arrested and charged with the sale and possession of alcoholic beverages contrary to R.S. 33:1-2 and in violation of R.S. 33:1-50. Cox was also arrested, charged with the sale of alcoholic beverages without a license in violation of R.S. 33:1-2. They were released in bail for arraignment in the Commercial Township Municipal Court.

Bateman thereafter obtained release of the boat and a pool table by depositing with the Director under the aforementioned stipulations the sums as set forth hereinabove.

Samples of the contents of several bottles of beer taken in these places were analyzed by the Division chemist who established that they were alcoholic beverage; fit for beverage purposes with an alcoholic content volume of 5.92%.

The records of this Division do not disclose any license or permit authorizing the sale of alcoholic beverages to Bateman or Cox or for the premises where the violations took place. The seized alcoholic beverages are illicit because they were intended for sale without a license. R.S. 33:1-1(i). Such illicit alcoholic beverages, the personal property and the commingled cash as set forth in Schedule "A" and "B" herein constitute unlawful property and are subject to forfeiture. R.S. 33:1-2; R.S. 33:1-66; Seizure Case No. 11,860, Bulletin 1749, Item 5; Seizure Case No. 11,909, Bulletin 1779, Item 6.

Edward C. Bateman, testifying in support of his claim for the return of the monies deposited under the aforementioned stipulation and the balance of the personal property, stated that he felt that the \$1,000.00 placed on deposit should be returned to him because he was in debt, and this money would enable him to pay off an existing loan.

With respect to the pool table, he admitted that he deposited his own money "...to protect the man that owned it". He explained that the pool table was owned by a Foames Perry who lived in Millville but he did not know his exact address. Further, he admits that he informed Perry that the table had been seized and that he had deposited money under a stipulation for its return. Perry did not appear at this hearing or enter a claim for the return of the said property.

It is significant, however, that Bateman did not deny the unlawful possession and sale of alcoholic beverages as hereinabove delineated and alleged.

In the absence of such denial or any evidence to establish good faith or unknowing violation of the provisions of the applicable statute, it must be inevitably concluded that, under the proofs herein, the said alcoholic beverages are illicit because they were intended for sale without a license. The alcoholic beverages, the personal property and the commingled cash as set forth in Schedule "A" and "B" constitute unlawful property.

Accordingly, it is recommended that the claim of Edward C. Bateman for the return of the said property in both matters be

rejected; that the claimant's application for the return of the deposits as set forth hereinabove, be denied; and that an Order be entered forfeiting the said deposits posted with the Director under the aforementioned stipulations signed by Bateman; and that the balance of the personal property, alcoholic beverages and cash be similarly forfeited. Seizure Case No. 11,909, supra; Seizure Case No. 11,164, Bulletin 1565, Item 5; R.S. 33:1-2; R.S. 33:1-66.

Conclusions and Order

No exceptions were taken to the Hearer's report pursuant to Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances recited in the Hearer's report, I concur in the recommended conclusions, and adopt them as my conclusions herein.

Accordingly, it is on this 15th day of May, 1968

DETERMINED and ORDERED that the sum of \$1,000.00 deposited by Edward C. Bateman in Seizure Case No. 11,947, representing the appraised retail value of a fishing boat known and designated as "Sea Cloud" which was returned to the said Edward C. Bateman, and the sum of \$200.00 in Seizure Case No. 11,948, representing the appraised retail value of certain fixtures, furnishings, food-stuffs and miscellaneous personal property, which were returned to the said Edward C. Bateman, both of which sums were paid under protest to the Director of the Division of Alcoholic Beverage Control, under two stipulations, as hereinabove set forth, be and the same are hereby forfeited in accordance with the provisions of R.S. 33:1-66, to be accounted for in accordance with law; and it is further

DETERMINED and ORDERED that the sum of \$23.03 as set forth in Schedule "A" (as to Seizure Case No. 11,947) and the sum of \$28.92 as set forth in Schedule "B" (as to Seizure Case No. 11,947), be and the same are hereby forfeited; and it is further

DETERMINED and ORDERED that the balance of the personal property, including the alcoholic beverages referred to in Schedules A and B, attached hereto, constitute unlawful property in accordance with the provisions of R.S. 33:1-66, and shall be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

JOSEPH M. KEEGAN
DIRECTOR

SCHEDULE "A"

- 1 - fishing boat known and designated as "Sea Cloud"
- 41 - bottles of beer
- 24 - bottles of soda
- \$23.03 - cash

SCHEDULE "B"

- 446 - bottles of alcoholic beverages;
- 1 - juke box; 1 refrigerator;
- 1 coca cola vending machine;
- 1 Pepsi cooler; miscellaneous furniture and fixtures and miscellaneous personal property; bottles of soda;
- \$28.92 - cash

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

BRADLEY LANES, INC.)
t/a Americana Lanes)
309 N. Delsea Drive)
Deptford, New Jersey)

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consumption License C-9 issued by the Township Committee of the Township of Deptford)

Licensee, by G.A. Walker, Vice-President, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 22, 1968, it sold drinks of beer to two minors, ages 18 and 20, in violation of Rule 1 of State Regulation No. 20.

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. Re Maione, Bulletin 1682, Item 6.

Accordingly, it is, on this 21st day of May, 1968,

ORDERED that Plenary Retail Consumption License C-9, issued by the Township Committee of the Township of Deptford to Bradley Lanes, Inc., t/a Americana Lanes, for premises 309 N. Delsea Drive, Deptford, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Tuesday, May 28, 1968, and terminating at 2:00 a.m. Friday, June 7, 1968.

JOSEPH M. KEEGAN
DIRECTOR

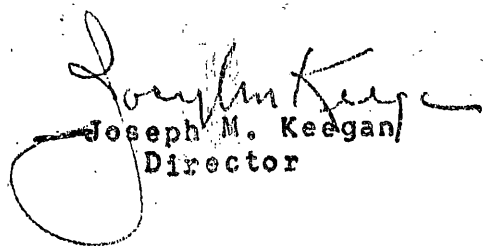
4. STATE LICENSES - NEW APPLICATIONS FILED.

South Jersey Distributors, Inc.
313-15-17 N. Tennessee Avenue
Atlantic City, N. J.

Application filed July 26, 1968 for person-to-person transfer of Limited Wholesale License WL-1 and Additional Warehouse License AW-45 covering premises at 301 New York Avenue (rear) & 303 New York Avenue (rear), North Wildwood, New Jersey, from A. Louis Schlesinger, t/a South Jersey Distributors.

Chester Helman,
t/a Pinebelt Beverage Co.
2305 Highway #9, Howell Township
PO Lakewood, New Jersey

Application filed July 29, 1968 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-30 from Louis Cohen, Inc., Route 130, E. Windsor Twp., N. J.



Joseph M. Keegan
Director