Mr. Gossweiler

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

February 17, 1960.

BULLETIN 1325

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BULLETIN 1325

1. COURT DECISIONS - LUBLINER AND CONGREGATION LENATH HAZEDIC v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, HUTCHINS AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

Morris Lubliner and Congregation
Lenath Hazedic,

Appellants-Appellants,

vs.

Board of Alcoholic Beverage Control
for the City of Paterson and Augustus
Hutchins, t/a Hutch's Tavern, and
Division of Alcoholic Beverage Control,
Department of Law and Public Safety,
State of New Jersey,

Respondents-Respondents.

Argued November 24, 1959--Decided February 4, 1960.

Before Judges Price, Gaulkin and Sullivan.

Mr. Louis Schwartz argued the cause for the appellants (Schwartz & Schwartz, Attorneys).

Mr. John E. Selser argued the cause for the respondent, Augustus Hutchins (Mr. Charles Turndorf, Attorney; Mr. Gary O. Turndorf, on the brief).

Mr. William J. Rosenberg argued the cause for the respondent, Board of Alcoholic Beverage Control for the City of Paterson (Mr. Harry Smith, Attorney).

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for the respondent, Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General).

The opinion of the court was delivered by

GAULKIN, J. A. D.

Paterson's three-man Board of Alcoholic Beverage Control granted a place to place transfer to "Hutch's Tavern" by a 2 to 1 vote. Upon appeal the Director of the Division of Alcoholic Beverage Control affirmed. Appellants ask us to reverse.

Appellants' first point is that "the Director of the Division should have reversed the local A. B. C. Board on the principle of *res judicata*." The discussion of that point will provide the

factual background necessary for the disposition of the remaining grounds urged for reversal.

Hutch's Tavern has been located in rented premises at 34 Straight Street, Paterson since prior to 1947. The licensee, Augustus Hutchins, purchased a building at 39 Carroll Street, Paterson and in 1947 applied for a place to place transfer of the tavern to that address. There was strong opposition and after a hearing the application was denied. Hutchins appealed to the Director, who affirmed. In his "Conclusions and Order", dated May 16, 1947, the Director said:

> "At the hearing on appeal it was established that the premises sought to be licensed are situated in a mixed residential and business neighborhood. The determination of the question as to the number of licensed premises which should be permitted in any such neighborhood is a matter confided to the sound discretion of the issuing authority....In the instant case there appear to be seven licensed premises within the immediate neighborhood, with many residents in protest voicing their objections at the hearing before respondent and again on appeal. In addition written objection to the transfer was filed by the Principal and Parent Teachers Association of nearby School No. 6, and a petition bearing the names of 408 residents of the neighborhood objecting to the transfer was also filed with respondent. The reasons advanced by respondent are certainly valid, were based on facts existing, and indicate that the vicinity is already adequately supplied with licensed premises. By the same token, there is an absence of any compelling evidence of public necessity for an additional licensed premises in the neighborhood and, consequently, the action of respondent cannot be deemed arbitrary and capricious...."

Hutchins again made application for the transfer in 1948, in 1950 and in 1951. The local board denied each application but Hutchins took no appeal.

In 1953 Hutchins applied for the fifth time. This time the local board approved the application by a 2 to 1 vote, the affirmative votes being cast by new members of the board. The member who cast the dissenting vote had been on the board before 1947, and always opposed the transfer.

The objectors appealed the 1953 approval to the Director of Alcoholic Beverage Control, who reversed. In his opinion, filed June 18, 1954, the Director said:

> "Proper liquor control dictates that, in considering successive applications, an issuing authority should not be permitted to 'back and fill' without sound reason for its action. The above principle is subject to the general rule that no governing body may tie the hands of its successors in matters involving the exercise of discretion. Northend Tavern, Inc. v Northvale, et al., Bulletin 493, Item 5.
>
> ...The two members who voted in favor of the transfer gave as their reasons that respondent licensee had a good record and that a liquor license to be used in

conjunction with a restaurant would serve the convenience of people of the licensee's race at the proposed location.

It appears from the prior appeals that the section of the City in which 39-41 Carroll Street is located is already adequately supplied with licensed premises. The same factual situation exists at the present time. This is the fifth application made for the same transfer with no material change in the facts. The petition opposing the transfer was signed by four hundred people, and a number of people opposed the transfer at the hearing held below. The testimony at all prior hearings was made part of the record herein. No real public need for a license at the new premises has been established. Under all the circumstances, I conclude that respondent Board abused its discretion and acted in an unreasonable manner in granting this application for transfer. I shall reverse the action of respondent Board."

In 1958 the sixth and present application for the transfer was filed. A hearing was held thereon in which the applicant and the objectors were again represented by counsel. The board (which now consisted of three new members, all appointed after 1954) reserved decision, stating that its members would inspect the neighborhood. On January 14, 1959 the board granted the application, again by a 2 to 1 vote. The objectors again appealed to the Director, who this time affirmed. It is from that affirmance that this appeal is taken.

The basic reason advanced by Hutchins in support of each of his six applications has been essentially the same. It is that Paterson does not have a high class restaurant for colored people, and one is needed because of the large colored population. Hutchins proposes to fill that need at 39 Carroll Street but he says that such a restaurant without a bar is not economically feasible. His present location, where he is only a tenant, is too small to contain such a restaurant. Therefore, he asks leave to move to the building at 39 Carroll Street which he purchased for that purpose.

Among the objectors were the principal of the nearest public school, who wrote that she believed "such a place of business which many of our children will have to pass, can expose our children to unncessary problems..."; the minister of a nearby church, who wrote that in his opinion it would "increase the congestion and delinquency that is already realized to an excessive degree in the area"; and the appellant Congregation, which wrote "that many of the elderly members...go to the synogogue three times a day to worship. They will suffer indignities if confronted by persons who loiter about a tavern." Appellant Lubliner stated at the hearing "that he resided in the area and was the principal of the Workmen's Circle School, at 22 Carroll Street, and...was opposed to the transfer to the proposed premises as the parents of the school children would object to their children passing the tavern several times a day."

Another minister, Rev. F. D. Bellamy, pastor of a church which had been established within 200 feet of the proposed location after the Director's 1954 decision, stated that he had "signed a waiver for Mr. Hutchins on the promise that Mr. Hutchins would assist him in securing a new church building." The validity of this waiver has not been challenged by the appellants, so we express no opinion on it.

It was not disputed that Hutchins' reputation has always been good, his tavern peaceful and his patrons well behaved. It is also not denied that the area about 39 Carroll Street is predominantly

colored, although the degree to which this is so is not admitted. Francis A. Hutchins testified that it was 85% in 1958 as compared to 60% in 1953.

On the last appeal before the Division appellants called only one witness, who testified that the number and location of the licenses in the area of 39 Carroll Street were unchanged (with one minor exception) since 1953; introduced in evidence certain maps and the records of the proceedings before the local board on the 1953 and 1958 applications (including the petitions and letters received by the local board); obtained a stipulation that "the previous proceedings in this Division so far as they are pertinent are to be referred to by the Director"; and then rested.

On June 16, 1959 the Director, adopting the opinion of the Hearer, affirmed the granting of the transfer. The opinion said:

> "When denying the 1954 appeal, the Director in his decision, while recognizing that new members of the Board (as here) when exercising their discretion were not bound by the action of their predecessors on the Board, concluded that, nevertheless...four successive denials, based upon the oft repeated similar objections, had gathered such impetus that the mere opinion of the new Board that transfer of the license was in the public interest seemingly could not overcome the previous opinions to the contrary and, thus, their action was reversed even though the burden had shifted and rested on the appellant to establish that the grant of the transfer by the Board was erroneous. Cf. Protos v. Newark, & O'Neal, Bulletin 809, Item 5.
>
> At the hearing before the local issuing authority on the present application, the evidence presented for and against the granting of the transfer was in large measure similar to that presented on the previous applications. The three commissioners personally inspected the area. They expressed concern over the lack of present parking facilities and received assurance that such facilities would be provided. One of the commissioners then stated: 'We are concerned with the condition of the neighborhood as we found it during our inspection. I think the area would be improved if Mr. Hutchins were to conduct a high class type of tavern and restaurant.' This commissioner then offered the resolution granting the application conditioned upon the completion of the proposed alterations of the premises. Another commissioner then stated: 'I will not second the motion for approval. This neighborhood does not require another tavern. I would suggest that he put a restaurant in there first if that is what he wants to run. That neighborhood can't support a high class restaurant * * *.' The resolution was then adopted by a two-to-one vote."

Then the opinion states the respects in which the Hearer found the evidence to be different from that before the Director when the 1954 opinion was written:

> "At the present hearing on appeal, the location of the liquor licenses in the area was indicated in a sketch. It appears that the nearest tavern to the proposed location is distant 1040 feet, with other taverns being at greater distance and that there are

three package store licenses distant 100, 300 and 1000 feet, respectively, from such location. Evidence has been presented by a person familiar with the neighborhood that, from casual observation, there has been, since 1954, a larger percentage of persons of applicant's race residing in the area. The applicant caused an investigation to be made which he maintains discloses that school children are a minor problem so far as relates to the location of his tavern at the premises."

The opinion then decided the question of res judicata as follows:

"It is interesting to note that in Auerbach v. Newark et als, Bulletin 1178, Item 1, it appears that a previous application for transfer of a 'C' license to the area was denied by the local issuing authority and such denial affirmed on appeal by the Director on the ground that such location was too close to a school and a public housing project and there was a considerable number of liquor outlets available in the vicinity to supply the needs of the neighborhood; and that the Director came to a similar conclusion on application to transfer a state beverage distributor's license to the area (although later such application was granted). On this basis, the Hearer in the Auerbach case, when considering the appeal from the grant of a transfer of a 'C' license to such area, reported that there had been no change for the better either in increase of residents in the area or improvements in business establishments; that the transfer of the license was objected to by various licensees and residents of the area on grounds similar to like objections to the two other applications above referred to; and that the record disclosed that the local and state issuing authorities had consistently held that there was no need or necessity for another liquor license in the area in question.

Accordingly, despite the fact that the members of the respondent Board had not held office at the time the other applications were considered, the Hearer stated that, since there was no room for latitude of opinion, it was arbitrary or unreasonable for members of the successor issuing authority to arrive at a conclusion contrary to that from the evidence before them and, hence, recommended reversal of the transfer, citing the Hutchins case reported in Bulletin 1022, Item 4.

The Director did not accept the Hearer's Report, being of the opinion that the previous expressions of the opinion by the licensing authorities that there was no need for an additional license in the area was not of such conclusive nature as to foreclose or preclude the present successor Board from exercising its independent discretionary authority to determine whether it is advisable to locate a 'D' license in the area where there were five 'C' licenses; that the previous denial of transfer of a 'C' license to the area was not an overwhelming or repeated official attitude on the subject sufficient to deprive the successor Board of the authority to formulate its own conclusions whether or not to grant the transfer. The Director affirmed the grant of the transfer.

In the instant case, the record of the action of the local Board on these applications, in sequence, is four denials of transfer and two grants of transfer,

> the latter two within the past five years. To again disregard the sentiment expressed by two independent respondent Boards is to maintain an adamant attitude that the passage of twelve years with the normal changes in the area to be expected is insufficient to overcome the past denials of transfers. In other words, that such denials are a bar in perpetuity or perhaps until the number of grants equals the number of denials. I do not think such is a reasonable conclusion.

Appellants argue that "[d]eterminations by administrative agencies such as the Division of Alcoholic Beverage Control where preceded by notice and hearing, have attained quasi-judicial status with the res judicata incidents of common law judgments", citing Russell v. Board of Adjustment of Tenafly, 31 N. J. 58 (1959), and hence "[t]he determination of 1954...should be honored as a valid judgment by the Director and this court. Unless new evidence was presented in 1959 of a real public need for a license at the new premises, the principles of res judicata should apply."

Appellants contend that no such "new evidence was presented"; that the view by the members of the local board is immaterial because the board did not state for the record what it saw; there was no evidence to support the Director's intimation that during the twelve years since the first application there were "numerous changes in the area", and, on the contrary, the evidence showed there were no changes; the testimony mentioned by the Director "by a person familiar with the neighborhood that, from casual observation, there has been since 1954 a larger percentage of persons of applicant's race residing in the area" was incompetent because it was "from casual observation", and, even if competent, was not sufficiently substantial to support the Director's judgment because it was not corroborated by evidence of actual count or other dependable data. (However, it must be noted that there was evidence that 39 Carroll Street had six out of sixteen white tenants in 1953 but only one in 1958, and that the same was approximately true of the building next door.) As to the evidence of the actual distance--1040 feet-- to the nearest tavern mentioned by the Director, appellants say if the exact number of feet was not in evidence in the previous proceedings the existence of the tavern and its location were. Therefore, conclude appellants, when the Director reversed he "collaterally attacked his own determination of 1954 by intimating that it was impelled by the impetus of the previous denials of transfer rather than upon the facts established at the hearings."

The extent to which common law concepts of res judicata should be applied to determinations of administrative agencies is a troublesome and unsettled question. Central Home Trust Co. v. Gough, 5 N. J. Super. 295 (App. Div. 1949). In that case Judge (now Justice) Jacobs said "we find many expressions in the federal cases that, in general, rules of res judicata will not be applied to preclude an administrator from departing from the earlier determination." 5 N.J. Super. at 298. However Judge Jacobs pointed out at p. 299 that

> "In New Jersey, as in many of the other states, courts have sought to rest their decisions upon concepts which distinguish 'quasi-judicial' action of administrative agencies from their 'quasi-legislative or executive' and 'administrative or ministerial' action, holding that quasi-judicial determinations have the res judicata incidents of common law judgments. See Finnegan v. Miller, 132 N. J. L. 192, 195 (Sup. Ct. 1944). We find these quoted terms troublesome since their precise meaning is unclear and courts frequently differ in their judgments as to whether particular action is quasi-judicial or otherwise."

Then Judge Jacobs added this pregnant sentence (at 300-301; emphasis ours):

> "It has been suggested, with much force that a more satisfactory approach would be to ascertain, from the terms of the organic act governing the agency and with particular regard to the nature of the proceeding and its effect upon private interests and the provisions for notice, hearing, finality and review, whether the Legislature contemplated that the administrative determination should attain the status of a common law judgment with its customary attributes. Cf. R. S. 34:15-58; Mangani v. Hydro, 119 N. J. L. 71 (E. & A. 1937)."

In Russell v. Board of Adjustment of Tenafly, supra, the Supreme Court said, 31 N. J. at 65 "[r]es judicata is applicable to actions heard by a zoning board of adjustment." Most of the reasons for this holding (some of which will be mentioned later) do not apply to actions of local liquor licensing authorities, basically because the statutes permit municipal liquor boards to exercise far more discretion than zoning boards, yet with far fewer indispensable procedural requirements. Compare the terms of the zoning law (R. S. 40:55-37 to 44) with those of the Alcoholic Beverage Law. R. S. 33:1 et seq.; Compare also Grundlehner v. Dangler, 29 N. J. 256, 270 (1959); Tomko v. Vissers, 21 N. J. 226, 239 (1956) and Wharton Sand & Stone Co. v. Montville Tp., 39 N. J. Super. 278 (App. Div. 1956) with Fanwood v. Rocco, --- N. J. Super --- (App. Div. 1960) and Downie v. Somerdale, 44 N. J. Super. 84 (App. Div. 1957).

For example, in Russell the Supreme Court said "the function of boards of adjustment...is essentially factfinding as opposed to policymaking", whereas the function of liquor boards in licensing is the reverse. Consequently, unlike zoning boards and similar agencies, the liquor board does not, as a rule, need to make findings of fact or even to articulate its reasons as a condition precedent to the valid exercise of its discretionary power. Compare Fanwood v. Rocco, supra, with Tomko v. Vissers, supra; Cf. Family Finance Corp. v. Gough, 10 N. J. Super. 13 (App. Div. 1950) and Pennsylvania Railroad Co. v. New Jersey State Aviation Commission, 2 N. J. 64 (1949). Of course, it is preferable and, on review, very helpful when the liquor board does make the basis of its action explicit, but it is not mandatory. Wharton Sand & Stone Co. v. Montville Tp., supra; Family Finance Corp. v. Gough, supra; Tomko v. Vissers, supra.

These are some of the reasons why res judicata may not be applied in liquor license cases as readily as in zoning cases. Yet even in zoning cases the Supreme Court has said that whether res judicata or principles akin thereto, such as collateral estoppel, shall be applied "is for the board, in the first instance, to determine... This finding, as any other made by the board, will be overturned on review only if it is shown to be unreasonable, arbitrary or capricious." Russell v. Board of Adjustment of Tenafly, supra, at p.65.

That does not mean that such principles may never be applied to liquor board proceedings. On the contrary, the may and should be. Otherwise an applicant would be able, with repeated applications, to wear down the objectors and, perhaps, even the liquor board itself. Opposing such applications is not only time consuming but frequently expensive, and few citizens can afford the time, effort and expense of resisting repeated applications. However (to paraphrase what the Supreme Court said in Russell, supra,) how, to what extent, and under

what circumstances res judicata and kindred principles should be applied to liquor cases should be left to the administrative agencies, subject to the same review as their other determinations.

Naturally, the application of those principles will vary with the subject matter involved. Cf. Fanwood v. Rocco, supra. When the issues require findings of fact, as in the "second class" of cases defined in Fanwood, there may be instances in which those principles should be applied as freely as in zoning cases, but the farther the issues move away from fact and into the other areas of their power and jurisdiction the more unfettered the local boards and the Division are entitled to be. As was said in the Note, Res Judicata in Administrative Law, 49 Yale L. J. 1250 (1940) at 1278:

> "...the doctrinal utilization of res judicata to hold administrative agencies without power to correct their own prior determinations frequently results in the frustration of a manifest legislative desire to secure administration free of legal strait-jackets. Where legislative policy remains unexpressed, the desirability of permitting agencies to reverse their former action depends principally on the nature of the substantive law administered and on the procedural character of original determinations. In this connection, nevertheless, a judicial policy of laissez-faire seems preferable. Administrative agencies are by far the best qualified to develop their own res judicata practices out of intimate acquaintance with their individual problems. Furthermore, 'interference by the courts is not conducive to the development of habits of responsibility in administrative agencies'."

See also Central Home Trust Co. v. Gough, supra at 301 in which the court said: "...administrative agencies have inherent power, comparable to those possessed by the courts..., to rehear and reconsider...."

The Division has already worked out such principles for its own guidance and for the guidance of local boards and has applied them. Examples may be found in Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N. J. Super. 598, 602 (App. Div. 1955); certif. denied 18 N. J. 204 (1955); Auerbach v. Newark, et als., ABC Bulletin, 1178, Item 1 (1957); Enno v. Tp. of Howell, ABC Bulletin, 1120, Item 6 (1956); Northend Tavern, Inc. v. Northvale, ABC Bulletin, 493, Item 5 (1942).

We may reverse the determination of the Director in a situation such as this only if what he did was so "clearly against the logic and effect of the presented facts" that "it is shown to be unreasonable, arbitrary or capricious." Russell v. Board of Adjustment of Tenafly, supra, at p. 67; Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N. J. L. 502, 511 (E. & A. 1947); Fanwood v. Rocco, supra; Rajah Liquors v. Division of Alcoholic Beverage Control, supra.

Applying these principles to the facts at bar, we can not say that when the Director refused to treat his 1954 decision as conclusive of the present case, his judgment was unreasonable, arbitrary or capricious. In 1954 the case presented to the Director a situation in which the applicant had applied four times before in five years and had been turned down each time, the last time being about 2½ years be-

fore the application involved in the 1954 appeal was granted. The present application, on the other hand, was made over 7 years after the last denial by the local board (May 23, 1951) and over 4 years after the Director's 1954 decision. In 1954 the Director said that when the local board granted the application after having refused the four previous similar applications in such recent, rapid and almost unbroken succession the "...Board abused its discretion and acted in an unreasonable manner...." When, over four years later, the Director found the local board still approved the transfer, was he obliged to say again that the local board abused its discretion? Did not the Director have the right to say, when the local board persisted in its opinion for so long in spite of his previous reversal, that he would yield to its judgment? We think it was in his discretion to do so, knowing that "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...." _Ward v. Scott_, 16 N. J. 16, 23 (1954); _Fanwood v. Rocco_, _supra_.

Appellants argue that "the resolution of the local Board" and "the conclusions and order of the Director" were invalid because they did not contain "adequate findings of fact" and did not state that those findings proved "that it is in the public interest and there is a public necessity" for the transfer. Appellants argue that such proof, findings and conclusions are a _sine qua non_ to a valid transfer. That is not true. Such findings may be advisable and useful but they are not essential. _Cf. Fanwood v. Rocco_, _supra_; _Family Finance v. Gough_, _supra_.

Appellants argue that the approval of the transfer was illegal and erroneous because the Paterson zoning ordinance prohibits a tavern at this location. It is not clear from the evidence that the ordinance does so provide, but even if it does that does not make the grant of the transfer improper or its approval by the Director error. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street, but he is not required to obtain it before the grant of the transfer. _Cf. Passarella v. Bd. of Comm._, 1 N. J. Super. 313 (App. Div. 1949).

Finally, appellants argue that, apart from the question of _res judicata_, upon the facts the approval of the transfer by the local board was an abuse of its discretion, and that the Director should have so found; and that we should declare the Director's failure to do so reversible error. In a case such as this "we take into consideration and give due weight to the fact that the Director has special expertness and broad experience in this general field." _Fanwood v. Rocco_, _supra_. The appellants have failed to show that his judgment was so wide of the mark as to become reversible error.

Affirm.

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2. LICENSEES - EMPLOYEES - SUSPENSION OF LICENSE DOES NOT DISQUALIFY LICENSEE FROM EMPLOYMENT BY ANOTHER LICENSEE DURING THE SUSPENSION - BULLETIN ITEM SUPERSEDED.

Dear Mr. --------- December 22, 1959

This acknowledges your undated letter received December 15th requesting permission to be employed as a bartender on other licensed premises during the suspension of a retail license held by a corporation, of which you are the president.

Although it was ruled in Re Eckert, Bulletin 119, Item 3, that a retail licensee whose license had been suspended could not be employed on other retail licensed premises during the period of suspension, in my opinion the basis for the ruling (i.e., that a suspension is a "partial revocation") is extremely dubious since, in fact, a suspension is, not a partial revocation, but merely a suspension. Hence, whatever disqualification may result from revocation of a license does not equally follow from a suspension of license during the period of suspension. That the ruling has long been unenforced and informally overruled Cf., Re Delano, Bulletin 821, Item 11, wherein it was held that a statutory automatic suspension of license did not apply to all licenses held by an individual licensee who had been convicted of violation of the Alcoholic Beverage Law (R. S. 33:1-31.1) but only to the license in connection with which the violation of law occurred. See also Re Giordano, Bulletin 742, Item 5, wherein the license of the licensee was suspended only with respect to the premises wherein the violations occurred although at the time the licensee held several other licenses in the same municipality.

Accordingly, the ruling in Re Eckert is hereby formally superseded and it is now ruled that the suspension of a retail license does not bar the employment of the licensee on other retail licensed premises during the period of suspension. Consequently, you may be employed as a bartender or otherwise on retail licensed premises notwithstanding that you are an officer of a corporation whose license is presently under suspension.

Very truly yours,

WILLIAM HOWE DAVIS
DIRECTOR

3. CLUBS - BONA FIDE GUESTS - OUTSIDE ORGANIZATIONS AND GROUPS CONDUCTING SOCIAL AFFAIRS ON LICENSED PREMISES - SPECIAL PERMIT, WHEN REQUIRED - FURNISHING OF ALCOHOLIC BEVERAGES BY CLUB - RESPONSIBILITY OF CLUB FOR VIOLATIONS ON LICENSED PREMISES DURING SOCIAL AFFAIRS.

Dear Mr. --------- February 2, 1960

This will acknowledge your letter of January 28th requesting information concerning the sale and service of alcoholic beverages on club licensed premises at "members' affairs and affairs conducted by outside organizations or groups" and also inquiring "when outside organizations or groups need special permits."

A club licensee is authorized to sell alcoholic beverages for on-premises consumption only to bona fide members and to bona fide guests of members.

A bona fide guest is an individual who is expressly invited by an individual member of the club and who is not only sponsored by but who is personally attended by the member.

There is no prescribed numerical limitation upon the number of guests which a member may have at any one time. What actually counts is whether or not each guest has been individually invited and is personally attended and sponsored by the member. Thus, where a member of the club holds an affair, such as a wedding reception or a birthday or anniversary celebration for himself or a member of his family, the persons attending the affair may be considered as his bona fide guests since on these occasions the person attending the affair has received an individual invitation from the member to attend the party.

In these situations the club licensee may furnish alcoholic beverages to the host and may also sell and serve his guests attending the affair for their consumption upon the licensed premises.

On the other hand, if a non-member is allowed to hold an affair of this type upon the club's licensed premises, the club licensee may not supply him with any alcoholic beverages and may not sell or serve alcoholic beverages to any of the host's guests who are not members of the club licensee and who are not bona fide guests of a club member. Nor may a member ostensibly act as the host at a wedding reception or similar affair really being given by a non-member.

An outside organization or group using the club's premises can not, as an entity, be a guest since, as indicated above, a guest is an <u>individual</u> invited by an <u>individual</u> member. In other words, there may be no "blanket" guest privileges conferred upon an outside organization or group and the club licensee may not supply the outside organization or group with alcoholic beverages for use by it at its affair or meeting held upon the club's licensed premises. Although an individual bona fide member who may also be attending the affair or meeting of the outside organization or group may, after or during the course of the affair or meeting, invite an individual friend or individual friends of his to the club bar and thereby make them his bona fide guests, the member can not just announce in a blanket fashion that all those attending the meeting who want a drink can go to the club bar or otherwise avail themselves of sale or service by the club licensee.

The outside organization would need a special permit to cover its sale and service of alcoholic beverages to those attending its affair where there is a charge of any kind in connection with its affair, whether the charge be a direct one for drinks or whether imposed through the sale of tickets or the charging of admission or the requirement of fixed donations or special assessments or where the charge is made ostensibly for food or entertainment or anything else. Even though holding such a special permit, the club licensee, may not, however, furnish the organization with its supply of alcoholic beverages. See Rule 11 of State Regulation No. 7.

No special permit is required where the outside organization serves alcoholic beverages really gratuitously in every respect. By way of example, where an organization holds an affair at which the supply of alcoholic beverages and the entire cost of the affair is defrayed from the general treasury fund of the organization accumulated through the periodic payment of dues by its members or other normal revenues without charge or special assessment being imposed upon those attending, no permit would be required. Similarly, if an industrial or other concern should hold an affair for its officers or its employees or guests and foots the entire bill without a charge being imposed upon those attending, no special permit is necessary. Here, too, as indicated above, the outside organization or concern can not be treated as a guest of the club and the club may not, even though no permit is required, supply the outside organization or concern with any alcoholic beverages.

A club licensee is, of course, fully responsible for any violations of the Alcoholic Beverage Law or State Regulations occurring upon the licensed premises and this is so whether or not the outside person, organization or group needs or does not need a special permit with respect to the affair held by them upon the club's licensed premises. By way of example, the Regulations not only prohibit the sale and service of alcoholic beverages by licensees to minors or to persons actually or apparently intoxicated but go further and prohibit any licensee from allowing, permitting or suffering the consumption of alcoholic beverages upon the licensed premises by any minor or any

person actually or apparently intoxicated. A licensee which is not able to control activities in violation of the law or regulations subjects itself to the institution of disciplinary proceedings even though the alcoholic beverages could not be and were not furnished by the licensee.

For your further guidance, you are advised that whenever a club licensee itself runs an affair, such as a dinner or a dance at which the public is admitted or at which tickets are sold to or admission charged to non-members, the club licensee needs a special permit from this Division. See Bulletin 213, Item 4.

Very truly yours,

WILLIAM HOWE DAVIS
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - VIOLATION OF R. S. 33:1-34 (FAILURE TO NOTIFY OF AGREEMENT TO SHARE PROCEEDS WITH EMPLOYEE) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Monterey Operating Company, Inc. t/a Monterey Hotel between 6th & 7th Avenues Ocean Avenue & Kingsley Street Asbury Park, N. J., Holder of Plenary Retail Consumption License C-75, issued by the City Council of the City of Asbury Park.	CONCLUSIONS and ORDER

Charles Handler, Esq., Attorney for Defendant-licensee
William F. Wood, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. You failed to file with the Asbury Park City Council, within ten days after the occurrence thereof, written notice of change in fact set forth in answer to Question No. 31 of your license application dated July 24, 1959, upon which you obtained your current plenary retail consumption license, such change being that on or about August 7, 1959 you agreed to pay Sol Fallis, an employee, 50% of the net profits from your licensed business; your failure to file such notice being in violation of R.S. 33:1-34.

"2. On October 14, 1959, you possessed, had custody of and allowed, permitted and suffered in and upon your licensed premises, alcoholic beverages in bottles which bore labels which did not truly describe their contents, viz.,

Two quart bottles labeled "Seagram's 7 Crown American Blended Whiskey, 86.0 Proof;"

in violation of Rule 27 of State Regulation No. 20."

The corporation obtained its license on August 6, 1959. On August 7 such licensee entered into a written agreement with Sol (Steve) Fallis whereby Fallis was to conduct the licensed business until September 10, 1959, as an employee and was to receive fifty per cent. of the net profits as compensation for his services. Fallis has received a substantial amount from such agreement. This agreement was verbally extended after September 10. This arrangement was not disclosed in the licensee's application for the license. The licensee failed to file with the local issuing authority a written notice of its agreement to pay a percentage of the profits to its employee. Such a notice is required under R.S. 33:1-34. Moreover, aside from the failure to file such notice, a licensee is not permitted to enter into an agreement of that nature with a person whose name does not appear on the license for the premises. Re Jacobsen, Bulletin 1239, Item 2.

On October 14, 1959, an ABC agent tested the licensee's open stock of bottles of alcoholic beverages and seized a number of bottles for further tests by the Division chemist. The chemist's tests disclosed that the contents of two of said bottles as listed in the charge, when compared with the samples of the genuine products of the labeled brand, varied substantially in acids and color.

A letter urging alleged mitigating circumstances sets forth that the corporate licensee was compelled to purchase the premises under a foreclosure sale; that its personnel were inexperienced in the conduct of a licensed liquor establishment and, hence, made the arrangement in question with Mr. Fallis since he operated the bar for the previous tenant; that the corporate licensee also purchased the stock of alcoholic beverages at such foreclosure sale and that its head bartender mixed the contents of partly-filled bottles in order to consolidate the stock of beverages. These explanations do not excuse the licensee for committing the violations. Those intending to engage in the liquor business should make that they are familiar with the rules and regulations of the Division and are charged with notice thereof.

Defendant has no prior adjudicated record. Satisfactory evidence has been presented that the agreement with Mr. Fallis has been terminated. It appears that, while the licensed business is conducted on a year-round basis, nevertheless it is presently conducted on a much more limited basis than during the summer months. Ordinarily I would be inclined, under the circumstances, to defer penalty until the opening of the summer season. However, it appears that the present corporate licensee is seeking sale of the licensed business. The licensed premises consist of a hotel of over fifty rooms, and it is possible for any new owner to obtain a new license thereby creating a problem in imposing the suspension. Under these circumstances it seems likely that it would be more effective to impose an immediate suspension of the license.

I shall suspend defendant's license for a period of fifteen days on Charge 1 (Re Century Holding Co., Bulletin 1122, Item 5), and for fifteen days on Charge 2 (Re Kubelczikas, Bulletin 1302, Item 8), making a total suspension of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 11th day of January, 1960,

ORDERED that plenary retail consumption license C-75, issued by the City Council of the City of Asbury Park to Monterey Operating Company, Inc., t/a Monterey Hotel, for premises between 6th and 7th Avenues,

Ocean Avenue & Kingsley Street, Asbury Park, be and the same is hereby suspended for twenty-five (25) days, commencing at 3 a.m. Monday, January 18, 1960, and terminating at 3 a. m. Friday, February 12, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
	)	
Caffy's Cocktail Lounge t/a Caffy's Cocktail Lounge 13 Speedwell Avenue Morristown, New Jersey	))	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Board of Aldermen of the Town of Morristown.	)))	

Defendant-licensee, by Joseph Cafarelli, President.
William F. Wood, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that it possessed on its licensed premises an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

On October 16, 1959, an ABC agent tested defendant's open bottles of alcoholic beverages and seized a quart bottle of "Seagram's Seven Crown American Blended Whiskey, 86 Proof" for further tests by the Division's chemist. Subsequent analysis by the chemist disclosed that when compared with an analysis of the genuine product, the contents of said bottle was much higher in solids and shorter in proof.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of ten days. Re Grande & Schipani, Bulletin 1309, Item 7. Five days will be remitted for the plea entered herein leaving a net suspension of five days.

Accordingly, it is, on this 11th day of January 1960

ORDERED that Plenary Retail Consumption License C-2, issued by the Mayor and Board of Aldermen of the Town of Morristown to Caffy's Cocktail Lounge, t/a Caffy's Cocktail Lounge, for premises 13 Speedwell Avenue, Morristown, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m., Monday, January 18, 1960 and terminating at 2:00 a.m., Saturday, January 23, 1960.

WILLIAM HOWE DAVIS
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Jan Hoving
t/a Stonehouse Bar & Grill
State Highway 206
Byram Township
PO Stanhope, New Jersey

Holder of Plenary Retail Consumption License C-12, issued by the Township Committee of Byram Township.

CONCLUSIONS AND ORDER

Defendant-licensee Pro se.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On November 23, 1959, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Louis ---, age 16, and Vincent ---, age 20, and allowed, permitted and suffered the consumption of alcoholic beverages by such persons in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

Acting upon information obtained from the New Jersey State Police, ABC agents obtained signed and sworn statements from Louis ---, 16 years of age, and Vincent ---, 20 years of age, wherein it appears that on November 23, 1959, at about 3:00 a.m., the two minors and a companion entered defendant's licensed premises and that each of the two minors was served two bottles of beer and two shorts of whiskey by the licensee without being questioned as to their ages. Both minors, in the presence of ABC agents and the licensee, identified the licensee as the person who had sold and served the alcoholic beverages to them at the time in question.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the period of twenty-five days, the minimum penalty for sales to two minors, one of whom is only 16 years of age. Re Rubin, Bulletin 1309, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 14th day of January, 1960,

ORDERED that Plenary Retail Consumption License C-12, issued by the Township Committee of Byram Township to Jan Hoving, t/a Stonehouse Bar & Grill, for premises on State Highway 206, Byram Township, be and the same is hereby suspended for twenty (20) days, commencing at 5:00 a.m., Tuesday, January 26, 1960, and terminating at 5:00 a.m., Monday, February 15, 1960.

WILLIAM HOWE DAVIS
DIRECTOR.

7. DISCIPLINARY PROCEEDINGS - ORDER POSTPONING SUSPENSION PREVIOUSLY IMPOSED.

In the Matter of Disciplinary Proceedings against

R & J Cottage Inn, Inc.
Rte. #46 Block 122A
Lodi, New Jersey

Holder of Plenary Retail Consumption License C-23, issued by the Mayor and Council of the Borough of Lodi.

ORDER

Carbonetti and DiMaria, Esqs., by Frank P. Carbonetti, Esq. Attorneys for Defendant-licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

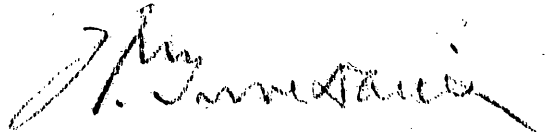
BY THE DIRECTOR:

An order having been entered on January 6, 1960, suspending defendant's license for ten days commencing at 3 a.m. Monday, January 18, 1960, and terminating at 3 a.m. Thursday, January 28, 1960; and

Application having been made to me by said defendant for a postponement of the effective dates because, prior to the entry of said order, defendant had entered into contracts with one orchestra to play on its premises for a period of four weeks commencing January 12, 1960, and with another orchestra to play on its premises for a period of two weeks commencing February 9, 1960; and copies of said contracts having been exhibited to me, and good cause appearing for the grant of the application,

It is, on this 13th day of January 1960,

ORDERED that the suspension of ten days, instead of commencing at 3 a.m. Monday, January 18, 1960, shall, in lieu thereof, commence at 3 a.m. Tuesday, February 23, 1960, and terminate at 3 a.m. Friday, March 4, 1960.



WILLIAM HOWE DAVIS
DIRECTOR

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