

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2316

March 22, 1979

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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N.J. 07114

BULLETIN 2316

March 22, 1979

1. APPELLATE DECISIONS - BARR v. PHILLIPSBURG.- SECOND SUPPLEMENTAL ORDER.

Frederick C. Barr & Anne Marie
Barr,
t/a Barr's Place,

Appellants,

v.

Town Council of the Town of
Phillipsburg,

Respondent.

SECOND

SUPPLEMENTAL

ORDER

D. Scott Curzi, Esq., Attorney for Appellants.
Silverman, Hughes & Kinton, Esqs., by Robert S. Kinton, Esq.,
Attorneys for Respondent.
Mart Vaarsi, Esq., Deputy Attorney General, Appearing for
Division.

BY THE DIRECTOR:

On December 1, 1978, a Supplemental Order was entered herein reimposing the one hundred and ten days suspension of appellants' license, effective December 13, 1978, after the Appellate Division of the Superior Court affirmed the action of the Director of the Division with respect to the finding of guilt of the appellants to a charge that, on August 3, 1975, they sold alcoholic beverage to a minor, in violation of N.J. A.C. 13:2-23.1.

By letter dated December 5, 1978, the appellants request a deferment of the suspension until January 13, 1979, to permit them to conduct previously scheduled social affairs and honor critical business commitments.

Good cause appearing, I shall grant a deferment of the suspension but only until January 10, 1979.

Accordingly, it is, on this 28th day of December, 1978,

ORDERED that the Supplemental Order herein dated December 1, 1978 be and the same is hereby amended, as follows:

ORDERED that Plenary Retail Consumption License No. 2119-33-001-001 issued by the Town Council of the Town of Phillipsburg to Frederick C. Barr and Anne Marie Barr, t/a Barr's Place for

premises 273 Chamber Street, Phillipsburg be and the same is hereby suspended for one hundred and ten (110) days commencing 2:00 a.m., Wednesday, January 10, 1979 and terminating 2:00 a.m., Monday, April 30, 1979.

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - E.T. LYNCH, INC. v. GLOUCESTER.

E.T. Lynch, Inc., t/a Keg Lounge,	}	ON APPEAL
	}	CONCLUSIONS
Appellant,		
v.	}	AND
	}	ORDER
Mayor and Council of the City of Gloucester,		
Respondent.	}	

Bertman, Johnson and Sahli, Esqs., by John Bertman, Esq.,
Attorneys for Appellant.
William E. Hughes, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant appeals from the failure of the Mayor and Council of the City of Gloucester City (hereafter Council) to provide appellant with necessary application forms to renew Plenary Retail Consumption License, 0414-33-012-001, for premises 431 Powell St., Gloucester for the licensing year 1978-79.

In its Answer, the Council contends that, since the appellant had not renewed its license for the 1977-78 licensing period, there was no license in being which could be renewed. Hence, its refusal to entertain such application was entirely appropriate.

The Petition of Appeal of appellant indicates that the licensed premises were destroyed by fire in March 1977, and in the following period, the holders of the stock of appellant corporation inadvertently failed to renew the license for the 1977-78 license term.

An appeal de novo was heard in this Division pursuant to A.C. 13:2-17.6, at which the parties were permitted to introduce evidence and to cross-examine witnesses.

Appellant introduced the testimony of its two principal stock-

holders, James D. Lynch and Rocco DeLaurentis, who explained that they had acquired the licensed business in January 1977. At settlement, they acquired the capital stock of the appellant corporation, and the information concerning their acquisition of such stock was to be transmitted to the Municipal Clerk of Gloucester City by the brokers handling the transaction. Neither principal, at that time, was aware of the many requirements concerning the operation of an alcoholic beverage licensed business.

Hardly two full months had elapsed from their purchase, when the entire premises were destroyed by fire. Immediate claims against the appellant were raised by musicians, whose instruments within the premises had been destroyed. Additionally, there were numerous claims of mortgagees and others who wished to receive payment from anticipated insurance proceeds. In consequence of the confusion surrounding the myriad of claims and the requirement by the City that the charred building remains be removed, neither of the stockholders applied for renewal of the license at the close of that license term, i.e., June 30, 1977.

Toward the end of the next licensing period, which terminated on June 30, 1978, it finally occurred to the owners of the license that a renewal application for the 1978-79 license term should be filed. DeLaurentis visited the Clerk's office and was advised no license existed that could be renewed.

Preliminarily it must be noted that the statutory authority given to renew alcoholic beverage license stems from N.J.S.A. 33:-1-21.13. This provision provides in part that a license can be renewed if it had been in existence the previous license term and an application is filed:

. . . with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses. (emphasis added)

A further provision applies to the failure to timely renew an alcoholic beverage license, N.J.S.A. 33:1-12.18. It provides as follows:

Nothing in this act shall be deemed to prevent the issuance of a new license to a person who files application therefor within sixty days following the expiration of the license renewal period

if the State commissioner shall determine in writing that the applicant's failure to apply for a renewal of his license was due to circumstances beyond his control.
(emphasis added)

Reading both sections in pari materia, it is apparent that by the expiration of almost a year (or at least nine months by any calculation) following the termination date of the license, any application now made must be for a "new" license, the "old" license no longer exists.

Although not introduced into evidence at the hearing, records of this Division indicate that there are presently thirty-two plenary retail consumption licenses issued in the City. The 1970 population of Gloucester City is 14,707. By the formulae respecting the number of plenary retail consumption licenses that may be issued in any given municipality, i.e., one for each 3,000 of population (N.J.S.A. 33:1-12.14), it is thus apparent that no "new" license could be created in Gloucester City at the present time.

Counsel for appellant vigorously urges that, as the circumstances of the totally destructive fire confused the novice owners of the license, there should be some remedy by which they could now perfect their renewal applications in order to bring the license to vitality. Although counsel's plea articulately describes the plight of the beginners in a rather sophisticated business, the remedy for oversights in making license applications is statutorily limited to a sixty-day period following termination of license period. N.J.S.A. 33:1-12.18, supra.

As there is no license existing of which this appeal is subject, it is, accordingly, recommended that the appeal be dismissed.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14.

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

Accordingly, it is, on this 5th day of January, 1979,

ORDERED that the action of the Mayor and Council of the City of Gloucester be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. APPELLATE DECISIONS - CLORES v. FORT LEE ET ALS.

Anthony Clores,	:	
Appellant,	:	
v.	:	ON APPEAL
	:	CONCLUSIONS
Mayor and Council of the Borough	:	AND
of Fort Lee, Richard and Alex	:	ORDER
Gottilla, and Southland Corp., t/a	:	
7-Eleven,	:	
Respondents.	:	

.
 Joseph R. Marinello, Esq., Attorney for Appellant.
 Murphy, Ellis & McBride, Esqs., by Frank Holahan, Esq.,
 Attorneys for Respondent - Borough of Fort Lee.
 Eichler & Forgosh, Esqs., by Rodger Gottilla, Esq., Attorneys
 for Respondents - Gottilla and Southland Corporation.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Fort Lee (hereinafter Council) which, by Resolution dated February 2, 1978, approved an application for a person-to-person and place-to-place transfer of Plenary Retail Distribution Lic. 0219-44-060-002, from J. Fletcher Cremer to Richard and Alex J. Gottilla and the Southland Corporation, and from one store in a shopping center at 1605 Lemoin Avenue, Fort Lee to an adjacent store in the same shopping center.

In his Petition of Appeal, appellant contends that the transfer should not have been granted, in that, the place in which the license is to be located is a "7-11 Store" frequented by local school children, and this would be contrary to the best interests of the community.

The Council denies this contention in its Answer and refers to its Resolution wherein it determined that "... the proximity of the proposed relocation of the license to School No. 1 will not impair the health, safety, welfare or morals of the students of said school."

An appeal de novo was heard in this Division, pursuant to N.J.A.C. 13:2-17.6, at which the parties were permitted to introduce evidence and cross-examine witnesses. However, in lieu thereof and in accordance with N.J.A.C. 13:2-17.8, a transcript of the minutes of the hearings of the Council was accepted into evidence. This was supplemented by argument of counsel, with supportive memoranda.

It has been consistently ruled that no one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 568 (Sup. Ct. 1946); Biscamp v. Township Council of the Township of Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

The decision as to whether or not a license will be transferred to a particular locality rests, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Ass'n. v. North Bergen, et als., Bulletin 997, Item 2.

Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954).

A local issuing authority has been held to possess wide discretion in the transfer of a liquor license, subject of course to review by this Division in the event of any abuse thereof. Passarella v. Board of Commissioners, Atlantic City, 1 N.J. Super. 313 (App. Div. 1949).

In Fanwood v. Rocco, 33 N.J. 404, 414 (196), the court stated:

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 determinations 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.

In short the action of the municipal issuing authority should 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. v. Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947) Cf. Teofilak v. Wildwood, Bulletin 1782, Item 2.

In appellate review of the transfer grant by the Council, the Director should not substitute his judgment for that of the local issuing authority, and shall not reverse unless he finds that there was a manifest abuse of discretion by the local authority. Vargas v. Union City, Bulletin 2237, Item 4; Brick Church Pub v. East Orange, Bulletin 2232, Item 4; Clinton Hill Liquors, Inc. v. Newark, Bulletin 2182, Item 2.

As the court has held in Lyons Farms Tavern v. Newark, 55 N.J. 292, 303 (1970):

Once the municipal board had decided to grant or withhold approval...its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion.

In sum, the Council fully considered appellant's application. It was cognizant of the verbal protests and written petition of the Board of Education. It considered the impact upon the Community of the proposed move, and, finding the move merely a change from one store to its adjacent store, determined that the proposal was not contrary to the best interests of the Community. It further specifically found that, although the store was a "7-11", the alcoholic beverages to be sold were all packaged, and no on-premises consumption is legally permitted. The Council found that it posed no risk or hazard to the minor patrons of the store.

It is uncontroverted that the Council's motives are pure. The Director's function on appeal, as hereinabove noted, is to affirm the Council's action where it is evidenced, as sub judice, that the Council acted circumspectly and in the proper exercise of its discretion in reaching its conclusion.

Accordingly, I find that the appellant has failed to meet its burden of establishing that the Council's action was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6.

It is, therefore, recommended that the action of the Council be affirmed and the appeal be dismissed.

Conclusions and Order

No written Exceptions were filed to the Hearer's Report pursuant to N.J.A.C. 13:2-17.14.

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

Accordingly, it is, on this 4th day of January, 1979,

ORDERED that the action of the Mayor and Council of the Borough of Fort Lee be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

4. APPELLATE DECISIONS - GLOWFESKIE V. EGG HARBOR.

Joseph H. Glowfeskie and	}	
Georgia R. Glowfeskie,		
t/a Boston Beef & Beer Pub,		
	}	ON APPEAL
Appellants,		CONCLUSIONS
vs.		
	}	AND
Common Council, of the City of		ORDER
of Egg Harbor,		
	}	
Respondent.		

 Jeffrey L. Gold, Esq., Attorney for appellants.
 McGahn and Friss, Esqs., by Joseph G. Gindhart, Esq., Attorneys
 for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, Common Council of the City of Egg Harbor (Council) which, on May 25, 1978, adopted a resolution denying the application of appellants for a place-to-place transfer of their plenary retail consumption license from 301 Boston Avenue to 105 Washington Avenue, in the City of Egg Harbor.

Appellants in their Petition of Appeal, allege that the action of the Council was erroneous in that (1) it was an arbitrary and capricious abuse of discretion and power and not based upon valid reason, and (2) it failed to take into account the situation existing at the time between the present and proposed locations.

Although not mentioned in the Petition of Appeal, the appellants further contend that the petition of objectors submitted to the Council containing signatures preporting to be those of the area residents, are, in large part, forgeries; and further, that a significant number declined or failed to add their residence addresses so that it cannot be readily ascertained where they reside.

The Council, in its Answer, denies the substantive allegations contained in the appellants' Petition of Appeal. It further alleges that the denial of the transfer was in the best interest of the

health, welfare and safety of the citizens and residents of Egg Harbor City.

The appeal was heard de novo pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses. Additionally, the transcript of the proceedings held by the Council was received in evidence, in accordance with N.J.A.C. 13:2-17.8. This was supplemented by oral testimony of appellant Joseph Glowfeskies and the receipt into evidence of several Exhibits. Respondent's attorney had expected to present the testimony of two members of the Council, but one could not leave his business and the other, could not hire a baby sitter for the day.

Joseph Glowfeskies testified on behalf of appellants. He has been operating a quiet tavern on Boston Avenue for the past seven years, serving liquor and sandwiches. During this period he has not been cited for violation of any State or Municipal Regulation pertaining to alcoholic beverages, nor has police assistance been necessary to quell a disturbance, or to his knowledge, for any other bar-related matter. He is close to the Moravian Church (but does not violate the two hundred feet minimum) and has never received a complaint from any parishioner or its Minister relative to the operation of the tavern. His patronage is in the main, over twenty-five years of age. He does not employ rock bands or live entertainment of any kind that would attract the eighteen to twenty-two year old category which traditionally has been the source of most of the noise and breach of the peace complaints that taverns encounter.

Negatively, his existing tavern constitutes a non-conforming use in an otherwise (basically) residential neighborhood zoned Residential on the municipal zoning map. He does not provide off-the-street parking at the current site, although the use of public streets by his patrons has not caused complaint. Lastly, while the Minister of the neighboring Church does not fault him in the manner in which he operates the tavern, the Church would be happier if it were not located at its present site.

It is Glowfeskies's intent to run the same type of operation at the proposed site, if given the opportunity, although perhaps remaining open later because of transient business he anticipates this heavily traveled highway would provide. He will not employ bands or live entertainment here, either. This location would provide at least fifteen off-street parking spaces. Recognizing the potential hazard of vehicles entering and exiting the premises from the highway, he proposes to remove means of ingress and egress to the side street (name unknown) and limit the current highway access to and from the property. Unlike the current site, the proposed

site is zoned Commercial.

There is a residence approximately thirty feet behind the proposed transfer situs. It was recently constructed (1971) in an area zoned Commercial at the time of its erection. He proposes (subject to municipal approval) to keep that side of the building free of windows and doors, as well as insulate it in an endeavor to minimize any noise escaping in that direction. Additionally, he is amenable to erecting a fence or planting trees to act as an additional sight and sound barrier.

The respondent offered no witnesses to support its action, nor did it attempt to rebut Glowfeskies's testimony. Instead, it relied upon the transcript of the hearing below, and the letter signed by the principal objector, Elaine Fischer, with a petition attached, containing in excess of one-hundred signatures, which is referred to in the transcript and was the subject of controversy at the municipal hearing.

- I -

The burden of establishing that the Council acted erroneously and should be reversed rests entirely upon the appellant, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15). The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949); Hudson-Bergen Package Stores Ass'n v. North Bergen, Bulletin 1981, Item 1.

There is no inherent or automatic right to the transfer of an alcoholic beverage license. In the absence of abuse of discretion in acting upon a license issuance or transfer, the action of the authority should not be disturbed by the Director of this Division. Hudson-Bergen County Retail Liquor Stores Ass'n v. Hoboken, 135 N.J.L. 502 (E. & A. 1947). The action of the Council may not be reversed in the absence of manifest mistake or other abuse of discretion. Florence Methodist Church v. Florence Twp., 38 N.J. Super. 85 (App. Div. 1965).

Each municipal issuing authority has wide discretion in the transfer of a liquor license. Michida Corp. v. Jackson, Bulletin 2250, Item 4. Action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fanwood v. Rocco, 33 N.J. 404 (1960); Lyons Farms Tavern v. Mun. Bd. of Alcoholic Beverage

Control, Newark, 55 N.J. 292, 303 (1970). ("The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action.").

It is apparent, from reading the transcript of the municipal hearing, that the Council made its determination not to approve the transfer upon the testimony of Elaine Fisher, and the petition she presented.

An examination of the petition quickly reveals that the signatures are not valid. Clusters of signatures are written in the same hand and the final two pages were constructed by two persons signing all the names and addresses. Additionally, approximately forty-three signatures appear without addresses so that one could not ascertain if they reside nearby or, indeed, within the jurisdictional limits of Egg Harbor City. In sum, the petition is worthless and one wonders why no comment was made upon the record by any member of the Council.

The testimony of Elaine Fisher is replete with comments such as "and I know that I'm going to hear noise. I'm wondering about the parking conditions and also a matter of safety. I have here from the police, a list of accidents that have happened at that corner already." " . . . I wrote a letter objecting to the bar in this area, . . . (a) very quiet neighborhood residential area . . . " And you must realize too, that pulling out of that (parking lot) is dangerous . . . " " . . . I imaging that I would be getting beer bottles in the yard and people staggering over in my yard."

Mrs. Fisher was followed by a few others, each of whom said a few words basically in support of Mrs. Fishers comments and fears. It would appear that Mr. Harry Hayes' testimony was given little or not credence despite his statement ahat he lived close to the present premises operated by the Glowfeskie's for seven years and that none of the fears expressed by the others had a basis in fact.

- II -

The dispositive issue herein may be identified as follows: Did the Council act arbitrary or unreasonably in denying the transfer under the circumstances and in light of the testimony it heard from the objectors.

The record leads me, inescapably, to conclude that the opposition of the neighbors residing in the area of the proposed site is largely based upon fears and suppositions of anticipated future offenses which may or may not be committed by the appellants.

There is a common thread linking the testimony of the objectors and that is their assumption that the subject license will be (if permitted to locate at the site) operated as a nuisance.

It must be borne in mind that the appellants have already operated in the jurisdiction for seven years without any of the incidents of the type feared by the objectors.

Lastly, I wish to comment upon Mrs. Fishers testimony regarding traffic hazards and dangers at the proposed site. I find nothing in the transcript to indicate that she has any expertise in this area, whatsoever.

One must bear in mind too that the area is zoned Commercial, not Residential, and that the leading objector built her home on Commercially zoned land and assumed some reasonable risks at the time. I cannot accept the statement that this is a "quiet residential area." Direct credible testimony at the de novo hearing suggests otherwise; testimony which remains uncontroverted.

The objectors may relax in the knowledge that the local issuing authority possesses ample power and authority to discipline any licensee for infractions of local and State A.B.C. regulations. Should this (or any) licensee disregard them, the license may be suspended or revoked, or have special conditions imposed during the following renewal period.

I find, as a fact, that the Council acted arbitrarily and unreasonably in denying the transfer under the circumstances, and in light of the testimony it heard relating to this application.

I, therefore, conclude the the appellant has sustained the burden of establishing that the action of the Council was erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6, and recommend that an order be entered reversing the Council's action and directing that they grant appellants' place-to-place transfer of their plenary retail consumption license.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14.

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

Accordingly, it is, on this 8th day of January, 1979,

ORDERED that the action of the Common Council of the City of Egg Harbor City be and the same is hereby reversed, and the Council be and is hereby directed to approve the transfer in accordance with the application filed therefor.

JOSEPH H. LERNER
DIRECTOR

5. APPELLATE DECISIONS - COLUMNS-BY-THE-SEA v. AVON-BY-THE-SEA.

Columns-By-The-Sea, A Partnership,	}	ON APPEAL
Appellant,	}	CONCLUSIONS
v.	}	AND
Board of Commissioners of Avon-By-The-Sea,	}	ORDER
Respondent.	}	

 Alan C. Sugarman, Esq., By Kathleen R. Wall, Esq., Attorney for
 the Appellant
 Healy & Weinstein, Esqs., By Daniel J. Healy, Esq., Attorneys for
 the Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Appellant challenges the action of the Board of Commissioners of the Borough of Avon-By-The-Sea (Board) which, by unanimous vote of its three members on March 9, 1978, denied appellant's application for the issuance of a new plenary retail consumption license.

In its Petition of Appeal, appellant alleges that the Board's action was based upon its interpretation of N.J.S.A. 33:1-12.14 which, in its pertinent part, provides that no new plenary retail consumption or seasonal retail consumption license shall be issued in a municipality unless and until the combined total number of such licenses existing in the municipality is fewer than one for each 3,000 of its population.

The Board, in its Answer, avers that its denial of appellant's application was mandated by the provisions of the cited statute for the reason that the Borough does not have the requisite population to permit the issuance of another plenary or seasonal retail consumption license, and the appellant did not qualify under the Hotel Exemption Law, N.J.S.A. 33:1-12.20.

At the de novo appeal held pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), appellant offered the transcript of the proceedings before the Board, in accordance with

N.J.A.C. 13:2-17.8 (formerly Rule 8 of said Regulation), agreed to the stipulation of certain facts, and offered oral argument. Additionally, appellant submitted a written summation.

It was conceded by the attorney for the Board that, since appellant acquired title to the subject premises two years prior, it transformed the building from an "eyesore" into a "beautiful" hotel containing 15 or 16 rooms, a large dining room and facilities for private receptions. He termed it a credit to the community, and indicated that a number of residents, including members of the Board, would have liked to see the sale and service of liquor at the establishment.

The Board based its denial of the application for issuance of the license upon counsel's legal opinion that the Board was powerless to do so by reason of the provisions of N.J.S.A. 33:1-12.14. It was conceded that the Borough's population was less than 3,000, and there are three retail consumption liquor licenses presently in existence.

Appellant contends that the quoted statute was patently unconstitutional and void.

Thus, the central issue has been clearly defined: May this Division declare a statute unconstitutional?

It has been consistently held that a challenge to the constitutionality of a statute or rule can only be adjudicated by a court of competent jurisdiction, since statutes are presumed to be valid on their face. Cf. Klein and Tucker v. Fairlawn, et al., Bulletin 1175, Item 3; Helen's Hideaway, Inc., v. Hawthorne, Bulletin 2176, Item 3; Blanck v. Mayor and Borough Council of Magnolia, 73 N.J. Super. 306 (App. Div. 1962), rev'd on other grounds, 38 N.J. 484 (1962). The Director is not empowered to disregard or repeal a statute. As hereinabove stated, such authority is vested in a court of plenary jurisdiction. Seip v. Mayor, etc., of Frenchtown, 79 N.J. Super. 521 (App. Div. 1963); Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940).

Inasmuch as this specific determination is dispositive of the subject appeal, I recommend that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibit and the

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

Accordingly, it is, on this 8th day of January, 1979,

ORDERED that the action of the Board of Commissioners of the Borough of Avon-By-The-Sea be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

Daniel F. Vernon, Jr.
Burrell Road, Tewksbury Twp.
Lebanon, RD 2, New Jersey
Application filed March 19, 1979 for
plenary winery license.



Joseph H. Lerner
Director