

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

BULLETIN 1523

August 12, 1963

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1. COURT DECISIONS - THE BOSS CO., INC. and GROSS, DISTRICT DIRECTOR OF INTERNAL REVENUE v. ATLANTIC CITY, CLOCK BAR & GRILLE, INC., SYCUR, INC., and DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR REVERSED.

SUPREME COURT OF NEW JERSEY
A-114 September 1962 Term

THE BOSS CO., INC. t/a THE CLICK,)
and CHRIS L. GROSS, District Director)
of Internal Revenue, Camden, New Jersey,)
Appellants,)

vs.)

BOARD OF COMMISSIONERS OF THE CITY OF)
ATLANTIC CITY, CLOCK BAR & GRILLE, INC.,)
and SYCUR, INC., and DIVISION OF ALCOHOLIC)
BEVERAGE CONTROL, DEPARTMENT OF LAW AND)
PUBLIC SAFETY, State of New Jersey,)
Respondents.)

Argued April 23, 1963.

Decided July 1, 1963

Mr. Richard M. Roberts of the United States Department of Justice, Washington, D. C., argued the cause for appellants; Mr. Alfred Abbotts, appearing; Mr. David M. Satz, Jr., United States Attorney, Attorney for appellants; Mr. Vincent J. Commisa, Assistant United States Attorney, Mr. Richard A. Levin, Assistant United States Attorney, Mr. Sidney E. Zion, Assistant United States Attorney, Mr. Dennis C. DeBerry, Attorney, Regional Counsel's Office, Internal Revenue Service, of Counsel on the Brief.

Mr. Herbert S. Alterman, Deputy Attorney General, argued the cause for respondent. Division of Alcoholic Beverage Control; Mr. Arthur J. Sills, Attorney General, attorney; Mr. Alterman, of counsel.

Mr. Chaim H. Sandler, Associate City Solicitor, argued the cause for respondent, City of Atlantic City; Mr. Murray Fredericks, City Solicitor, attorney.

Mr. Thomas W. Rauffenbart, attorney for respondents, Clock Bar & Grille, Inc., and Sycur, Inc., joined, by permission of the Appellate Division, in the brief of City of Atlantic City.

The opinion of the court was delivered by
SCHETTINO, J.

The Boss Co., Inc., and the District Director of Internal Revenue appealed to the Appellate Division from the Conclusions and Order of the Director of the Division of

Alcoholic Beverage Control dismissing their appeals and affirming the action of the Board of Commissioners of the City of Atlantic City in refusing to grant an application by Boss that liquor license C-188 be transferred to it, and in granting the application of Clock Bar & Grille, Inc., to renew said license and to transfer it to Sycur, Inc. While the appeal was pending, we certified the case on our own motion.

While Clock was the holder of a liquor license for premises known as 19-21 South Tennessee Avenue, Atlantic City, it became indebted to the federal government in the amount of \$25,914.76, plus interest, for unpaid excise taxes which were assessed on August 15, 1958. By virtue of section 6321 of the Internal Revenue Code of 1954, a lien arose in favor of the United States upon "all property and rights to property" belonging to Clock. 26 U.S.C.A. § 6321. On March 15, 1961, a revenue officer, acting pursuant to 26 U.S.C.A. § 6331, attempted to seize all rights of Clock in and under the liquor license. That same day notice was given to Clock that the property would be publicly sold on April 10 by the District Director.

On April 6, the Board granted an application by Clock for a transfer of the license from 19-21 South Tennessee Avenue to 22-24 South South Carolina Avenue.

On April 10, the licensee's property was sold to Boss by the District Director, and two days later Boss made application to the Board for the transfer of the license to it and the retransfer of the license to 19-21 South Tennessee Avenue. Clock opposed the application and a public hearing was held. The Board denied this application on May 4 on the ground of lack of jurisdiction to grant the person-to-person transfer because Boss' application was not accompanied by a separate written consent to the transfer by the original licensee, Clock, as required by R.S. 33:1-26. The Board was also of the opinion that Clock had no property rights in the license which could be subjected to levy or sale because R.S. 33:1-26 provides, inter alia, that under no circumstances shall a license or rights thereunder be deemed property. Boss and the District Director appealed to the Division of Alcoholic Beverage Control. The appeal was heard on June 26.

On May 27, Sycur, with Clock's written consent, applied to the Board for the transfer of said license to it for premises at 22-24 South South Carolina Avenue. Boss and the District Director opposed the application, and a public hearing was held on June 29. That day the Board granted Clock's application for renewal of liquor license C-188 for the term ending June 30, 1962, as well as its transfer to Sycur. Again, Boss and the District Director appealed to the Division of Alcoholic Beverage Control.

All parties agreed that, inasmuch as the issues in both appeals were the same, they should be combined and decided together, with the decision in the earlier appeal binding the later one. The Conclusions and Order of the Director of the Division of Alcoholic Beverage Control adopted the Hearer's Report in which both reasons given by the Board for the denial of the transfer to Boss--lack of jurisdiction to grant the application and the absence of property rights in the license subject to levy and sale by the federal government--were found valid, and the Director affirmed the actions of the Municipal board.

The sole issue before us is whether a liquor license and any rights thereunder are property or rights to property within the meaning of section 6321 of the Internal Revenue Code. The United States Supreme Court has held that, in determining whether and to what extent a taxpayer has property or rights to property to which a federal lien can attach, state law controls; but once it has been determined that state law has created a sufficient interest in the taxpayer to satisfy the requirements of section 6321, federal law governs the attachment and priority of the lien. Aquilino v. United States, 363 U.S. 509, 4 L. Ed. 2d 1365 (1960); United States v. Bess, 357 U.S. 51, 2 L. Ed. 2d 1135 (1958). Our Alcoholic Beverage Law in R.S. 33:1-26 provides: "Under no circumstances, however, shall a license, or rights thereunder, be deemed property, subject to inheritance, sale, pledge, lien, levy, attachment, execution, seizure for debts, or any other transfer or disposition whatsoever, except to the extent expressly provided by this chapter."

The language alone of our statute is not dispositive of the issue, for a state legislative pronouncement in and of itself is insufficient to determine the existence or non-existence of a property interest within the meaning of section 6321. In Fidelity & Deposit Co. v. New York City Housing Authority, 241 F.2d 142 (2d Cir. 1957), Judge Medina noted that in adopting legislation regarding federal liens for taxes, Congress took for granted the existence of state laws creating and maintaining various interests, but fashioned the statute to require the courts to determine for federal purposes whether a state-created interest was property or rights to property. "That classification of interests is a federal question; the existence of the interests to be federally classified, however, is solely a question of state law." 241 F. 2d at 144. And in In re Halprin, 280 F.2d 407 (3d Cir. 1960), Judge Hastie said that the application of section 6321 involves a two-step inquiry in which both state and federal law must be consulted. "State law creates legal interests and defines their incidents, but the ultimate question whether an interest thus created and defined falls within a category stated by a federal statute requires an interpretation of that statute, which is a federal question." 280 F. 2d at 409. The court in Halprin applied its understanding of the nature and characteristics of property rights in order to decide whether the intangible right in issue was one Congress meant to include within the phrase "property and rights to property."

A liquor license in New Jersey vests a personal right in the licensee to conduct a business otherwise illegal. As such, it is merely a temporary permit or privilege. Mazza v. Cavicchia, 15 N.J. 498, 505 (1954); In re Schneider, 12 N.J. Super. 449, 456 (App. Div. 1951). But once granted, it is protected against arbitrary revocation, suspension or refusal to renew. See Blanck v. Mayor & Borough Council, 38 N.J. 484, 489 (1962); R.S. 33:1-22, 1-31.

This license has value--not merely the personal value to the licensee that inheres in the right to engage in the business of selling intoxicating liquors, but also the monetary value that arises from the power possessed by the licensee to substitute, with the municipal consent, some other person in his place as licensee. Moreover, in limited situations, the personal nature of the license is sacrificed so that this value can justly accrue to the benefit of third parties. R.S. 33:1-26 provides that if the operation of the business covered by the license devolves by operation of law upon a person other than the licensee, the

issuing authority may, in its discretion, "extend said license for a limited time, not exceeding its term, to the executor, administrator, trustee, receiver or other person upon whom the same has devolved by operation of law as aforesaid." If the license is extended, the holder thereof can exercise the same rights as the original licensee, and by conducting the business or converting the license into money by consenting to a person-to-person transfer, the estate of a deceased licensee will benefit or the assets available for creditors of a financially troubled licensee will be increased. Thus the liquor license is a legal interest in the nature of an economic asset, created and protected by statute, and because it has monetary value and is transferable, either by consent of the licensee or by operation of law (in the special statutorily-described sense), it possesses the qualities of property.

The somewhat unusual situation before us--the question whether a liquor license can be classified as "property" for federal purposes despite a legislative pronouncement to the contrary--has arisen in two cases. In Midwest Beverage Co. v. Gates, 61 F. Supp. 688 (N.D. Ind. 1945), the licensee sought an interlocutory and permanent injunction to enjoin officials of the State of Indiana from enforcing provisions of a statute which would cancel the license before it was due to expire. Plaintiff argued that the statute deprived it of its property rights without due process of law in violation of the fourteenth amendment. The officials moved to dismiss for lack of jurisdiction of the court to hear the cause on the ground, inter alia, that no property rights of the plaintiff were involved. The statute under which plaintiff's license was issued provided that no person was deemed to have a property right in a liquor license, nor was the license itself or the enjoyment thereof to be considered a property right.

The District Court conceded that while the license as such may not be property, the use and enjoyment of it gave its possessor something of value which had all the qualities of property. The court noted that under Indiana law the license could be transferred from one holder to another, subject to the terms and regulations of the state liquor commission, and that an administrator or executor of an estate of a deceased licensee or a receiver or trustee in bankruptcy could continue the business. Once granted, the court declared, "the use of the permit *** has the elements of property irrespective of what the Legislature may declare about the permit itself, and *** is property within the meaning of the due process clause of the Federal Constitution." 61 F. Supp. at 691.

The rationale of Midwest was adopted and applied to a case arising under section 6321. Deitsch v. Board of Liquor License Comm'rs, 58-1 U.S. Tax Cas. par. 9496, at 68, 334 (Md. Cir. Ct. 1958). Like Boss, Deitsch purchased a liquor license from the District Director of Internal Revenue, which the latter seized when the original licensee became delinquent in payment of federal income taxes, and his application to have the license transferred to him was denied by the respondent board on the sole ground that the license was not property or a property right. A Maryland statute declares that liquor licenses are not to be regarded as property or as conferring any property rights. On appeal, the court determined that the legislative purpose was to make clear that a license, at least insofar as the state was concerned, was not entitled to the ordinary protection of the constitution

usually afforded property rights. However, the court was of the opinion that, except for that purpose, the license could be considered property. Noting that other sections of the statute provide for the transfer of a license by the personal representative of the estate of a deceased licensee and for the sale or assignment of a license by the licensee or a receiver or trustee, the court stated: "There is no doubt that the license in this case is something of value, and the 'something' has attributes of property." 58-1 U.S. Tax Cas. par. 9496, at 68,335. In the opinion of the court, the liquor license was "property" within the meaning of section 6321, subject to seizure and sale by the federal government, with the rights of the purchaser contingent upon his being approved by the Board of Liquor License Commissioners and meeting any other requirements of Maryland law and regulations adopted pursuant thereto.

A liquor license was held to be "property" within the meaning of the Bankruptcy Act in In re Quaker Room, 90 F. Supp. 758 (S.D. Cal. 1950), despite judicial pronouncements to the contrary in cases decided in California state courts. Those cases were distinguished in Golden v. State, 133 Cal. App. 640, 285 P. 2d 49 (Dist. Ct. App. 1955), and a liquor license was declared "property" within the meaning of section 6321, the court emphasizing its transferability and its substantial value. Accord, Division of Labor Law Enforcement v. United States, 301 F. 2d 82 (9th Cir. 1962).

We agree with the sound reasoning of the above cases, and in light of the property characteristics incident to the legal interest created by our statute, we conclude that the liquor license in New Jersey constitutes "property" within the meaning and for the purposes of section 6321. Thus, as far as the federal government is concerned, R.S. 33:1-26 cannot immunize liquor licenses from the attachment of federal liens, for, as stated in United States v. Bess, supra, 357 U.S. at 57, 2 L. Ed. 2d at 1141, "state law is inoperative to prevent the attachment of liens created by federal statutes in favor of the United States."

Our decision is also consistent with the suggestion of Judge Francis that "the public interest requires liberal interpretation and application of the lien statute [section 6321] because such money is the life blood of government," Tanenbaum Textile Co. v. Vogue Foundations, Inc., 36 N.J. Super. 572, 581 (App. Div. 1955), and in no way marks a departure from the principles which have guided our courts in liquor license litigation. See Blanck, supra, 38 N.J. at 490-92. The liquor license, although transferable, is still to be considered a temporary permit or privilege, and not property, as it always has been, even before our Legislature so declared by statute, Voight v. Board of Excise Comm'rs, 59 N.J.L. 358, 360-61 (Sup. Ct. 1896), and this consideration is to continue to govern the relationship between state and local government and the licensee. Likewise, the vitality of R.S. 33:1-26 is in no way diminished and will continue to protect the liquor license from any device which would subject it to the control of persons other than the licensee, Mannion v. Greenbrook Hotel, Inc., 138 N.J. Eq. 518, 520 (E. & A. 1946); Rawlins v. Trevethan, 139 N.J. Eq. 226, 230 (Ch. 1947); Walsh v. Bradley, 121 N.J. Eq. 359, 360 (Ch. 1937), be it by pledge, lien, levy, attachment, execution, seizure for debts and the like. And finally, the sound discretion of the issuing authority to issue, renew or transfer liquor licenses will not be disturbed, for the seizure by the federal government merely obviates the necessity of securing the consent of the

licensee to the transfer; Boss, as transferee, must still make application to the issuing authority as is required in the case of an original application for a license, R.S. 33:1-26, and must measure up to the qualifications required of licensees as set out in R.S. 33:1-25. See Deitsch, supra.

Reversed and remanded.

2. COURT DECISIONS - OAK INN, INCORPORATED v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL AND ELIZABETH - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-122-62

OAK INN, INCORPORATED,
a New Jersey Corporation,

Appellant,

v.

STATE OF NEW JERSEY, DEPARTMENT
OF LAW AND PUBLIC SAFETY, DIVISION OF
ALCOHOLIC BEVERAGE CONTROL, THE
BOARD OF ALCOHOLIC BEVERAGE CONTROL
OF THE CITY OF ELIZABETH, NEW JERSEY,

Respondents.

Argued: June 10, 1963 - Decided: July 12, 1963

Before Judges Sullivan, Lewis and Labrecque.

Mr. Harold G. Smith argued the cause for the appellant (Messrs. Wilentz, Goldman & Spitzer, attorneys; Mr. Smith, of counsel).

Mr. John M. Boyle, City Attorney, argued the cause for the respondent The Board of Alcoholic Beverage Control of the City of Elizabeth.

Mr. Herbert S. Alterman argued the cause for the State of New Jersey, Department of Law and Public Safety, Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney).

PER CURIAM

This is an appeal from an order of the State Division of Alcoholic Beverage Control affirming the refusal of the Elizabeth Board of Alcoholic Beverage Control, to renew the appellant's plenary retail consumption license.

In June 1962 the appellant Oak Inn, Incorporated, which had operated a tavern at 1023 Magnolia Avenue, Elizabeth, for several years, made application for renewal of its license for the year beginning July 1, 1962. On June 26, 1962 the municipal board met for the purpose, among others, of acting

on the application. It had directed Mr. Epstein, appellant's president, to appear before it earlier on the evening in question. He appeared in response to the summons and was asked to explain why the board should renew appellant's license. His attention was called to some 14 items appearing in the police blotter for the license year relevant to the operation of the licensed premises. One of these was a sale after hours' conviction on September 29, 1961 which, as hereinafter noted, resulted in a 90 days' suspension of appellant's license. Mr. Epstein stated that he personally was at the tavern only between the hours of 11:00 a.m. and 5:00 p.m. each day and that he had no knowledge of any police calls to the premises. Thereafter a resolution denying the application for renewal was unanimously adopted.

In the resolution, the board found, in substance, that the licensee was unfit to operate the licensed premises by reason of having conducted the same improperly and in violation of the Rules and Regulations. It further found that it would be contrary to the best interest of the public health, safety, welfare, and morals to approve the application for renewal. Annexed to the resolution was an itemization of the police calls referred to and a list of prior admitted violations of the Rules and Regulations. The latter comprised the following:

(1) September 18, 1958, license suspended for five days, October 5 to October 10, 1958, upon pleas of non vult to violation of Rule 5, State Regulation No. 20 (nuisance) and violation of Rule 1, State Regulation No. 38 (sale in original containers after hours).

(2) November 13, 1958, license suspended for 20 days, December 1 to December 21, 1958, upon plea of non vult to violation of Rule 1, State Regulation No. 38 (sale in original containers after hours).

N.B. On this violation, the licensee was placed on probation for the period from November 14, 1958 to January 1, 1959.

(3) February 25, 1960, license suspended for 55 days, March 7 to May 1, 1960, upon plea of non vult for violation of Rule 1, State Regulation No. 38 (sale after hours).

(4) September 29, 1961, license suspended for 90 days, October 2, 1961 to December 31, 1961, upon entry to plea of guilty to violation of Rule 1, State Regulation No. 38 (sale after hours).

A timely appeal was taken to the Division of Alcoholic Beverage Control on the ground that the denial of the appellant's application for renewal of the license was arbitrary, capricious, and in violation of the constitutional rights of the appellant and was not based on facts justifying the denial.

At the hearing in the Division, Mr. Epstein, appellant's president and its only witness, was specifically interrogated by its attorney as to a number of the police calls referred to above. He denied that he or anyone employed in the tavern was involved in any of the incidents mentioned except one dated September 29, 1961 for selling after hours and one dated March 26, 1962 involving a complaint by one of its bartenders against a patron for disorderly conduct. In addition to these, the complaints in question

referred to the alleged picking of customers' pockets on the premises; assaults, some allegedly committed within and some without the tavern; and nuisances committed outside the tavern by patrons thereof.

Sergeant Alfred R. Goegelman, who was currently in charge of the confidential squad of the Elizabeth police, testified that complaints for A.B.C. violations were within his jurisdiction. Up to November 1961 he had been engaged as a police field supervisor. He was familiar with the licensed premises and had visited the tavern in the line of duty. The police were under orders to check it at least once each shift. He considered the tavern to be a trouble spot and it had been warned that checks were being made of it by the police. He was not personally familiar with any of the police calls to the tavern which had occurred during the license year.

Following the hearing a report was prepared and adopted by the Director which affirmed the board's refusal to renew the license. In it he found, in substance, that the licensing authority had "exercised its discretion reasonably, circum-spectly and in the best interests of the community," that there was substantial evidence to support its determination and that there was no evidence to indicate improper motivation on the part of the members thereof. He also found that any contention that the appellant had been deprived of due process at the municipal level was without effect in view of the trial de novo which had been afforded the appellant before the Division.

The sole basis for the present appeal is the appellant's contention that it was deprived of due process at the hearing before the licensing authority. This is premised upon the contention that it was not afforded the opportunity of presenting evidence or cross-examining witnesses and that hearsay evidence in the form of the police reports was considered. We find the appellant's contentions to be without merit.

Initially, we are satisfied that the licensee received a fair hearing before the municipal licensing authority. Its president received a written notice to appear on the night of the hearing. He was there advised that the police investigation of licensees had revealed that there were 14 items on the police blotter bearing upon the operation of the tavern and he was afforded an opportunity to be heard regarding these. There was no request for an adjournment to obtain counsel or produce witnesses, Mr. Epstein electing to rely upon his own explanation and assurances. The issuing authority was not sufficiently impressed. The five admitted violations of the Rules and Regulations which had culminated in a 90 days' suspension during the license year were adequate to support the refusal to renew.

But assuming that the hearing at the municipal level did not conform to the requirements of due process a reversal is not indicated where the facts in issue are not in dispute, Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957); Downie v. Somerdale, 44 N.J. Super. 84 (App. Div. 1957); Boots 'N Saddle v. Newark Municipal Bd., A.B.C., 44 N.J. Super. 38 (App. Div. 1957); or where there has been a subsequent de novo hearing, Nordco, Inc. v. State, *supra*, at p. 287; Davis, "The Requirement of a Trial Type Hearing," 70 Harv. L. Rev. 193, 271 (1956); *cf.* In re Masiello, 25 N.J. 590, 600 (1958); Benzoni v. Dept. of Civil Service, 10 N.J. Super. 103, 106 (App. Div. 1950); or where it appears that substantial justice has plainly been rendered,

Boots N'Saddle v. Newark Municipal Bd., A.B.C., supra, at p. 41.

In the instant case the appeal to the Division resulted in a de novo hearing. Cino v. Driscoll, 130 N.J.L. 535 (E. & A. 1943); Fanwood v. Rocco, 33 N.J. 404, 414 (1960). The Director's review is plenary and results in independent findings which supersede the action taken at the original hearing. Neiden Bar and Grill v. Municipal Bd., etc., of Newark, 40 N.J. Super. 24, 28-29 (App. Div. 1956). The present appeal is from the action of the Director. Essex County, etc., Stores Association v. Newark, etc., Bev. Cont., 64 N.J. Super. 314, 324 (App. Div. 1960).

At the hearing in the Division the appellant was represented by counsel and was afforded every opportunity to present witnesses and to examine and cross-examine. We note that previous thereto it had been furnished with a copy of the resolution denying renewal of its license to which was attached the list of 14 notations from the police department. The contention that its burden at the hearing was greater than its burden before the local authority has no pertinency in the face of the absence of evidential facts to establish that there had been an abuse of discretion below. Cf. Fanwood v. Rocco, 59 N.J. Super. 306, 314-319 (App. Div. 1960). Notwithstanding the burden of proof incumbent upon it, Downie v. Somerdale, supra, at p. 87; Nordco, Inc. v. State, supra, at p. 287, the appellant chose to rest upon the testimony of Mr. Epstein, its principal owner, rather than to call the bartenders who had been in actual charge of the premises during the disputed hours.

Nor do we find any substance to the appellant's contention that the receipt of "hearsay" evidence by the Director vitiated his findings. It was the statutory duty of the Elizabeth board to "*** investigate applicants and to inspect the premises sought to be licensed ***." R.S. 33:1-24. It was proper for it, and also the Director, to take into account not only the licensee's conduct but also conditions not attributable to its conduct which rendered the continuance of the tavern in a particular location inimical to the public interest. Nordco, Inc. v. State, supra, at p. 282. Where, as here, there was testimony in the appellant's direct case referable to the notations in the police blotter, it was not improper for the Director to consider such notations so long as his ultimate determination rested upon legally admissible evidence. Mazza v. Cavicchia, 15 N.J. 498, 509 (1954). In any event, appellant appears to have disputed only the location of the occurrences mentioned. Thus Epstein testified:

"Q. The question is, sir, whether it is your your contention that these alleged police reports and violations during 1961-62 did not occur on the premises. A. That is correct."

We accordingly find that there has been no denial of due process.

The question of whether a license should be renewed rests in the sound discretion of the local issuing authorities and of the Division on appeal and courts will not interfere in the exercise of that discretion unless it appears that there was manifest error, clearly unreasonable action, or some more

untoward impropriety. Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598,600 (App. Div. 1955). As was said in Zicherman v. Driscoll, 133 N.J.L. 586, 587 (Sup. Ct. 1946):

"The primary question presented is the right of a holder of a plenary retail consumption license to a renewal of that license for a subsequent term.

The question of a forfeiture of any property right is not involved. R.S. 33:1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, *** and no person is entitled as a matter of law to a liquor license. *** No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interfere with the actions of the constituted authorities. *** The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the guide post in the issuing and renewing of licenses.

*** Under the duty imposed upon it the board is required to consider an applicant's past record as a licensee. ***"

The action of the Director sustaining the refusal of the municipal authorities to renew appellant's license did not constitute an abuse of discretion. On the contrary, in view of the five admitted violations of the Rules and Regulations, the last one resulting in a 90 days' suspension during the current year, we are satisfied that substantial justice has plainly been rendered. Boots 'N Saddle v. Newark Municipal Bd., A.B.C., supra, (44 N.J. Super. at p. 41).

Affirmed.

3. RECAPITULATION OF ACTIVITY BY QUARTERLY PERIODS FROM JULY 1, 1962 THROUGH JUNE 30, 1963

	1st Quarter			2nd Quarter			3rd Quarter			4th Quarter			Total
	July	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	
ARRESTS:													
Total number of persons arrested	72			68			43					81	264
Licensees and employees	32			45			31					68	176
Bootleggers	38			22			12					30	102
ABC Agent Impersonators	2			-			-					3	5
SEIZURES:													
Motor vehicles - cars	4			2			1					3	10
Stillts - over 50 gallons	2			2			-					2	6
- 50 gallons or under	4			4			-					2	10
Mash - gallons	2,525			1,280			-				7,945	-	11,750
Distilled alcoholic beverages - gallons	339,512			147,843			13,041				25,260		525,656
Wine - gallons	18,945			39,323			22,350				8,093		88,711
Brewed malt alcoholic beverages - gallons	55,878			24,472			3,843				52,241		136,434
RETAIL LICENSEES:													
Premises inspected	2,119			2,570			2,942				3,190		10,821
Premises where alcoholic beverages were gauged	1,910			2,029			1,802				1,874		7,615
Bottles gauged	29,839			31,226			26,899				28,131		116,095
Premises where violations were found	244			290			420				442		1,396
Violations found	394			358			500				605		1,857
Unqualified employees	210			85			91				169		555
Reg. #38 sign not posted	62			84			132				135		413
Application copy not available	47			48			99				105		299
Prohibited signs	8			23			26				36		93
Other mercantile business	6			20			39				27		92
Disposal permit necessary	8			7			6				19		40
Improper beer taps	2			8			6				4		20
Questionable liquor	7			-			5				4		16
Other violations	44			83			96				106		329
STATE LICENSEES:													
Premises inspected	32			49			107				83		271
License applications investigated	27			23			18				63		131
COMPLAINTS:													
Complaints assigned for investigation	1,176			1,083			1,271				1,284		4,814
Investigations completed	1,248			1,077			1,235				1,296		4,846
Investigations pending	(169)			(185)			(196)				130		130
LABORATORY:													
Analyses made	699			241			309				365		1,614
Refills from licensed premises - bottles	102			62			190				131		485
Bottles from unlicensed premises	143			50			16				44		253
IDENTIFICATION:													
Criminal fingerprint identifications made	30			33			14				27		107
Persons fingerprinted for non-criminal purp.	1,019			665			629				1,252		3,565
Ident. contacts made w/other enforcement agency.	689			505			480				823		2,497
MV identifications via NJ State Police teletype	14			12			8				6		40
DISCIPLINARY PROCEEDINGS:													
Cases transmitted to municipalities	49			37			35				27		148
Violations involved	52			40			36				32		160
Sale during prohibited hours	26			19			21				11		77
Sale to minors	21			14			8				10		53
Possessing chilled beer (DL licensee)	2			2			2				4		10
Failure to close prem. during proh. hours	2			3			-				1		6
Sale to non-members by club	-			1			2				2		5
Sale outside scope of license	1			-			1				3		5
Permitting brawl, etc. on premises	-			-			1				1		2
Employing female bartender (local reg.)	-			1			-				-		1
Failure to afford view into prem. dur. proh. hr.	-			-			1				-		1
Cases instituted at Division	65			58			66				68*		257
Violations involved	92			101			90				106		389
Possessing liquor not truly labeled	17			16			18				7		58
Sale to minors	12			14			14				12		52
Sale during prohibited hours	13			13			10				15		51
Permitting lottery activity on premises	5			3			7				8		23
Hindering investigation	7			6			2				4		19
Sale below filed price	7			2			4				4		17
Permitting immoral activity on premises	2			8			1				6		17
Permitting bookmaking on premises	4			-			3				5		12
Conducting business as a nuisance	1			4			3				3		11
Unqualified employees	-			3			3				4		11
Fraud and front	-			2			1				7		10
Permitting gambling on premises	-			-			2				6		8
Permitting hostess activity on premises	2			5			1				-		8
Unauthorized transportation	2			2			1				2		7
Fraud in application	3			2			-				2		7
Beverage Tax Law non-compliance	-			1			3				3		7
Permitting foul language on premises	1			2			1				2		6
Sale outside scope of license	3			-			1				2		6
Sale to intoxicated persons	1			2			-				2		5
Sale to non-members by club	3			1			1				-		5
Possessing indecent matter	-			2			1				2		5
Failure to close prem. dur. proh. hours	2			-			-				2		4

* includes one cancellation proceeding - license improvidently issued to club not bona fide

	1st Quarter		2nd Quarter		3rd Quarter		4th Quarter		Total
	July	Aug. Sept.	Oct. Nov.	Dec.	Jan. Feb.	Mar.	Apr. May	June	
DISCIPLINARY PROCEEDINGS (Continued)									
Cases instituted at Division (Continued)									
Failure to afford view into prem. dur. pro. hr.	1				1			1	3
Purchase from improper source			1		1				2
Possessing contraceptives on premises			1		1				2
Application copy not on premises	1		1						2
Permitting female impersonators on premises									2
Failure to file notice of change in appl.			1				1		2
Unlicensed purchase by solicitor					1		1		2
Solr. aiding & abetting unlicensed sale					1		1		2
Retailer-to-retailer sales	2								2
Delivery without bona fide invoice			1				1		2
Single instance of other violations	4		5		6		4		19
Cases brought by municipalities on own initiative and reported to Division	54		73		46		68		241
Violations involved	59		91		64		77		291
Sale to minors	46		43		31		48		168
Sale during prohibited hours	7		12		2		8		29
Permitting brawl, etc. on premises	5		7		5		8		25
Failure to close prem. during proh. hours	4		5		4		1		14
Permitting minors unaccom. by parents or guardians on premises (local reg.)			4		4		1		9
Conducting business as a nuisance	2		1		2		1		6
Hindering investigation	1		3		1				5
Permitting bookmaking on premises	2		1				1		4
Permitting gambling on premises	1		2				1		4
Permitting foul language on premises			1		2				3
Permitting persons of ill repute on premises			1		2				3
Sale to intoxicated persons					2		1		3
Permitting lottery activity on premises	1		1						2
Permitting immoral activity on premises	1		1				1		2
Unqualified employees			2						2
Failure to file notice of chge in appl.					2				2
Act of violence			1		1				2
Sale outside scope of license			1		1				2
Employee working while intoxicated			1				1		2
Employing bartender w/o permit (local reg.)			1				1		2
Permitting female impersonators on premises					1		1		2
Single instance of other violations			2		3		3		8
HEARINGS HELD AT DIVISION:									
Total number of hearings held	117		99		110		108		434
Appeals	22		14		13		13		62
Disciplinary proceedings	74		61		68		61		264
Eligibility	16		14		20		25		75
Seizures	3		6		7		2		18
Tax revocations					2		4		7
Applications for license	1		1				2		4
Orders to show cause			2						2
Hearings on petition	1						1		2
STATE LICENSES AND PERMITS ISSUED:									
Total number issued	4,720		4,680		2,777		22,048		34,225
Licenses	615		9		8		15		647
Solicitors' permits	162		122		119		2,824		3,227
Employment permits	1,007		663		538		3,356		5,564
Disposal permits	233		177		204		207		821
Social affair permits	1,341		1,315		1,005		1,312		4,973
Wine permits	2		941		10		1		954
Miscellaneous permits	535		626		332		789		2,282
Transit insignia	781		729		587		12,356		14,453
Transit certificates	44		98		74		1,188		1,404
OFFICE OF AMUSEMENT GAMES CONTROL:									
Licenses issued	177		90		249		293		809
Premises inspected	1,023		3		1		589		1,616
Premises where violations were found	23				1		28		52
Number of violations found	25				1		32		58
Enforcement files established	72		97		8		43		220
Disciplinary proceedings instituted	5								5
Violations involved	7								7
Operating controlled game	2								2
Redemption of prize for money	2								2
Hindering investigation	1								1
Operating unlicensed game	1								1
Awarding free game	1								1

Acting Director of Alcoholic Beverage Control
Acting Commissioner of Amusement Games Control

Dated: July 15, 1963

4. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE
SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

JERSEY CITY LIQUOR MART, INC.)
t/a JERSEY CITY LIQUOR MART)
478 West Side Avenue)
Jersey City 4, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution)
License D-99, for the years 1962-63 and)
1963-64, issued by the Municipal Board)
of Alcoholic Beverage Control of the)
City of Jersey City.)

Licensee, by Thomas M. Falkowski, President, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that
on May 25, 1963, it sold two pints of wine to a minor, age 18,
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 Lighthouse
Tavern, Inc., Bulletin 1517, Item 7.

Accordingly, it is, on this 24th day of June 1963,

ORDERED that Plenary Retail Distribution License D-99,
issued by the Municipal Board of Alcoholic Beverage Control of
the City of Jersey City to Jersey City Liquor Mart, Inc., t/a
Jersey City Liquor Mart, for premises 478 West Side Ave., Jersey
City, be and the same is hereby suspended for ten (10) days,
commencing at 9 a.m. Monday, July 1, 1963, and terminating at
9 a.m. Thursday, July 11, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISQUALIFICATION REMOVAL PROCEEDINGS - PETIT LARCENY
EQUIVALENT TO LARCENY - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application)
to Remove Disqualification)
because of a Conviction, pursuant)
to R.S. 33:1-31.2)
)

CONCLUSIONS
AND ORDER

Case No. 1753

BY THE ACTING DIRECTOR:

On December 21, 1956, petitioner, after pleading guilty in another State to a charge of petit larceny (\$927.00), was given a suspended sentence and placed on probation for an indefinite term and ordered to make restitution. Such conviction, in view of amount involved, is tantamount to a conviction of larceny (high misdemeanor) in this State. Since the crime of larceny involves the element of moral turpitude (Re Case No. 1659, Bulletin 1436, Item 8), petitioner was thereby rendered ineligible to engage in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (33 years old) testified that he is married and living with his wife and four children; that for the past five years he has resided at his present address and that he has been employed as a truck driver for nine years.

Petitioner further testified that he is asking for the removal of his disqualification to be free to accept a job in this State as a part-time bartender in order to supplement his present income and that, ever since his conviction on December 21, 1956, he has not been convicted of any crime.

The Police Department of the municipality wherein petitioner resides reports that there are no complaints or investigations presently pending against the petitioner.

The petitioner produced three character witnesses (a truck driver, an embroidery spanner and a retired porter) who testified that they have known petitioner for more than five years last past, and that in their opinion he is now an honest, law-abiding person with a good reputation.

Considering all of the aforesaid facts and circumstances, I am satisfied that the petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 27th day of June 1963,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

EMERSON A. TSCHUPP
ACTING DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY
LABELED - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

RIVEREDGE RESTAURANT, INC.)
185 River Road)
North Arlington, N. J.)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption)
License C-2 for the years 1962-63 and)
1963-64, issued by the Mayor and)
Council of the Borough of North)
Arlington.)

Licensee, by Charles H. Eagan, President, Pro se.
David S. Piltzer, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads guilty to a charge alleging that on
May 13, 1963, it possessed alcoholic beverages in eight bottles
bearing labels which did not truly describe their contents, in
violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended
for thirty days, with remission of five days for the plea
entered, leaving a net suspension of twenty-five days. Re Ross'
Blue Lantern, Inc., Bulletin 1470, Item 3.

Accordingly, it is, on this 24th day of June 1963,

ORDERED that Plenary Retail Consumption License C-2,
issued by the Mayor and Council of the Borough of North Arlington
to Riveredge Restaurant, Inc., for premises 185 River Road, North
Arlington, be and the same is hereby suspended for twenty-five
(25) days, commencing at 2 a.m. Monday, July 1, 1963, and
terminating at 2 a.m. Friday, July 26, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.


V. H. Stratton, Inc.
t/a Anthony Bottling Co.
Brown Street, between 5th and 6th Streets
Cambridge, Delran Township
P. O. Riverside, New Jersey
Application filed August 5, 1963 for
person-to-person transfer of State
Beverage Distributor's License SBD-35
from Anthony Bottling Co.

Sunshine Brewing Co.
N. W. Corner West Elm and Gordon Streets
Reading, Pennsylvania
Application filed August 5, 1963 for
person-to-person transfer of Limited
Wholesale License WL-2 from Sunshine
Brewing Co. (This corporation is being
dissolved and license being transferred
to new corporation with same name).

Victor Fischel & Company, Inc.
960 Springfield Avenue
Irvington, New Jersey
Application filed August 6, 1963
for Plenary Wholesale License.

Ark Beverages, Inc.
121 Meadow Street
Hackensack, New Jersey
Application filed August 8, 1963 for
place-to-place transfer of State
Beverage Distributor's License SBD-17
from 254 Railroad Avenue, Hackensack,
New Jersey.

R. & P. Distributing Co., Inc.
292 Third Street
Trenton, New Jersey
Application filed August 8, 1963 for
person-to-person transfer of State
Beverage Distributor's License SBD-77
from Ritchie & Page Distributing Co., Inc.


Emerson A. Tschupp
Acting Director

New Jersey State Library