

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
RICHARD J. HUGHES JUSTICE COMPLEX - CN-087
TRENTON, NEW JERSEY 08625-0087

BULLETIN 2450

JUNE 2, 1987

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STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
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RICHARD J. HUGHES JUSTICE COMPLEX - CN-087
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BULLETIN 2450

June 2, 1987

1. NOTICE TO WHOLESALERS - SUBMISSION OF ANNUAL CREDIT REPORTS
FOR CALENDAR YEAR 1986 PURSUANT TO N.J.A.C. 13:2-24.4(e)(3)

All New Jersey licensed manufacturers, brewers, vintners, rectifiers and blenders, importers, wholesalers and distributors have recently been sent a Notice identifying the filing requirements and contents of an annual credit compliance report mandated by N.J.A.C. 13:2-24.4(e)(3). Since this report is only required if the licensee sold alcoholic beverages to retailers in this State in 1986, a licensee that has not made such sales does not have to file a report, but rather, should certify that fact in a letter to the Division. The Notice sent to licensees follows:

Pursuant to N.J.A.C. 13:2-24.4(e)(3) every wholesaler that sells alcoholic beverages to retailers must submit to the Division annually a report outlining its actions to insure compliance with Division credit regulations. If your company made no sales to retailers in 1986, all that is required is a letter stating that fact. The report for calendar year 1986 certified by an appropriate agent or officer of the wholesaler, must be filed by June 10, 1987.

The report shall include the following:

1. An identification of the wholesaler and the job classification of the individual(s) submitting the report;
2. A statement of the following credit practices and terms:
 - (a) The wholesaler's normal credit period to the entire retail trade;
 - (b) An enumeration of general standards utilized to justify different credit terms to particular accounts, if applicable;
 - (c) An indication whether you have allowed prompt payment discounts on price in credit purchases, and, if so, a delineation of the discount terms; and
 - (d) The percentage charged by the wholesaler on delinquent accounts and the method of computing interest.
3. A statement of how the wholesaler defines "satisfaction"

in its terms of sale for the purposes of a timely payment of a credit obligation and for the purposes of payment on an account subject to a Notice of Delinquency, i.e., in default;

4. Set forth the telephone number and address of the individual and/or bureau charged with maintaining credit records for the two year period required under N.J.A.C. 13:2-24.4(e);

5. Provide the following statistical data concerning your wholesale operation and credit transactions as of December 31, 1986:

(a) Dollar amount of gross sales to retailers during the reporting year;

(b) Dollar amount of outstanding indebtedness due from retailers, whether in default or not, as of December 31, 1986, and

(c) Dollar amount of defaulted indebtedness, as of December 31, 1986 for transactions:


- (i) up to 6 months old
- (ii) 6 months to 1 year old
- (iii) over 1 year old;

6. Provide the specific names and dollar amounts concerning collection activity for defaulted obligations:

(a) For retailers currently subject to civil litigation or subject to entry of a judgment in 1986 by wholesaler to collect indebtedness; and

(b) For retailers whose debts were discharged by operation of law e.g., Bankruptcy, receivership, etc.) in 1986 or who are currently subject to such proceedings.

7. Provide any additional information you deem relevant to your compliance with the annual report requirement and submit any comments or suggestion to amend, modify or supplement the herein stated report standards or the subject regulations.


JOHN F. VASSALLO, JR.
DIRECTOR

DATED: May 11, 1987

NOTE: Public inspection of information requested in this report and investigative exclusions therefrom shall be governed by the provisions of N.J.A.C. 13:2-29.1, et seq., following review by the Division.

Dollar figures for specific wholesalers and distributors will be considered confidential. Summaries or examples of such figures may be utilized in reports without identification of specific parties.

Transmittal of reports and all inquiries should be directed to J. Wesley Geiselman, Executive Assistant to Deputy Director Robert J. Pinard, at the Division offices.

2. NOTE TO RETAIL LICENSEES - UTILIZATION OF CITATIONS IN LIEU OF DISCIPLINARY CHARGES IN CERTAIN CASES

Commencing June, 1987, the Division of Alcoholic Beverage Control and the Division of State Police, Alcoholic Beverage Control Enforcement Bureau will begin implementation of a new program designed to expedite the disposition of routine, minor offenses. The essential element of this program will be the utilization of a summons-like citation form which an ABC agent will issue at the time of investigation to a licensee for certain infractions of alcoholic beverage control laws or regulations.

In many respects, the operation of the program will resemble the manner in which a traffic violation is handled. A citation, or in this case a "Notice of Violation", will be prepared by the investigating ABC agent identifying the alleged infraction.

This Notice will be given to the licensee or its employee after preparation. The licensee will have the option of contesting the Notice by entering a "not guilty" plea in writing within ten business days. In such cases, the matter will be formally heard and decided. In the alternative, the licensee can plead guilty or "non vult" and pay a monetary fine in lieu of formal disciplinary proceedings. It is expected that in most cases where the citation is used, the licensee will not contest the charge.

Examples of the type of offenses where this procedure will be used include:

- No E-141-A form
- Incomplete E-141-A form
- No copy of license application (long, short or current)
- License certificate not conspicuously displayed
- No Special Federal Tax Stamp or indicia of payment
- Contaminated and/or low proof bottles (no tampering)
- Purchase/Receiving alcoholic beverages from prohibited source (Retailer to Retailer)

Photo reduced Notice of Violation

STATE OF NEW JERSEY DEPARTMENT OF LAW & PUBLIC SAFETY ALCOHOLIC BEVERAGE CONTROL				
NOTICE OF VIOLATION				
NUMBER	Nº		81	
DAY	MONTH	DATE	YEAR	HOUR
NAME ON LICENSE				
TRADE NAME				
ADDRESS		TELEPHONE #		
CITY		ZIP CODE		
MAILING ADDRESS				
LICENSE NUMBER				
PERSON PRESENT		POSITION		
ADDRESS				
CITY		STATE		ZIP CODE
VIOLATION DESCRIBE IN WORDS				
STATUS : NRS 32				
REGULATION : NAC 12				
SECTION OF LICENSE PREMISES VIOLATED BY				
SIGNATURE				
BADGE				
UNIT				
DATE				

Prohibited promotions
 Employment of minor
 Transfer of alcoholic beverages
 without Bulk Sales Permit
 No transit insignia (retailer)
 Failure to notify of corporate
 structure change
 Storage off licensed premises
 No beer tap markings
 No identification of brand
 being dispensed by automatic
 or electronic dispenser
 Alcoholic beverages as a prize
 Possession of open container
 on plenary retail distribution
 licensed premises
 Other mercantile business
 Failure to notify of prior record

READ CAREFULLY
 YOU MAY PLEAD GUILTY, NON-VULT OR
 WAIVE YOUR RIGHT TO A HEARING BY
 TELEPHONING
 (609) 984-1520
 OR BY WRITING TO
 DIRECTOR
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL
 RICHARD J. HUGHES JUSTICE COMPLEX
 CN 087
 TRENTON, NEW JERSEY 08625
 AT WHICH TIME YOU WILL BE ADVISED
 REGARDING PENALTY.
 IF YOU WISH TO CONTEST THE CHARGE(S),
 YOU MUST ENTER A WRITTEN PLEA OF
 NOT GUILTY TO THE DIRECTOR OF ALCO-
 HOLIC BEVERAGE CONTROL AT THE ABOVE
 LISTED ADDRESS.
 PLEASE TAKE NOTICE THAT YOU MUST
 RESPOND, TO THE DIRECTOR, WITHIN TEN
 (10) BUSINESS DAYS OF THE ISSUANCE OF
 THIS NOTICE. FAILURE TO RESPOND WILL
 BE CONSIDERED A DEFAULT AND YOUR
 LICENSE COULD BE SUBJECT TO SUSPENSION.

I HEREBY ENTER A PLEA OF GUILTY
 OR NON-VULT TO THE VIOLATION(S) SET
 FORTH IN THIS NOTICE AND ACCEPT THE
 DETERMINATION OF PENALTY SET BY THE
 DIRECTOR OF THE DIVISION OF ALCOHOLIC
 BEVERAGE CONTROL.

NAME OF LICENSE _____

TITLE/POSITION _____

The monetary penalties will range from \$50 to \$250 - per offense.
 The exact amount of the penalty and how to pay it can be ascertained
 by contacting the Prosecution Bureau of the Alcoholic Beverage
 Control at (609) 984-1520 two or three days after receipt of the
 citation.

3. NOTICE OF REVISED REGISTRATION FORM FOR MANUFACTURER'S REBATE PROGRAMS

In Bulletin 2432, Item 1 (August 31, 1983) a recommended form
 was set forth in full to be used by manufacturers, importers,
 distillers, wholesalers, brewers, vintners, and rectifiers and
 blenders when they register proposed rebate programs under N.J.A.C.
13:2-24.11. While the information to be included continues to remain
 basically the same, a revised form has been developed by the Division
 which should make it easier to complete the required information form
 by providing additional space for answers and will assist the
 Division in computerizing the information for its records.
 Experience has indicated that most industry members utilized that
 prior form and the Division continues to strongly encourage all
 registrants to utilize the revised form. One change to note is the
 requirement that the form be filed, with attachments, in triplicate.
 This will enable the Division to dedicate one copy to a master filing
 binder to be readily accessible and open for public inspection.

A reduced facsimile of the new revised form follows:

ABC FILE NO.
RR _____

FOR ABC USE ONLY
DATE RECEIVED _____

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
CN 087, TRENTON, N.J. 08625

REBATE/REFUND OFFER INFORMATION

TO BE COMPLETED BY MANUFACTURER, DISTILLER, RECTIFIER/BLENDER, BREWER,
VINTNER, OR IMPORTER OFFERING REBATE.

INSTRUCTIONS: THIS FORM SHOULD BE FILED IN TRIPLICATE. EACH COPY
SHOULD BE ACCOMPANIED BY THE FORM TO BE USED IN THE
REBATE OFFER. ALSO INCLUDE A SELF-ADDRESSED, POSTAGE-
AFFIXED ENVELOPE. [PLEASE PRINT OR TYPE]

1. NAME OF FILER _____

2. NAME OF PRODUCT _____

3. PRODUCT TYPE _____

4. CONTAINER SIZE _____ REBATE AMOUNT _____ SIZE _____ REBATE AMOUNT _____
CONTAINER SIZE _____ REBATE AMOUNT _____ SIZE _____ REBATE AMOUNT _____

5. BRAND REGISTRATION NO. _____ REGISTRANT NAME _____

6. MAILING ADDRESS OF FILER OFFERING REBATE

(ZIP CODE)

TELEPHONE NO. () _____ N.J. LICENSE NO. _____
(INDICATE "NONE" IF NOT A NJ LICENSEE)

7. EFFECTIVE DATES OF REBATE PROGRAM
COMMENCEMENT DATE _____ EXPIRATION DATE _____

8. INDICATE HOW REBATE OFFER WILL BE ADVERTISED TO THE PUBLIC

9. TERMS AND CONDITIONS OF REBATE OFFER
PROOF OF PURCHASE REQUIRED? _____ YES _____ NO
MARKETING AREA _____

10. PERSON TO CONTACT REGARDING REBATE PROGRAM _____
TELEPHONE NO. () _____

11. CLEARING HOUSE WHICH WILL PROCESS REBATE
NAME _____
ADDRESS _____

INFORMATION MUST BE SUBMITTED AT LEAST 10 DAYS PRIOR TO REBATE COMMENCEMENT

**4. NOTICE REGARDING SUBSTITUTION OF BEVERAGES - N.J.A.C.
13:2-23.19 DOES NOT PREVENT A LICENSEE FROM REFUSING SALE OF
ALCOHOLIC BEVERAGES TO A PROPOSED PATRON AND THEREAFTER
OFFERING A NONALCOHOLIC BEVERAGE TO THAT PERSON**

Several inquiries have been received concerning N.J.A.C.
13:2-23.19, a Division regulation which provides as follows:

No licensee privileged to sell alcoholic beverages for consumption on the licensed premises shall serve or allow, permit or suffer the service of any alcoholic beverage other than ordered or substitute a nonalcoholic beverage when an alcoholic beverage has been ordered.

The specific question raised seeks clarification whether this regulation somehow prohibits a retail licensee from refusing to sell or serve alcoholic beverages to a person it believes is actually or apparently intoxicated and at the same time offering as an alternative to such person a nonalcoholic beverage, such as coffee or soda.

The direct answer is that a retailer is not prohibited from doing this by the regulation. A licensee can and must under N.J.A.C. 13:2-23.1(b) refuse service to or prohibit continued consumption of alcoholic beverages by a person who is actually or apparently intoxicated. To offer as an alternative to such person a nonalcoholic beverage is not prohibited by this regulation.

The provisions of N.J.A.C. 13:2-23.19 address two situations which are prohibited. The first deals with a patron that orders a specific brand of alcoholic beverage, for example "Old Deregulator" gin. The licensee must serve only "Old Deregulator" gin to that patron. A different brand of gin may not be served. If the licensee does not have "Old Deregulator", the patron must be told and provided an opportunity to reorder another brand. Should, however, a patron just order gin without specifying any particular brand, the licensee can choose which brand of gin it will serve.

The second example prohibited by this regulation represents the situation where a patron orders an alcoholic beverage, and the licensee does not put any alcoholic beverages into the drink. In this case the licensee is, without the knowledge of the patron, serving a nonalcoholic drink represented to be an alcoholic beverage drink. Examples of this could be serving a patron who orders "gin and tonic" a drink that does not contain any gin or substitutes some nonalcoholic product that would have the essence or flavor of gin.

To briefly reiterate, the prohibitions contained in N.J.A.C. 13:2-23.19 do not limit in any way the licensee's right, ability or obligation to refuse to serve an alcoholic beverage to a person who is actually or apparently intoxicated, or who might appear too

youthful looking despite proof of age and thereafter offer and serve, if accepted by such person, a nonalcoholic beverage drink.

5. STATE LICENSE TRANSACTIONS - APRIL 30, 1987 TO DATE

LICENSE TYPE:	LICENSE #:	STATUS:
Public Warehouse license Dusol Corporation 259-262 Jefferson Street Newark, NJ 07105	3401-28-492-001	New license iss. eff: 5/1/87
Transportation license Consolidated Rail Corp. 1138 6 Penn Center Plaza Philadelphia, PA 19103	3401-20-493-001	New license iss. eff: 5/1/87
Wine Wholesale license Excelsior Wine & Spirits 19 Self Boulevard Carteret, NJ 07008	3401-26-490-001	New license iss. eff: 5/6/87
Annual State Permit Wall Street Catering, Inc. 1100 Pleasant Valley Rd West Orange, NJ 07052	3401-14-495-001	New license iss. eff: 5/6/87
Public Warehouse Vineland Construction Co. 71 West Park Avenue Vineland, NJ 08360	3401-28-498-001	New license iss. eff: 5/12/87
Public Warehouse Vineland Construction Co. 1215 Harrison Avenue Kearny, NJ 07032	3401-28-499-001	New license iss. eff: 5/12/87
Transportation license Zavitz Brothers Limited 955 Middlegate Road Ontario Canada 24Y3Y	3401-20-496-001	New license iss. eff: 5/12/87
Wine Wholesale license Wine World, Inc. 2000 Main Street St Helena, Ca 94574	3401-26-494-001	New license iss. eff: 5/14/87
Limited Wholesale license Mario Fernandez 137 Walnut Street Newark, NJ 07105	3401-25-497-001	New license iss. eff: 5/15/87
Plenary Retail Transit Nine O Six Inc. Official #288706 906 Ocean Avenue Belmar, NJ 07719 From: Ocean Beach Enterprises, Inc. same address	3400-13-992-003	Person to Person Transfer eff: 5/15/87
Transportation license Staten Beverage Inc. 14 W 21st Street Linden, NJ 07036	3401-20-354-002	Expansion of Premises. eff: 5/18/87
Transportation license The Orient Limited 1433 Pinewood Street Rahway, NJ 07065	3401-20-500-001	New license iss. eff:
Transportation license Richmond Express, Co. 1201 Corbin Street Elizabeth, NJ 07201	3401-20-501-001	New license iss. eff: 5/19/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Coastal Cat" #627141 500 State Highway 36 Middletown, NJ 07748	3401-13-502-001	New license iss. eff: 5/21/87

Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Jamey Downey" #625597 500 State Highway 36 Middletown, NJ 07748	3401-13-503-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Catherine J" #623430 500 State Highway 36 Middletown, NJ 07748	3401-13-504-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Coastal Champion" #607766 500 State Highway 36 Middletown, NJ 07748	3401-13-505-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Stanis M" #596656 500 State Highway 36 Middletown, NJ 07748	3401-13-506-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Walter M" #588270 500 State Highway 36 Middletown, NJ 07748	3401-13-507-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Little M" #689156 500 State Highway 36 Middletown, NJ 07748	3401-13-508-001	New license iss. eff: 5/20/87
Plenary Retail Transit Harbor Commuter Service, Inc. Boat "Paul Salard" #624734 500 State Highway 36 Middletown, NJ 07748	3401-13-509-001	New license iss. eff: 5/20/87
Annual State Permit K.R.K. Restaurant Associates, Inc. Allen Avenue & Ocean Place Allenhurst, NJ 07711	3401-14-510-001	New license iss. eff: 5/21/87
Wine Wholesale license The Wineworks, Inc. 124 Route 59 Suffern, NY 10901 220 91st Street North Bergen, NJ	3401-26-511-001	New license iss. eff: 5/22/87 Warehouse address
Transportation license L & M Beverage Company, Inc. 4925 Princeton Avenue Philadelphia, PA 19135	3401-20-512-001	New license iss. eff: 5/28/87
Limited Wholesale license Crown Jewel Importers & Marketing Corp. 333 Route 46 Bldg A Fairfield, NJ 07006	3401-25-513-001	New license iss. eff: 6/1/87
Plenary Retail Transit Nighthawk, Inc. #618937 Slip 49 Hwy 35 Belmar Basin, NJ 07719 From: Boat #DN608609	3401-13-468-002	Place to Place eff: 6/1/87
Plenary Retail Transit Adventurer Fleet, Inc. 104 Hawthorne Drive Rio Grande, N.J. 08242 From: Sea Raider, Inc.	3400-13-849-002	Person to Person Transfer eff: 6/1/87
Plenary Retail Distribution Louis & Josephine Sodano 73 Riverdale Ave. Monmouth Beach, N.J. 07750	1333-44-002-006	Expansion of Premises. eff: 6/1/87

6. APPELLATE DECISION; PETROCK'S LIQUORS, INC. V. HILLSBOROUGH TOWNSHIP AND JNB, INC. - OBJECTOR'S APPEAL FROM PLACE-TO-PLACE TRANSFER APPROVAL DISMISSED. (DISCUSSION OF EXPANSION OF LICENSED PREMISES TO SEPARATE ADJACENT BUILDING AND PRIVILEGES OF A PLENARY RETAIL CONSUMPTION LICENSE WITH BROAD PACKAGE PRIVILEGES)

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL

APPEAL NO. 5188)	ON APPEAL
PETROCK'S LIQUORS, INC.,)	FINAL CONCLUSIONS SUSTAINING
LICENSE #1810-32-010-001)	ACTION BELOW AND FINAL ORDER
APPELLANT-OBJECTOR,)	AFFIRMING PLACE-TO-PLACE
)	(EXPANSION-OF-PREMISES)
V.)	TRANSFER
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HILLSBOROUGH AND)	OAL DKT. NO. ABC 5600-86
JNB, INC., t/a PHEASANTS LANDING,)	
RESPONDENTS.)	

John A. Craner, Esq., Attorney for Appellant-Objector
(Craner, Nelson, Satkin & Glazner, Esqs.)

Frank N. Yurasko, Esq., Attorney for Township Committee,
Township of Hillsborough, Respondent Issuing Authority

Daniel A. Lime, II, Esq., Attorney for JNB, Inc., t/a Pheasant's
Landing, Respondent-Transferee
(Westling, Lime & Welchman, Esqs.)

INITIAL DECISION BELOW

HONORABLE DAVID J. MONYEK, ADMINISTRATIVE LAW JUDGE

Decided: December 26, 1986

Received: December 29, 1987

BY THE DIRECTOR:

I. FILED EXCEPTIONS:

Written Exceptions to the Initial Decision were submitted on behalf of the Respondent-Transferee and written Replies thereto were submitted on behalf of the Appellant-Objector, as is provided pursuant to N.J.A.C. 1:1-16.4(a). Each of the Exceptions and its corresponding Reply follows.

In its Exceptions the Respondent-Transferee initially argues that the Administrative Law Judge was incorrect in concluding that the operation of the packaged-goods store and the restaurant/bar were different from one another by their very nature and thereafter emphasizing those differences. Therefore the Respondent states that the Judge erroneously determined from such fact finding that

these operations could not constitute one single specific place of business. Additionally, the Respondent argues that the differences cited by the Judge are inherent in the types of activities engaged in by a restaurant versus a packaged-goods operation. In contrast to those assertions, the Appellant-Objector submits that it was perfectly reasonable and sensible for the Administrative Law Judge to conclude that the differences are sufficient to differentiate between the two activities and thereafter conclude that they did not constitute one specific business, but rather were two separate businesses.

The Respondent-Transferee further suggests that the differences in operation between the different bank accounts, separate purchases and separate rental basis of each location were essentially accounting matters which should not lead to the conclusion that these are two different places of business within the intentment of N.J.S.A. 33:1-26. The Respondent-Transferee stresses that the profits went to one entity. As a counterpoint, the Appellant-Objector replies that these are not mere accounting matters, but are differences which go to very substance of the two distinct operations maintained by JNB, Inc. and that same support the conclusion of the Administrative Law Judge that these are two separate businesses. The Appellant-Objector states that the fact that the profits enured to the same people is not a crucial factor.

The Exceptions submitted on behalf of the Respondent-Transferee also took issue with the Judge's observations that the two businesses are by their very nature distinctly different, based upon his comment that employees, other than the manager, are allocated solely to one operation or another. Respondent argues that the allocation of employees is irrelevant, and is merely in keeping with the Judge's prior observations concerning the differences between the two types of businesses. In contrast, the Appellant-Objector states that in fact the employees of the restaurant did not work at the liquor store and the employees of the liquor store did not work at the restaurant, and the fact that one manager managed both entities was not the important issue.

The Respondent-Transferee took further exception to the Judge seeming to place great weight on the fact that packaged-goods are presently sold at the restaurant situs. The Respondent-Transferee notes that the testimony indicated such package good sales are minimal and consist mainly of beer. In contrast, the Appellant-Objector believes that the Judge was reviewing the fact that packaged-goods are presently being sold at the restaurant and continue to be sold there, ". . . pointing to the obvious fact that by opening the second location to handle packaged-goods, JNB, Inc. was obviously splitting the license into two separate locations"

In its Exceptions the Respondent-Transferee submits that the Judge's reasoning would preclude the grant of a place-to-place transfer in instances even if the package good store were physically connected to the restaurant; thus Respondent suggests that the Judge's decision was based on matters of form rather than substance.

In contrast, the Appellant-Objector disagrees with such contention and states that the Respondent-Transferee's argument is mere speculation.

Finally, the Respondent-Transferee argues that the Township did not act in a vacuum, but that it had the benefit of an opinion issued by the Division as well as its own attorney's advice. It submits there is ample support in the record to sustain the decision reached by the Township Committee. In contrast, the Appellant-Objector states its viewpoint that, from reading the transcript of the hearing held at the local level, the Township Committee was confused and very much guided by the direction of its attorney advice, which the Appellant submits, was erroneous and a total misinterpretation of the existing case law. Appellant therefore argues that there was not ample support in the record to uphold the decision below and furthermore that whatever representations were made to the Township Committee by JNB, Inc., same certainly were not carried forward by it. Accordingly, while the Respondent-Transferee suggests that the unanimous decision by the Issuing Authority should not be disturbed, the Appellant-Objector argues that such decision should be reversed and that the Initial Decision of the Administrative Law Judge be adopted. For the reasons hereafter stated, I shall reject the recommendation contained in the Initial Decision and I shall affirm the action of the issuing authority which granted the requested place-to-place (expansion-of-premises) transfer.

The time provided to make a final decision in this matter was extended by a properly executed Order of Extension until March 31, 1987, to allow the Respondent-Transferee the opportunity to have the transcript of the hearing held before the Administrative Law Judge compiled and submitted to me for review and consideration.

II. PROCEEDINGS BELOW:

This case involves the appeal to the Division by the Appellant-Objector who contested the granting of a place-to-place transfer (expansion-of-premises) of the plenary retail consumption license (with broad package privileges) [commonly referred to as a "Broad C" license] held by the Respondent-Transferee, JNB, Inc., t/a Pheasant's Landing. Upon the appeal being filed and the answers received, the matter was forwarded to the Office of Administrative Law for a hearing as a contested case.

After conducting a hearing and reviewing the evidence, the Administrative Law Judge determined that the Issuing Authority was in error in granting the place-to-place transfer and he therefore recommended that the action in granting such transfer be reversed. Upon my review of the transcripts of the proceedings held before both the local issuing authority as well as before the Administrative Law Judge, and upon consideration of all of the evidence of record, I conclude that the Judge reached an erroneous decision herein. Therefore, I shall reject certain selected fact findings, conclusions of law, and the Judge's recommendation as contained in

his Initial Decision rendered in this matter and shall affirm the action of the Issuing Authority below. My reasons follow.

III. FACTUAL FINDINGS:

While I shall accept most of the factual findings which the Administrative Law Judge made in this case, I specifically reject the following underlined portion of Fact Finding # 22. I shall also comment upon some of the Judge's other factual findings and discuss the determinations which I have reached concerning same. Lastly, upon my review of the testimony of record, I have added certain fact findings which I summarized from the evidence and which I have considered in reaching my decision herein.

A. Finding Regarding Commonality of Names and Relationship of Premises:

Fact Finding # 22 stated the following:

The restaurants and the packaged-goods store are separated physically by approximately 150 feet, have different names and are not held out to the public to be related to each other.

My review of the record compiled in this case leads me to conclude that the names used to designate the previously licensed premises (i.e., the two restaurants) and the new premises (i.e., package store) to which the license has now been expanded are, in contrast to the Judge's finding, substantially the same. The previously existing structure (Building One) contained both restaurants and the banquet areas. The restaurants are collectively known as "Pheasant's Landing" with formal dining taking place in "The Inn" and less formal ("snack type") dining taking place in "The Nest." [*T2, at 33, 40, 43-44.] The full description of the two restaurants, therefore, would be "Pheasant's Landing Inn" and "Pheasant's Landing Nest." The new package store, located in Building Two, is known as "Pheasant's Landing Wine and Spirit Shoppe." Accordingly, I find the names of the premises to be substantially the same and that they provide an express indication that all of these premises are held out as having a connection with one another.

Of additional significance to me is the physical setting, location, layout and construction of the two buildings housing the premises as disclosed by the photographs which have been submitted in this case. [Exhibits R-1 and A-10 through A-15.] My review of those photographs clearly reveals that the architecture, construction materials, and coloring of the buildings are of very similar if not the exact likeness for both Buildings One and Two.

* T1 shall hereinafter designate the testimony taken on June 24, 1986 before the local issuing authority and T2 shall designate the testimony taken on October 16, 1986 before the Administrative Law Judge.

A review of the site plan submitted also indicates that an inference arises therefrom regarding a connection between the premises. Clearly this is a self contained site constructed on privately held land, isolated from other ventures which by itself lends an indication that all of the stores would appear to have some connection with the "anchor" restaurant situs. Plainly, there are no intervening public streets or alleyways. Moreover, testimony received at the hearings disclosed that a patron could walk on a walkway from the restaurant premises to the Wine and Spirits Shoppe without passing in front of any "foreign" intervening interests and that free public access was provided thereon.

Given the common reference in all premises' names and the commonality of the building structures, and in consideration of the physical layout of the site, and the absence of any interests intervening in the free public passage from one premises to another, I must conclude that indeed both the restaurants and the package store are held out to the public as having a business relationship to one another.

B. Finding Regarding Sale of Packaged-Goods:

I also conclude that Fact Finding #5, as written, while technically correct, might easily lead someone unfamiliar with New Jersey's Alcoholic Beverage Control (ABC) law to conclude incorrectly that only a "Broad C" consumption license can sell alcoholic beverages for both off-premises as well as on-premises consumption. In fact, the more typical and numerous plenary retail consumption licenses authorized for issuance in this State [commonly referred to as "Straight C" licenses] can also sell packaged-goods for off-premises consumption. N.J.S.A. 33:1-12(1). Those licensees, however, are limited to making such sales from their principal barrooms and are restricted in how their goods are displayed and offered for sale. They also have to comply with other enumerated restrictions. N.J.A.C. 13:2-35.1, et seq.

A "Broad C" licensee, on the other hand, is not so limited and it can in fact sell packaged-goods both from its principal barroom and/or from a separate store or portion of its premises, without need of a barroom of any type. N.J.S.A. 33:1-12.23. (Furthermore, in view of the testimony that restaurant employees are advised to encourage patrons to utilize the Wine and Spirit Shoppe for packaged-goods rather than sell them from the restaurant situs, same translates to evidence of a strong business connection between the locations. Absent such connection, why would licensee's employees send its customers to a competitor rather than making the sales themselves for the licensee's benefit?)

Given the logic utilized by the Judge in reaching his decision, during which he emphasized the significant differences between the operation of a restaurant and a package store, and his stressing that some packaged-goods sales were made and are continued to be made from the restaurant portion of the premises, I conclude that he may, himself, have been confused by this somewhat arcane nuance of the ABC law. [See, Initial Decision, pp. 8-10.] I shall discuss, infra, my conclusions reached based upon this fact finding and the applicable laws relating to same. [See, Sections V.C. & D.; and VI.C.]

C. Finding Regarding Accounting Violations:

Finally, while I accept Factual Findings 13, 14, 15, 16, 17, 18, 19 and 20, I conclude, as I shall further describe below, that same are related essentially to accounting and bookkeeping matters. Although these fact findings may give rise to an indication that a violation of appropriate ABC regulations may have taken place, and while I do not mean to minimize any such violations, I do not find that same renders this transfer void. [See, e.g., Section "V.B.," infra.] Moreover, I note that the Judge concluded these were eight separate fact findings, out of a total of twenty-two, rather than indicating that they all related to one essential violation of the requirement to keep true books of account [cf. N.J.S.A. 33:1-35; N.J.A.C. 13:2-23.32]. Thus it seems entirely possible that his ultimate recommendation in this matter was influenced by the cumulative effect of these numerous fact findings. In contrast, I view such eight (8) individually listed facts as, conceptually, one basic factual finding.

D. Additional Fact Findings:

I also wish to clarify the substance contained in Fact Finding #11 as I interpret same; thus I shall supplement it with the following additional fact finding:

23. The testimony establishes that the President of the Respondent-Transferee is the manager of both restaurants and the packaged-goods store, he has ultimate control over all of the employees on behalf of the Licensee, and all of the employees are paid by the licensed corporation from its one payroll account. [T2, 31-32. 49-53, 63-64.]

My determination herein further rests upon the following additional fact findings which I have made after reviewing the transcripts and record presented to me.

24. There is a separate walkway connecting the previously existing premises with the new building, which included the Wine and Spirit Shoppe. It is possible to walk from the restaurant to the Wine and Spirit Shoppe without passing in front of any of the other businesses. [T1, 28-30.]
25. The same exact persons who own the license also own the land on which the licensed premises is situated and the licensee has a present possessory interest in the land entitling it to exclusive control thereunder. No countervailing interests intervene between the previously licensed building and the new Wine and Spirit Shoppe. [T1, 25-30.]

26. Only one objector testified against the requested transfer before the issuing authority and no further evidence of any other objectors was presented at the hearing held before the Administrative Law Judge. The Objector, the Appellant herein, mainly opposed this expansion on the grounds that Appellant previously had been informally advised it could not accomplish a somewhat similar expansion of its license privileges on two occasions in the past. The Appellant-Objector also indicated concern that it would lose business if the expansion was approved in that it viewed the Respondent's Wine and Liquor Shoppe as a direct competitor who would have an "unfair" advantage since it offered both on premises consumption as well as the sale of packaged-goods. (It is noted that the Appellant-Objector could also sell alcoholic beverages for on-premises consumption, but that to date, for various reasons, apparently including the referenced previous informal "denial" of its expansion plans, it has not done so.) [T1, 9-22, 42-45.]
27. The Respondent's location provides ample parking for customers and there is no indication of any traffic problems occurring as a result of the expansion. [Exhibit A-5.]
28. No evidence was introduced which indicated in any manner that the Respondent's premises had nuisance, crime, or alcohol abuse related problems in the past, nor that any would be generated by the requested premises expansion. [See, Resolution dated July 21, 1986, Exhibit A-2.]
29. After review of the testimony presented to it and after explanation of the applicable law, the local issuing authority unanimously approved the requested place-to-place (expansion-of-premises) transfer application and formalized its approval in a detailed, fact based Resolution. [T1, at 76; Exhibit A-2.]

IV. APPLICABLE LAW:

Preliminarily I note that the Director should not substitute his judgment for that of the local board if reasonable support can be found for its determination in the record. Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292, 303 (1970). It is also well settled that the Director will abide by the municipality's grant or denial of an application as long as the local board's exercise of judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. 404, 414 (1960). Where there is a clear abuse or an unreasonable or arbitrary exercise of discretion by the local issuing authority, the Director need not accept the local decision. Nevertheless, the Legislature has placed upon the local issuing authority the high responsibility and wide discretion to act with the public interest as its particular guide. Lublimer v. Mun. Bd.

Alc. Bev., Paterson, 33 N.J. 428, 446 (1960). Moreover, ordinarily local officials are thoroughly familiar with their community's characteristics, the nature of the area and the dangers associated with the sale of alcoholic beverages. Lyons Farms Tavern, supra. Therefore, considerable deference should generally be paid to their determinations.

In the present instance, the Appellant-Objector has appealed a determination of the local issuing authority to grant a place-to-place transfer application. In appeals to the Division, ". . . the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant." N.J.A.C. 13:2-17.6.

Finally, although N.J.S.A. 33:1-26 provides that "[a] separate license is required for each specific place of business," the case law holds that such provision does not require that a license's privileges be limited to service occurring in one single, self-contained building; instead a license may be utilized to authorize the dispensing of alcohol in more than one building, so long as same is determined to be a "single place of business." Margate Civic Assoc. v. Bd. of Comm'rs, Margate, 132 N.J. Super. 58, 65 (App. Div. 1975).

V. DISCUSSION OF "TYPICAL" EXPANSION OF PREMISES CASE:

Because the ultimate issue to be determined in this case - whether or not the activities of the Respondent-Transferee, whose license privileges extend to two (2) separate buildings, constitute "a specific place of business" - is an atypical matter, it may be instructive to first view the question in terms of the more usual setting, a "simple" expansion-of-premises request occurring within the same structure. Therefore, for purposes of illustration, let us consider the process, likely areas of inquiry and the probable result had the Respondent-Transferee added a structure on to its existing building which currently houses the restaurants and it thereafter applied to expand its premises to allow for a separate Wine and Spirits Shoppe to be operated out of the new addition.

A. Motivation of the Appellant-Objector:

Initially I have no doubt, after thoroughly reviewing the proceedings held before the local issuing authority that, once the "split license" issue is removed from this proceedings, it similarly would remove the apparently emotional impetus which seems to have fueled the Appellant-Objector's insistence in pursuing this appeal. On the one hand, given the assertions made by Appellant during those proceedings, I can certainly empathize with the Appellant's feelings in this matter, since he indicates that when, during 1977 and 1982, he had informally inquired about expanding

his license privilege, he was ". . . denied the privilege of separating our license." [T1, 9-22.] Nevertheless, because he did not formally request the appropriate place-to-place transfer, there is no documented record as to what specific facts were presented nor are we able to determine who rendered such misadvice. Moreover, as the Township Attorney advised the local governing body

You cannot make a determination based on what happened in [the Petrocks'] inquiry. The facts are distinguishable. We don't know the law that was applied and perhaps most importantly that's not to say that whoever they made their inquiry to do (sic) not make a mistake. One wrong then does not justify two wrongs now. [T1, 67-68.]

Furthermore, it would seem more appropriate for the Appellant to seek its remedy of any apparent wrong caused to it by formally requesting its own expansion-of-premises transfer, in accordance with the appropriate laws and regulations, rather than seeking to void the Transferee's application.

In any case, assessing this expansion request in the absence of the split license issue, it seems reasonable to believe that there would have been little likelihood that an appeal would have been taken from an approved transfer. Moreover, notwithstanding whether or not an appeal would have been lodged, the motivation by an Objector is usually of no relevance to the final outcome of an appeal.

Once the "split license" allegation is removed from these proceedings, only two substantive aspects raised in the Initial Decision are left for review: (1) the failure of the Respondent-Transferee to keep true books of account for its combined operation, and (2) the separate and distinct usage of the employees by the restaurants and by the package store, respectively, and whether same constitutes a fatal defect to this transfer.

B. Effect of the Different Accounting Books & Accounts Used:

The preliminary indication that the Transferee may have failed to keep true books of account (for ABC purposes) rests upon the testimony presented by the Respondent's officers before the Administrative Law Judge. At that de novo hearing it was indicated that the Respondent (contrary to the representations presented to the governing body) maintained separate bank accounts for the restaurant operations and the packaged-goods store business. [T2, 60-64, 68.] Although it seems unlikely (under the facts being assumed herein for discussion purposes) that the Respondent's accounting practices would have been discussed before the local issuing authority in a typical premises expansion instance, nevertheless whenever a violation is discovered, it should be addressed through the institution of appropriate disciplinary proceedings.

I note that while the Transferee initially indicated that all receipts and expenditures would be run through one set of books, it testified truthfully at the hearing before the Administrative Law Judge that it had in fact set up different books of account and bank accounts for its restaurant operations and its packaged-goods sales. Thus, I do not find there was any attempt made to hide or otherwise conceal this change of plans. It appears same was based upon purely accounting considerations without a conscious decision made to obviate the requirements of law. I also find it of critical importance that all profits (or losses) accrue only to the licensed corporation and that no non-licensee acquired any interest in this license. Therefore, the absence of a conscious and willful attempt to utilize such accounting procedures for purposes of concealing an undisclosed interest in the license or improperly obtaining its profits indicates that if a violation occurred, it was certainly not of an egregious nature.

A review of this Division's presumptive penalty for such a violation indicates that if same were established, upon a finding of guilt, the license would face a potential suspension for 30 days; in no event, however, would same be any basis to nullify a place-to-place transfer. Accordingly, I do not find that this transfer request should be rejected on the basis that a violation may have occurred.

C. Separate and Distinct Usage of Employees:

In a corresponding fashion, not only is it unlikely that the Respondent's accounting practices would not have been examined below (given the restricted fact pattern used herein for discussion purposes), but also there is little likelihood of an inquiry being made into whether or not the employees of the restaurant would work in the package store and vice-versa. Such factor has no relevance in typical expansion-of-premises proceedings. Besides, common knowledge of the diversity of the two operations would have made such employee "switching" not only highly impractical but virtually improbable. Finally, as the Appellate Division in Margate, supra, noted in its factual representation of that case, the matter of importance is that ". . . all employees are hired, fired and paid by a single employer - [the licensee]." Id. at 64. The testimony establishes that very same factual configuration herein.

D. Different Hours of Sale:

Similarly, I find that, especially in view of the limitations placed by law on the hours of sale of packaged-goods [See, N.J.S.A. 33:1-40.3 and N.J.A.C. 13:2-38.1, et seq.], common sense tells us that packaged-goods stores will rarely have the same hours of sale as a consumption license, whether the consumption license is being utilized in either a bar or a restaurant.

Thus, the factors that seemed to make an emphatic impression on the Judge, holds little relevance to me given my review and conclusion of the operative facts and applicable law. I shall now turn to the discussion in the recent caselaw concerning typical expansion-of-premises objections and results.

E. Review of Expansion of Premises Cases:

A review of the recent reported expansion-of-premises cases reveals that, typically, objections to same are based upon allegations of:

- expected parking problems and traffic congestion caused by the expansion. Cf., Scott's Tap Room Inc. v. Bor. Coun. of South River, Bulletin 2116, Item #2.
- improperly attempting to expand a "straight C" plenary retail consumption license in contravention to the restrictions and limitations imposed by N.J.S.A. 33:1-12.23 and N.J.A.C. 13:2-35.1. Cf., Essex County Package Stores Assoc. v. Mun. Bd. Alc. Bev. Con., Newark, et al., Bulletin 2168, Item #3.
- Nuisance, crime, alcoholic beverage related abuses, and widespread community sentiment against the transfer. Lyons Farms, supra.

However, the cases also disclose that mere allegations of such matters without sufficient credible support will not prevent the expansion, especially where the issuing authority has approved same.

- Ephesian Baptist Church v. Mun. Bd. Alc. Bev. Con., Newark, et al., Bulletin 2188, Item #1.

Moreover, even where the local issuing authority has denied the requested expansion, if the allegations of nuisance activities, anticipated increased patronage, asserted civil disturbances or speculatively feared future violations are not supported by credible evidence, the determination of the local issuing authority will be reversed and directed to approve the transfer.

- La Pussycat, Inc. v. Gloucester, Bulletin 2198, Item #2.
- Paul's Shore Liquors, Inc. v. Asbury Park, Bulletin 2326, Item #1.

Clearly not one of these concerns was raised at either of the two hearings held in this matter.

With respect to the Appellant's testified concerns about the Respondent as its competitor, it is firmly established that ". . .

an issuing authority is not obligated to consider whether the financial interest of any preexisting licensee (such as the Appellant-Objector herein), will be promoted or harmed in its determination whether to grant a liquor [transfer] application." Paulison Liguors, Inc. et al. v. Clifton et al., Bulletin 2161, Item #3 and cases cited therein.

Accordingly, this transfer must stand or fall solely on whether or not it meets the criteria of being "a specific place of business" as established by the Margate and other relevant case law criteria.

VI. ANALYSIS OF "A SPECIFIC PLACE OF BUSINESS" ISSUE:

A. Review of the Margate Case:

The Margate case established that in assessing what is a "specific place of business," it must be determined whether the licensee operated its business "as a single entity under its complete domination." Supra at 64. Reviewing the determination of the local issuing authority as previously affirmed therein by the Director, the Appellate Division indicated that it gave substantial weight to ". . . the contemporaneous and practical construction of a statute over a period of years by the agency charged with its enforcement [where same was] without interference by the legislature [concluding same] is evidence of its conformity with the legislative intent" Id. Accordingly, the Court accepted the operative facts as previously determined by the Director in sustaining his affirmance of the action below. Cf., Margate Civic Association v. Margate, Bulletin 2128, Item #3.

The facts of relevance in making its determination in the Margate case were articulated by the Court to be, basically, the commingling of funds and use of one bank account; that all employees are hired, fired and paid by a single employer - the licensee; and that the physical arrangement of the buildings and manner in which the two restaurant entities were operated, compelled the conclusion that they constituted a single specific place of business within the intendment of N.J.S.A. 33:1-26.

B. Review of Other Relevant Cases:

The Court, in reaching its conclusion, cited the Division's prior determinations in: Re: Dodd, Bulletin 241, Item #8; Springdale Park, Inc. v. Tp. Comm. of Andover, 97 N.J. Super. 270 (App. Div. 1967); and Gallagher's Avalon Liquor Store, et al. v. Bd. of Comm'rs, Avalon, Bulletin 1945, Item #1.

In Springdale Park the licensee operated a 51-room motel and, in 1964, it was issued a plenary retail consumption license under an exemption to the population cap commonly known as the "hotel/motel" provision contained in N.J.S.A. 33:1-12.20. In 1966 the licensee applied to transfer the license and extend it to include, in addition to the motel, a building adjacent to but on the north side of the motel. The licensee wished to enlarge the building and utilize it as a public restaurant, private dining room, coffee shop and cocktail lounge. The requested transfer was approved by the issuing authority and that action was affirmed by the Director. In its appeal to the Appellate Division the Appellant argued that ". . . the separation [of the two buildings], together with the contemplated size, location and seating capacity of the facilities to be operated within the new structure, establishes the latter's independent character." Springdale Park, at 272. Therefore, it suggested that the "motel" license was being utilized for a non-motel use. The Court sustained the Director's determination that the ". . . building to which the transfer was granted will be part and parcel of the motel operation." (emphasis by Appellate Division.) Id. at 273. Thus the fact that this transfer resulted in the addition of a private dining room, public restaurant, coffee shop and a cocktail lounge, which are different albeit somewhat related activities to the previous use of the license was not found to be fatal to this expansion-of-premises request.

Of more proximate relevance was the case of Gallagher's Liquors, supra. In that case the licensee requested to expand its premises to include a new building constructed adjacent to its existing premises. The objectors argued that the approval by the local issuing authority was erroneous on grounds that included:

* * *

3. The transfer, in effect, seeks to cover two separate locations with one license.

4. The transfer has the effect of converting the existing 'C' license into a broad base 'C' license where actually, two separate licenses should be required.

5. The transfer has the effect of converting an existing 'C' license into a 'D' license.

* * *

The issuing authority approved the transfer noting in its resolution ". . . the new building will be located on the same land area previously licensed, and that said building will constitute the principal bar and sole location for the sale of packaged-goods for off premises consumption"

The Division's hearing officer, in recommending affirmance of the transfer, noted that "[e]xtension and enlargement of premises

in these circumstances under one single license has been consistently upheld by the Division and the courts for many years." The Director agreed and the expansion-of-premises action was affirmed.

C. Discussion of the Broad Package Privilege Aspect:

In the instant case, much of the Judge's recommendation seems to rest upon his emphasis of the different type of activities conducted in the restaurants as opposed to the packaged-goods store. I have already noted my belief that the Judge may have misunderstood the law which grants all consumption licenses (and not merely those having the "broad package privilege) the privilege to sell for off premises consumption. Moreover, it must be kept in mind that it is well settled that an issuing authority cannot improperly attempt to restrict the privileges of a license. Englewood Common Council v. Lacqua, 92 N.J. Super. 493 (App. Div. 1966). I believe that if this expansion were prevented based upon reasoning that the licensee was engaging in two different activities, merely because it fully utilized its license by both dispensing alcohol for on-premise consumption as well as selling packaged-goods from a separate store (even if same were also sold from its restaurant), such result would effectively restrict the Transferee herein in the exercise of its statutory licensed privileges. I deem it improper to accomplish indirectly what could not be done in a direct fashion. Thus, the issue must be resolved on whether or not this usage may or may not be considered a specific place of business.

One final case may render further clarity to the facts at issue herein. In Essex County Retail Liquor Stores Assn. et al. v. Newark and Pere, Inc., Bulletin 1302, Item #2, [hereinafter cited as Pere] the objecting Association appealed from a determination by the Newark issuing authority which granted an expansion-of-premises to a consumption licensee whose license contained the broad package privilege. The Association alleged that such action divided the license ". . . so that a tavern is at 405 Seventh Avenue, and a packaged-goods store is at 138 Roseville Avenue, . . . [that] this license has now been divided so that there are two separate premises on separate streets, one a packaged-goods store, and one a tavern, under the same license . . . [and] that under the broad package powers the packaged-goods department must be adjoining to the tavern part of the premises and that the entrances to the packaged-goods store and the tavern must be adjoining." The Appellant Association also alleged that the packaged-goods department was over a hundred feet away from the original site of the tavern entrance and that the public was being given the impression that there are two separate establishments not connected and not the same licensed premises.

Former Director Howe, in affirming the action below, stated

The single remaining question, therefore, is whether the premises, as extended, constitute one "specific place of business" under R.S. 33:1-26, Paragraph 1. In many situations the question has been, and will hereafter be, a difficult one. Certainly, a municipal issuing authority confronted with an application for an extension-of-premises transfer should look most carefully into the physical and structural setup, and should deny the transfer if there is not bona fide free public access between the licensed premises and the additional premises sought to be licensed.

Director Howe, finding that it plainly appeared that such free public access was afforded, affirmed the expansion.

D. Review of the Issuing Authority's Determination:

In many ways the instant case herein is very similar to the factual situation disclosed in Pere. The transcripts plainly show that local authority found the question to be a difficult one. Indeed, this is about the only instance that I can recall where some members of a local authority expressed their aggravation that this Division has not stepped in and dictated a result. Normally, members of issuing authorities jealously guard their ability to make independent judgments based upon their assessment of their particular community's needs. Their sense of the "right of home rule" often is upset when this Division, on appeal or otherwise, finds it must reverse a local determination. Notwithstanding some members' aggravation of having to reach a determination on these facts, in this instance, the Hillsborough Township Committee obviously took very seriously its responsibility to reach a proper decision in this matter. The Borough Attorney clearly and concisely advised the Committee as to the relevant principles of law to be applied to the facts herein. The resolution granting the transfer cogently lists proper factors to be considered for the Township to reach its conclusions. I can find no basis to overturn its determination within the record presented herein.

E. Review of the Judge's Opinion:

I also wish to comment on the Judge's opinion. Although I have reached a different result, I find his opinion well reasoned given the somewhat muddy waters of this particular facet of the law and the truly unusual factual situation presented herein. An already unclear area of the law was further clouded by the Respondent-Transferee's decision to utilize separate sets of books and bank accounts, contrary to the representations made before the local authority. That matter will be dealt with shortly. Additionally, the usage of the broad package privilege indigenous to this particular license was a further ingredient which added

further confusion to the basic issue. Therefore, I can well understand the Judge's annoyance at and his conclusion that the evidence presented to him revealed "an entirely different picture" than that presented to the issuing authority. It appears that this may have been one of those instances where an agency's expertise and knowledge of certain technicalities within its area of competence has enabled a clarification of some otherwise obscure or misleading matters. I hope my discussion, supra, has brought into focus this otherwise seemingly unclear picture of the facts and the relevant law and principles to be applied concerning this particular case.

VII. CONCLUSIONS AND ORDERS:

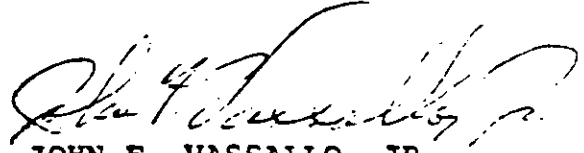
To sum up, my review of the record indicates that there is sufficient commonality among the previous licensed business and the newly expanded premises on which to conclude that this remains a specific place of business within the intendment of N.J.S.A. 33:1-26. Given the linkage in the names of the premises, in consideration of the broad and pervasive authority of the manager over all employees and the entire premises and the fact that all profits (or losses) inured to the licensed corporation and that no non-licensee had acquired any interest in this license (and the requirement that if there are accounting violations same will be addressed through the institution of disciplinary proceedings), acknowledging the commonality of the buildings' architecture, construction and layout, and finally the clearly established fact that no intervening interests interfere with the passage from one premises to another, I find that the licensed premises herein may be considered a specific place of business as required by N.J.S.A. 33:1-26. Accordingly, I find that the Appellant has not sustained its burden of proof to require the reversal of the action below.

Besides affirming the approval of the requested expansion of premises, I shall also forward this file to the Prosecution Bureau with the direction that it review the evidence contained herein to determine whether or not disciplinary proceedings shall be brought against this Transferee for any apparent violations.

Accordingly, it is on this 31th day of March, 1987,

ORDERED that the action of the Township Committee of the Township of Hillsborough, approving the application of JNB, INC., t/a Pheasant's Landing, which requested a place-to-place (expansion of premises) transfer of Plenary Retail Consumption License (with Broad Package Privileges) Number 1810-32-003-003, be and the same is hereby affirmed and the appeal therefrom be and is hereby dismissed; and it is further

ORDERED that the file concerning this said transfer matter be and the same is hereby submitted to the Prosecution Bureau for purposes of reviewing the evidence contained therein and determining whether or not disciplinary proceedings shall be brought against the said Transferee for violations of the ABC laws and regulations.



JOHN F. VASSALLO, JR.
DIRECTOR

APPENDIX: INITIAL DECISION BELOW



State of New Jersey

OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. ABC 5600-86

AGENCY DKT. NO. Appeal No. 5188

PETROCK'S LIQUORS, INC.,

Appellant,

v.

TOWNSHIP COMMITTEE OF
THE TOWNSHIP OF HILLSBOROUGH
AND JNB, INC., t/a PHEASANT'S
LANDING,

Respondents.

John A. Craner, Esq., (Craner, Nelson, Satkin, & Glazner, attorneys) appeared on behalf of appellant

Frank N. Yurasko, Esq., Attorney for Township Committee, Township of Hillsborough, appeared on behalf of respondent, Township of Hillsborough

Daniel A. Lime, II, Esq., (Westling, Lime, & Welchman, attorneys) appeared on behalf of respondent, JNB, Inc., t/a Pheasant's Landing

Record Closed: November 12, 1986

Decided: December 26, 1986

BEFORE DAVID J. MONYEK, ALJ:

STATEMENT OF THE CASE

This is an appeal to the Director of the Division of Alcoholic Beverage Control by way of a de novo hearing contesting the granting of a place-to-place transfer of a

OAL DKT. NO. ABC 5600-86

plenary retail consumption license by the Township of Hillsborough to JNB, Inc. Petrock's Liquors, Inc., appeared below and objected to the proposed transfer and is the moving party appellant herein

PROCEDURAL HISTORY

In June 1986, respondent JNB, Inc., applied to respondent Hillsborough Township to "activate the packaged goods license" heretofore included in and issued to it under its Broad C Alcoholic Beverage Liquor License No. 1810-32-003-003. The activation of the packaged-goods license was proposed to be effecutated by allowing JNB, Inc. to operate a packaged-goods store in a separate location in a separate building 152 feet from the Pheasant's Landing Restaurant, the owner and operator of the Broad C license theretofore issued.

On June 24, 1986, a public hearing was held, at which appellant appeared and objected to the granting of the transfer. Subsequent to the hearing the Township Committee, by resolution, approved the requested transfer.

On July 23, 1986, appellant filed a timely appeal of the municipal action on the ground that the granted place-to-place transfer amounted to a splitting of the license, in that two separate businesses in two separate locations were operating under one license, contrary to N.J.S.A. 33:1-26.

Written Answers by and on behalf of each of the respondents were filed in response to appellant's Notice of Appeal with the Director of the Division of Alcoholic Beverage Control. On August 25, 1986, the matter was referred to the Office of Administrative Law as a contested case, in accordance with and pursuant to N.J.S.A. 52:14B-1 et seq. and N.J.S.A. 52:14F-1 et seq.

On September 2, 1986, the Clerk of the Office of Administrative Law served upon each of the parties a Notice of Filing of Contested Case, and on September 10, 1986, the Acting Director of the Office of Administrative Law served upon each of the parties a Notice of Hearing, setting October 16, 1986, as the date for the de novo hearing. Accordingly, on the date set for the hearing at the Hillsborough Township Municipal Building, Neshanic, New Jersey, a plenary hearing was conducted and proofs were

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proffered by, and on behalf of, each of the parties. At the conclusion of the hearing, on motion made and granted, counsel for each of the parties was given the opportunity to file a written summation and memorandum of law on behalf of his respective client by or before October 30, 1986, and thereafter to respond to his adversary's memorandum by or before November 12, 1986. Memoranda were filed by all parties and the record was closed on November 12, 1986.

FACTUAL FINDINGS

All relevant, operative, pivotal facts are uncontroverted. Accordingly, I FIND the facts as follows:

1. Respondent JNB, Inc. is a New Jersey corporation which holds a Broad C Alcoholic Beverage Liquor License No. 1810-32003-003 issued by the Township of Hillsborough, and said corporation operates premises known as Pheasant's Landing, a one-building complex housing two restaurants; a formal dining area known as "The Inn" and a less formal restaurant and bar known as "The Nest."
2. Food and alcoholic beverages are served in both the aforesaid restaurants and packaged goods, mainly beer, is presently sold from the less formal restaurant known as "The Nest."
3. A single, large building housing both restaurants, a kitchen and banquet facilities is located on lot 5B in block 198 as shown on the tax assessment map of the Township of Hillsborough, which lot is approximately 8 acres in area (Exhibits A-5, A-11 and A-12).
4. The stockholders of JNB, Inc. the corporation that owns and operates the restaurants and liquor license, are the same persons who own the real estate upon which the restaurants are located and who operate the real estate as a partnership rather than a corporation. (Exhibits A-3 and A-4).

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5. The Broad C License heretofore issued to respondent JNB, Inc. permitted respondent to sell alcoholic beverages for consumption on its premises as well as to sell alcoholic beverages from those premises for off-premises consumption, which rights, that is, both on-premises and off-premises alcoholic beverage consumption, have been and are presently exercised by respondent.
6. In addition to the structure housing the restaurants, kitchen and banquet facilities of respondent JNB, Inc. there has recently been constructed on the eight-acre parcel a "strip mall" consisting of six stores, which "strip mall" is separated from the restaurant building by a parking lot and open space (Exhibit A-5).
7. Respondent JNB, Inc. applied to the Hillsborough Township governing body to permit it to engage in the sale of alcoholic beverages for off-premises consumption at the restaurants located in the Pheasant's Landing complex, and also to engage in the sale of packaged goods in a wine and spirit store in the store premises of the "strip mall" located nearest to the restaurant premises.
8. The distance from the packaged-goods-store premises in the "strip mall" to the nearest door situated in the restaurant premises measures 152 feet by way of a straight-line measurement (Exhibits A-5, A-14, A-15 and R-1).
9. The restaurant premises and the proposed packaged-goods-store premises are unconnected, and immediately adjacent to the packaged-goods-store premises are five other attached store premises which presently house, and are expected to house, various other mercantile establishments.
10. It is proposed that only packaged goods are to be sold at Pheasant's Landing Wine and Spirit Shop in the strip mall although packaged goods are presently sold and are available for sale at the restaurant premises known as "The Nest," and will be continued to be sold thereat even after the granting of the application, although customers of the restaurant

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premises would be encouraged to patronize the wine and spirit shop located in the strip mall.

11. JNB, Inc. would operate both locations, the restaurants and the packaged-goods store; the present manager of the restaurants would manage both the restaurants and the packaged-goods store and the corporation would pay both the employees of the restaurants and the packaged-goods store.
12. The packaged-goods store employs only two employees who work exclusively in the packaged-goods store and have no duties, functions or responsibilities to or at the restaurants, banquet hall, kitchen or other functions of the restaurants. Likewise, no restaurant employees would work at or have any duties associated with the operation of the packaged-goods store.
13. Separate records of sales are maintained for the packaged-goods store and separate records of sales are maintained at the restaurants.
14. The packaged-goods store sales receipts and books of record are maintained separately from those of the restaurant.
15. All alcoholic beverage sales, receipts and records, for both liquor sold over the bar and packaged goods sold at the restaurants, are kept separate, distinct and apart from the alcoholic beverage sales made at the liquor store.
16. Separate bank accounts are maintained for the restaurant operations, separate, distinct and apart from the bank account for the packaged-goods store operation. Each has its own name or title different from the other.
17. All receipts from the packaged-goods store are deposited in a separate bank account and all purchases of both alcoholic beverages and snack foods sold in the packaged-goods store are purchased and paid for out of the packaged-goods store's separate bank account.

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18. The purchases of liquor and food for use at the restaurants are made separately from the purchases for the packaged-goods store.
19. The rental for the packaged-goods store is based upon the same rental rate as the other unrelated, independent stores in the strip mall payable to the partnership owning the real estate, while the corporation which operates the restaurants pays a separate, unrelated rental to the real estate partnership based upon an entirely different payment formula.
20. In addition to paying rent out of its separate account to the partnership which owns the realty, the packaged-goods store pays out of its own checking account all utilities and other operating costs to the partnership owning the realty, while the restaurants pay out of its own operating account its operating expenses out of its separate bank account.
21. The packaged-goods store and the restaurants operate on different time schedules and have different operating hours. The Nest operates from 3 p.m. to 12 midnight on Mondays, Tuesdays and Wednesdays; from 3 p.m. to 1 a.m. on Thursdays; from 3 p.m. to 2 a.m. on Fridays; from 11:30 a.m. to 2 a.m. on Saturday; and from 3 p.m. to 10 p.m. on Sunday. The Inn is open from 11:30 a.m. to 3 p.m. on Monday; from 11:30 a.m. to 3 p.m. and from 5 p.m. to 9:30 p.m. on Tuesdays, Wednesdays and Thursdays; from 11:30 a.m. to 3 p.m. and from 5 p.m. to 10:30 p.m. on Fridays; from 5 p.m. to 10:30 p.m. on Saturday; and from 3 p.m. to 9 p.m. on Sundays. The packaged-goods store is open from 10 a.m. to 9 p.m. weekdays and from 12 noon to 6 p.m. on Sundays (Exhibits A-12 and A-13).
22. The restaurants and the packaged-goods store are separated physically by approximately 150 feet, have different names and are not held out to the public to be related to each other.

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ISSUE

May the holder of a Broad C license operate a packaged-goods store in addition to, but separate from, its present restaurant and packaged-goods business by utilizing the one license issued to it for the restaurant premises through a place-to-place transfer?

APPLICABLE LAW

Just as there is no dispute as to the operative facts herein, all parties agree as to the applicable law. The dispute involves the application of the law and not the source. All agree that N.J.S.A. 33:1-26 is the controlling statutory mandate and that Margate Civic Assoc. v. Bd. of Comm'rs. of the City of Margate, et al, 132 N.J. Super. 58 (App. Div. 1975) is the controlling decisional precedent for the interpretation of the aforesaid statute.

N.J.S.A. 33:1-26, in pertinent part, provides:

Licenses are not transferable except as hereinafter provided. A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises.

The Appellate Division in Margate, stated:

While the Alcoholic Beverage Law does not explicitly define "specific place of business," the obvious purpose of this statutory requirement is "to prevent the splitting of licenses and indirect avoidance of the maximum license limitations." Essex Co., etc., Stores Ass'n. v. Newark, etc., Bev. Cont., 64 N.J. Super. 314 at 321 (App. Div. 1960). Thus, in the Essex case, supra, we held that this requirement was satisfied where each of the several liquor departments in Bamberger's Newark store was operated "as a single entity under its complete domination." Here, too, "Maloney's Tavern" and "Maloney's Beef and Brew" are operated by Manaam "as a single entity under its complete domination." They are not operated separately and distinct from each other. In fact, the receipts from each are commingled; one bank account is maintained for the entire business operation, and all employees are hired, fired and paid by a single employer — Manaam. While the two South Washington Avenue buildings are not physically joined or attached and each has a separate entrance off South Washington Avenue, they are immediately adjacent to one another, separated only by a narrow alleyway, the street end of which is fenced-off, prohibiting public passage. These buildings and the premises upon

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which they stand, including the alleyway, are all owned by Manaam. Thus, the physical arrangement of the buildings and manner in which the "Tavern" and "Beef and Brew" are operated compel the conclusion that they constitute a single "specific place of business" within the intendment of N.J.S.A. 33:1-26 [at 64].

The construction placed upon the statute by the Director in A.B.C. Bull No. 241, Item 8 (1938), referred in the Essex case, supra has been followed in principle by the Director in more recent decisions.[at 65]

ABC Bulletin No. 241, Item 8 (1938), provides, in pertinent part, the following:

Where two separate buildings constitute the premises sought to be licensed, separate licenses will in general be necessary. The reason is that generally speaking each building will constitute a separate place of business. For each specific place of business (R.S. 33:1-26; Control Act, Sec. 23), a separate license is required. But it does not necessarily follow that merely because there are separate buildings, separate licenses will be necessary. The buildings may be so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute.

***It all depends on the facts and upon how the respective buildings are used. I can conceive of situations such as the one you present, where in the case of a club or a society it might be permissible, while if a commercial proposition merely seeking to obtain two licensed premises for the price of one, it would not. The question is largely one of good faith.

ANALYSIS

It is axiomatic that mere physical separation of two units of a single business enterprise is insufficient reason to deny a requested transfer. Springdale Park, Inc., v. Tp. Comm. of Andover, 97 N.J. Super. 170 (App. Div. 1967); Margate Civic Assoc. The question, rather, is does respondent's operation of a packaged-goods store in a strip mall, approximately 150 feet away from its restaurant premises, where both locations sell alcoholic beverages by way of packaged goods and at one location "over the bar" alcoholic beverages are sold, which businesses are operated as hereinabove set forth, (see Factual Findings) constitute "a single specific place of business"? I think not.

N.J.S.A. 33:1-26 mandates that a separate liquor license is required for each specific place of business so as to confine the use of the license to the licensed premises and thus prevent the splitting of licenses and the indirect avoidance of the maximum license limitations. Although in Margate two buildings separated by a narrow alleyway

which was fenced from the front were permitted to be operated under a single license, the Court specifically found that in addition to the two operations being identical in nature (restaurants where food and liquor were sold) it was held that the operations comprised a single business entity.

In the instant matter, the only common feature of identity between the two businesses is common ownership; that is, the stockholders of JNB, Inc. own both restaurants and the packaged-goods store. By their very nature the two operations are distinctly different; one is a restaurant and bar operation, which incidentally sells packaged-goods; the other, the packaged-goods store, exclusively sells packaged goods and neither sells food nor liquor for on-premises consumption. The two distinct and different operations are to be conducted in separate buildings approximately 150 feet apart. The liquor store is one of six stores in a "strip mall," and the restaurant and bar operation are housed in its own exclusive building, in no way connected with, or physically associated with, the "strip mall," other than being located on the same 8-acre tract.

Other than having a similar name, "Pheasant's Landing," in each of its business titles, no effort is made to hold out to the public either an identity of interest or ownership in the two separate businesses. Respondent JNB, Inc. introduced no evidence that patrons of each entity would be common to the other or that any effort would be made to relate the two businesses to each other to the relative patrons of each. The nature of the operations are completely different. The packaged-goods store sells packaged liquor, packaged beer and snacks. It sells neither food nor beverages to be consumed on the premises. The restaurants serve food and drinks in each of the two locations, and both the Inn and the Nest may sell packaged goods and may continue to do so. The receipts for each business are kept separately. Each has its own bank account. Each pays for its purchases from its individual bank account. Each is open to the public at different hours. Each pays its own rental to its landlord based upon different criteria.

Each has its own employees who are not employees of both operations. Each has its own checking account. Each has a different clientele. The differences are far more striking than the similarities. Aside from being owned by the same corporation and using the term "Pheasant's Landing" in its business name, there appear to be no similarities, common identities or singleness of purpose in the two operations. Rather, it appears that the present owners of the Broad C license merely wish to increase their present over-the-counter liquor sales by establishing a packaged-goods store in the

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general vicinity of the restaurants, and thus, in effect, split its license into two specific places of business to avoid the maximum license limitations. In short, respondent JNB, Inc. seeks to do precisely that which both the statute, N.J.S.A. 33:1-26 and the decisional authorities specifically prohibit. It is, therefore, **CONCLUDED** that the restaurant known as "Pheasant's Landing" and the packaged-goods store known as "Pheasant's Landing Wine and Spirit Shoppe" do not constitute a single specific place of business within the intendment of N.J.S.A. 33:1-26.

Although I am mindful of the proposition that the responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or to cover enlarged premises is primarily committed to municipal authorities, and that local boards considering applications for such transfers are invested by our Legislature with wide discretion, and that their principal guide in making a determination is the public interest, Margate Civic Ass'n., it is specifically noted that the evidence presented to the municipal governing authority herein was substantially and significantly different from the evidence presented at the de novo hearing of the appeal.

At the hearing before the municipal governing body, the applicant indicated that its application was to "activate the packaged-goods license," inferring that no packaged goods were presently being sold by it in connection with its restaurant and bar operation. Furthermore, it was specifically represented to the municipal governing authority that a single bank account would be used for the combined operations, the same federal identification number would be used for both operations and that there would be common hiring and firing of employees for both operations. Contrariwise, at the de novo appeal hearing it was elicited that packaged goods have been, and will continue to be, sold at the restaurant situs and, likewise, will be sold at the packaged-goods store. Additionally, it was elicited that separate bank accounts for each operation were used and that the employees of the liquor store do not work at the restaurant and have nothing to do with the restaurant operation. Likewise, none of the restaurant employees work or will work at the liquor store. It was also demonstrated at the de novo hearing of the appeal that purchases for each of the operations would be done separately and paid for separately from the separate accounts of each of the entities, that the rental base for each operation was separate, distinct and calculated in a different way and that separate records for sales and proceeds are kept for each operation. In short, an entirely different picture was painted of the separate, distinct and unique aspects of each of the operations at the de novo hearing from that which was portrayed at the municipal hearing.

Although, I am equally mindful of the proposition that the Director of the Division of Alcoholic Beverage Control who conducts the de novo hearing of the appeal will not substitute his judgment for that of a local board or reverse the ruling of a local board if reasonable support for it can be found in the record, where the record is both different and substantially expanded it thus becomes necessary to make new factual and legal determinations based upon the record on appeal resulting from the de novo hearing. (Exhibits A-1 and A-9.)

It is further noted that after the hearing at the municipal level both the mayor and at least one committeeman expressed confusion, reluctance and equivocation in having to decide the issue based upon the record before it. (Exhibits A-1 and A-9.). Thus, I FIND that the record made at the de novo hearing of the appeal herein to be more complete, accurate and reliable than that made at the municipal level and, furthermore, to be both different from, and supplementary to, the record made below in substantial and significant considerations. Therefore, little, if any, deference may be given to the findings, conclusions and disposition heretofore made by the municipal governing body (Exhibit A-2).

DISPOSITION


Based upon the testimony heard, evidence adduced, and applicable regulatory and decisional authorities, I CONCLUDE that the operation of the restaurants and bar known as Pheasant's Landing and the operation of the packaged-goods store known as Pheasant's Landing Wine and Spirit Shoppe, located 152 feet from the restaurant operation in a "strip mall" located on the same 8-acre tract as the restaurants, to be two separate and distinct places of business and two separate and distinct premises which do not constitute a single specific place of business within the intendment of N.J.S.A. 33:1-26. Therefore, it is ORDERED that the place-to-place transfer be and is hereby DENIED, and further that the action heretofore taken by Resolution of June 24, 1986, of the Township of Hillsborough Township Committee, holding "the operation of the restaurants and packaged goods store as...one single specific place of business for which no splitting of license will occur in accordance with N.J.S.A. 33:1-26" and the application of JNB, Inc. "for expansion of the license premises to include a package-goods store in the eastern most unit of a six unit mini-strip shopping arcade separated from the restaurant structure by a common parking lot...be and is hereby approved", is hereby expressly, specifically and completely REVERSED, SET ASIDE AND NULLIFIED.

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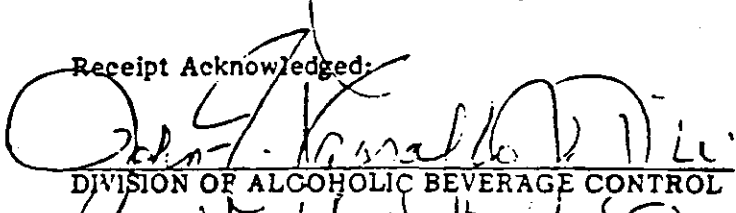
This recommended decision may be affirmed, modified or rejected by the DIRECTOR OF THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL, JOHN F. VASSALLO, JR., who by law is empowered to make a final decision in this matter. However, if John F. Vassallo, Jr., does not so act in forty-five (45) days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

I hereby FILE my Initial Decision with JOHN F. VASSALLO, JR., for consideration.

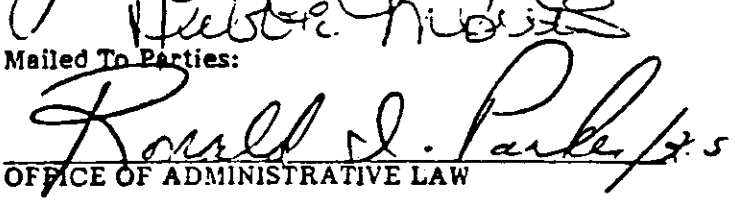
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DATE


DAVID J. MONYK, ALJ

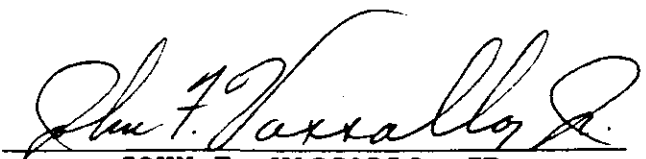
12/29/86
DATE

Receipt Acknowledged:

DIVISION OF ALCOHOLIC BEVERAGE CONTROL

DEC 31 1986
DATE

Mailed To Parties:

OFFICE OF ADMINISTRATIVE LAW

PUBLICATION OF BULLETIN 2450 IS HEREBY DIRECTED THIS
2ND DAY OF JUNE, 1987.


JOHN F. VASSALLO, JR.
DIRECTOR