

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

BULLETIN 1720

March 21, 1967

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - MILAN v. HOBOKEN.
2. DISCIPLINARY PROCEEDINGS (Roselle Park) - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.
3. STATE LICENSES (Union) - OBJECTIONS TO TRANSFER OF PLENARY WHOLESALE LICENSE - TRANSFER APPROVED.
4. STATE LICENSES (East Windsor Township) - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.
5. ADVERTISING - HEREIN OF RADIO ADVERTISING BY RETAIL LICENSEES - ESTABLISHED POLICY OF DISAPPROVAL REAFFIRMED.
6. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Mount Holly) - SALE TO A MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.
8. STATE LICENSES - NEW APPLICATION FILED.



tion to seek such transfer for the proposed premises; that he received a letter to appear at the City Hall for a hearing at 1:00 p. m. on May 12, 1966; that at 12:30 p.m. on said date he personally spoke to Mr. Amoruso and was advised that the hearing would be held at 1:00 p.m. in the courtroom; that he looked in the courtroom at 1:00 p.m. but saw nobody and again was there at 1:15 and again at 1:20 p.m. and saw nobody, and that at 1:40 p.m. he saw some people leave the courtroom who stated to him that the hearing was over; that he then spoke to Mr. Amoruso who said that his application for transfer of the license had been denied.

Andres Lacap, a physician practicing in Hoboken, testified that he has known appellant since November 1965 and had on five or six occasions attended social functions at the proposed premises and that on these occasions had never seen anything improper. Dr. Lacap further stated that since he has known appellant, he has found him to be a person of good moral character.

Philip Cardona, employed by the Board of Education of Hoboken, testified that on at least twelve occasions he attended social affairs at the proposed premises and never witnessed anything wrong occurring there. He further said that appellant has a reputation of being a law-abiding person.

Josuf Dela Torre, a sanitation inspector employed by the City, testified that he has known appellant for about eight years and that appellant bears a good reputation; that on about eleven occasions he has attended social events at the proposed premises and had never seen anything improper take place.

Anthony J. Amoruso, Secretary of respondent Board, testified that a petition containing one hundred thirteen signatures objecting to the transfer of the license in question was received subsequent to the filing of appellant's application on April 4, 1966, and that a hearing in the matter was scheduled for 1:00 p.m. on May 12, 1966; that about fifteen minutes before the meeting was to be held on May 12, appellant came to his (Amoruso's) office and, in response to his inquiry, was advised that the matter was to be heard at 1:00 p.m. "in the courtroom;" that at exactly 1:00 p.m. Chairman Arthur Scheffler called the meeting to order and inquired whether the applicant was present; that the applicant's name was then called but, there being no response, "the chairman suggested we wait a few minutes to see if he comes in;" that there was no appearance by appellant or any person in his behalf; that four persons testified at the hearing before respondent, objecting to the transfer of the license.

Amoruso stated that within a radius of one block of the proposed premises, there are three plenary retail consumption licenses, two plenary retail distribution licenses and one club license. Amoruso also testified that the distance between the premises at 142 Garden Street and the proposed premises is approximately eleven blocks. He also stated that a supplementary ordinance was approved by the municipality on May 5, 1966, the pertinent part of which provides that no plenary retail consumption license shall be transferred to other persons and premises where the proposed premises are located within five hundred feet of another premises covered by a plenary retail consumption license.

William J. Matthews testified that he is a councilman representing the Second Ward of the City wherein the proposed licensed premises are located; that over a period of years, he received complaints because of "music being played at all hours of the morning" when affairs were held at the proposed premises and also because of noise as the people "were leaving the place and in the late hours or early hours of the morning;" that on one occasion he (Matthews)

contacted the police because of the complaints; that he formerly resided on the street directly to the rear of the proposed premises, which street is strictly residential in character; that he appeared at the meeting of respondent at 1:00 p.m. on May 12, 1966, at which time Mr. Scheffler delayed the hearing "to see if any other people arrived" and that he (Matthews) "went out in the corridor to look for anyone else who may be interested in attending the hearing, and I could find no one;" that he voiced his objection before respondent to the transfer to the proposed site, as did three other persons.

Chairman Scheffler testified that at 1:00 p.m. on May 12, 1966, he opened the meeting but appellant was not there; that appellant's name was called and, when there was no response, he (Scheffler) delayed the hearing; that when neither appellant nor any person in his behalf appeared, the hearing began; that four persons spoke in opposition to the transfer because of noise from persons leaving the premises in the early hours of the morning and also that the premises for which the transfer is sought is on the second floor of the building.

Chairman Scheffler further testified that there are five liquor outlets, including a club license, in the vicinity of the location sought by appellant and, although aware of the recent supplemental footage ordinance relative to distance between premises, he did not consider this ordinance when he voted to deny the transfer in question.

It appears from the record herein that the hearing before respondent was conducted without appellant being present. Appellant contends that he looked inside the courtroom on three occasions between 1:00 and 1:20 p.m. and saw no one there. However, the city clerk, a councilman and the chairman of respondent Board testified that the matter was actually heard and that the transfer application was denied.

I am satisfied that the hearing had taken place with reference to the application for transfer of the license to appellant and that appellant failed to appear at the appointed time. However, since in this appeal the matter was heard de novo pursuant to Rule 6 of State Regulation No. 15 and appellant and all persons who desired to testify were afforded full opportunity to be heard, appellant has been fully protected. E.A.V. Liquors & Bar, Inc. v. Paterson, Bulletin 1702, Item 1. Furthermore, it might be well to point out that a local issuing authority, when denying an application for transfer, need not conduct a hearing. The sole purpose of a local hearing is to insure that before any application is granted, objectors have an opportunity to be heard. Jersey City Tavern Owners Association, et al. v. Jersey City, et al., Bulletin 1622, Item 2.

An analysis of the testimony presented on appellant's behalf fails to disclose any evidence whatsoever that there was a need or necessity for a plenary retail consumption license at the proposed location or that it would in any manner be a convenience to persons residing in the area. The fact is that a petition containing one hundred thirteen names of objectors to the transfer of the license showed that many of those who signed the petition reside in the immediate area of the proposed premises. The reasons given by the members of respondent Board, in addition to the objections to the transfer of the license, disclose that they took into account other liquor outlets in the vicinity, the past improper conduct of the persons who had attended affairs at the said premises, and that the proposed premises are on the second floor of the building. All of respondent's witnesses were in agreement that there was no personal objection to appellant.

Appellant herein, to warrant a reversal of the action of respondent, must show by a preponderance of the evidence that respondent abused its discretion in denying the application for the transfer of appellant's license. To meet this burden, it is necessary that appellant show manifest error or some abuse of discretion on the part of respondent. Nordco, Inc. v. State, 43 N.J. Super 277; Rajah Liquors v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 598 (App. Div. 1955).

A transfer of a liquor license to other premises is not an inherent or automatic right. The issuing authority may grant or deny the transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Richman, Inc. v. Trenton, Bulletin 1560, Item 4, and cases cited therein.

The number of licenses which may be permitted in any particular area and the determination as to whether or not a license shall be transferred to a particular location come within the sound discretion of the issuing authority, and the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether proper cause exists for its opinion and, if so, to affirm irrespective of his personal views. Rothman v. Hamilton, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Company v. West Orange, Bulletin 1155, Item 3.

In Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. Super. 306, 321 (App. Div. 1960), Judge Gaulkin stated:

"The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof 'In application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license as to said premises.' N.J.S.A. 33:1-26."

In Ward v. Scott, 16 N.J. 16, 23 (1954), the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle:

"Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications... And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S.Ct. 148, 151, 58 L.Ed. 319, 324 (1913)."

The court stated in Fanwood, supra, at p. 320, "No person is entitled to either [transfer of a license or issuance of an original license] as a matter of law" and "If the motive of the governing body is pure, its reasons, whether based on morals, economics, or aesthetics, are immaterial."

In the matter sub judice, the municipality did not grant, but denied, the application. The action of respondent may not be reversed by the Director unless he finds "the act of the board was

clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Association et al. v. Hoboken et al., 135 N.J.L. 502, at p. 511.

It is apparent by the unanimous vote of the members of respondent that in their opinion there are sufficient liquor outlets to supply the needs of the people in the area of the proposed premises. Moreover, the distance being eleven blocks from the present location of the transferor's premises to the proposed location would, in effect, constitute placing of another liquor outlet in a different section of the municipality.

I have fully considered the grounds of appeal contained in appellant's petition of appeal.

After reviewing the testimony, I find sufficient evidence to support respondent's findings and, in the absence of improper motivation by respondent, I find its action did not constitute an abuse of discretion or was there any testimony to indicate that discrimination or bias entered into respondent's determination.

Under the circumstances, it is recommended that the determination of respondent be affirmed and that the appeal be dismissed.

#### Conclusions and Order

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

Having carefully considered the record herein, including the exhibits and the argument of the attorneys for the respective parties, the Hearer's report and the recommendations included therein, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 11th day of January, 1967,

ORDERED that the action of respondent Municipal Board of Alcoholic Beverage Control be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI,  
DIRECTOR

2. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION STAYED DURING APPEAL.

In the Matter of Disciplinary Proceedings against )

Robert W. Lavin )  
t/a Twin Corners Bar & Grill )  
157 East Westfield Avenue )  
Roselle Park, N. J. )

SUPPLEMENTAL ORDER

Holder of Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Roselle Park )

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John L. McGuire, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

On October 26, 1966, I entered Conclusions and Order herein suspending the license for sixty-five days for permitting the acceptance of horse race bets on the licensed premises. Re Lavin, Bulletin 1707, Item 2.

Prior to the effectuation of the order of suspension, on appeal filed, the Appellate Division of the Superior Court stayed the operation of the suspension pending the outcome of the appeal.

On January 12, 1967, the appeal was dismissed by consent. Hence, the suspension may now be reimposed.

Accordingly, it is, on this 12th day of January, 1967,

ORDERED that the sixty-five-day suspension of license heretofore imposed, and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Consumption License C-1, issued by the Borough Council of the Borough of Roselle Park to Robert W. Lavin, t/a Twin Corners Bar & Grill, for premises 157 East Westfield Avenue, Roselle Park, commencing at 2:00 a.m. Tuesday, January 17, 1967, and terminating at 2:00 a.m. Thursday, March 23, 1967.

JOSEPH P. LORDI,  
DIRECTOR

3. STATE LICENSES - OBJECTIONS TO TRANSFER OF PLENARY WHOLESALE LICENSE - TRANSFER APPROVED.

In the Matter of Objections to )  
 Applications by )  
 Kasser Distillers Corp. )  
 Holder of Plenary Wholesale License )  
 W-3 for premises )  
 Third and Luzerne Streets )  
 Philadelphia, Pennsylvania )  
 and )  
 161 Frelinghuysen Avenue )  
 Newark, New Jersey )  
 for additional warehouse license )  
 for and place-to-place transfer of )  
 license to premises )  
 1835 Burnet Avenue )  
 Union, New Jersey )  
 ----- )

CONCLUSIONS

Richman, Berry and Ferren, Esqs., by Grover C. Richman, Jr., Esq.,  
 Attorneys for Applicant.  
 Fox, Yannoff and Fox, Esqs., by Leo Yanoff, Esq., Attorneys for  
 Objector, N.J. Wine & Spirits Wholesalers Association.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Written objections having been filed by the objector herein to respective applications of the captioned corporation for an additional warehouse license and for a place-to-place transfer of its existing plenary wholesale license, a hearing was held thereon pursuant to Rule 12 of State Regulation No. 1.

The issues raised in this matter may be more clearly focused if the licensing history of the applicant is first outlined. Applicant now holds and has held a plenary wholesale license since July 1, 1957. Prior to November of 1964, applicant did not maintain any licensed premises in this state. Since the latter date, and following appropriate applications and advertising thereof, the applicant has been licensed to maintain a warehouse under its plenary wholesale license at 161 Frelinghuysen Avenue, Newark, and to maintain an additional warehouse at 926 Haddonfield Road, Cherry Hill. The objections herein relate to its pending applications (1) for a separate license to maintain an additional warehouse and salesroom pursuant to R.S. 33:1-15 at 1835 Burnet Avenue, Union, New Jersey and (2) for a transfer pursuant to R.S. 33:1-26 of its plenary wholesale license from the foregoing Newark warehouse and to maintain licensed premises and salesroom at the aforesaid Union location.

The objector alleges:

1. There is no public need or necessity for the granting of these applications and, in fact, the granting of the applications will be detrimental to the public good and welfare.

2. An enforcement and control problem may be created contrary to the intent and spirit of Revised Statutes 33:1-1, et seq. and in such case the applications should not be granted.

3. The applicant, a Pennsylvania corporation, was not authorized to do business in the State of New Jersey in compliance with the provisions of Revised Statutes 14:15-3, and has not paid corporate franchise taxes.

4. Applicant has falsified certain of its license applications in answering "Yes" to the question reading: "If not incorporated under the laws of the State of New Jersey, is the corporation authorized to do business in New Jersey?"

5. In other respects applicant has committed acts or failed to fulfill statutory requirements as a result of which it is not entitled to receive the transfer referred to above.

In the conduct of the hearing I chose to develop, initially, the background facts surrounding the third and fourth objections recited above.

As to 3, it is admitted that applicant is a foreign corporation, did not become registered with the Secretary of State as authorized to do business in this state until October 3, 1966 and has not--at least to the date of hearing on October 4, 1966--paid New Jersey corporate franchise taxes.

There is nothing in the New Jersey Alcoholic Beverage Law requiring registration with the Secretary of State or the payment of corporate franchise taxes as a condition precedent to the Director's grant of a license or license transfer application. Objector argues, nevertheless, that the failure to do so operates, as a matter of law, to bar applicant from obtaining here what is essentially a transfer of an existing license to other premises in this state. In support of this contention, the objector relies strongly on Gaines, & c. v. State Board of Tax Appeals, 122 N.J.L. 334 (Sup. Ct. 1939), aff'd 124 N.J.L. 128 (E. & A. 1939). Such case, however, dealt only with the narrow question whether the prosecutor therein, a foreign corporation, was "doing business" in the State of New Jersey, subject to franchise tax, and contains no express or implied authority that a license issuing authority must decide, or is the proper forum to determine, in the first instance, whether an applicant is required to comply with the provisions of R.S. 14:15-3 or has paid franchise taxes pursuant to R.S. 54:11-1 et seq. Grant of the pending applications would not, and could not, divest other state agencies or the Courts of primary jurisdiction in the enforcement of the provisions of the Corporation Act (Title 14, Revised Statutes) or Title 15 dealing with taxation, or in the imposition of the penalties prescribed therein for violation. Nor would it gainsay the Director taking affirmative action against an issued license if adjudication of violation is made by the agency, or the Courts, having original jurisdiction over the subject matter. Cf. Bulletin 1560, Item 5. In any event, applicant is now certified by the Secretary of State as being in compliance with Title 14.

As to 4, applicant had responded negatively to Question 7 (inquiring if applicant corporation was authorized to do business in New Jersey) in its initial application for plenary wholesale license commencing July 1, 1957 and in its applications for the succeeding six renewal years. Following the 1963-64 renewal, application was filed for transfer of its plenary wholesale license to include the aforementioned Newark premises as its warehouse thereunder, with such transfer application containing an affirmative response to Question 7. Similarly, Question 7 in the 1964-

65 and the 1966-67 renewal applications, and in the pending transfer application, was answered in the affirmative. While, technically, such answers were not then correct, I do not believe there was any deliberate intent to deceive or mislead this Division but, rather, the errors occurred through carelessness in preparation by applicant's office staff and lack of proper examination of the application by its executing officer. In this respect, it is significant to note that applicant's renewal application for 1965-66 (intervening between its 1964-65 and 1966-67 applications) correctly sets forth a negative answer to Question 7.

Following the conclusion of testimony with respect to 3 and 4, counsel for the objector was requested to proceed with respect to his client's allegations encompassed in 1, 2 and 5. However, counsel did not produce any witnesses nor offer any testimony with respect to the allegations last referred to, contending that the burden of going forward with evidence on such remainder of objections is upon the applicant. Over objection of counsel, the hearing was then terminated.

In considering the instant applications, I lay stress upon the fact that the applicant is already the holder of a plenary wholesale license and seeks only a transfer of its situs in this state to another location. I cannot conceive how the public can be prejudiced by a place-to-place transfer of this type of license (which contains no privilege of selling to consumers) or how such transfer would create an enforcement and control problem "contrary to the intent and spirit of Revised Statutes 33:1-1, et cetera." Bulletin determinations and cases cited by counsel for the proposition that the burden is upon the applicant are not factually a propos to the instant case, involving, as they do, licensees having consumer privileges and conducting, in most instances, a tavern type of operation with a substantially different impact upon the public interest. Nor does my examination of either the transcript in the matter of Sanford Kalb or the Director's Conclusions therein (Bulletin 1387, Item 5) lend substance to the claim that such matter stands for such proposition. More controlling is the Division policy of many years standing, which has been to require any applicant for a new plenary wholesale license to attend a hearing--even in the absence of objectors--to establish that its contemplated mode of operation would not be detrimental to the public interest. Conversely, applications for place-to-place transfer are granted, after investigation, but without hearing, as a matter of course. Evidential are numbers of place-to-place transfers granted to the plenary wholesale members of the objector association without hearing or affirmative establishment by them that public necessity is served by the transfer grants. Too, it is interesting to note that the instant objector--invariably objecting to new wholesale licenses--was silent with respect to applicant's 1964 transfer and additional warehouse license applications. In all fairness, the objector should have, under the circumstances here present, come forward affirmatively in support of its conclusionary objections and thereby afford opportunity of rebuttal to the applicant.

Counsel, in his brief, also refers to R.S. 33:1-26 and to State Regulation No. 6, which, dealing only with the form and content of transfer applications, have no relevancy to the issues herein.

I, therefore, recommend that the pending application for place-to-place transfer be granted.

Since the application for additional warehouse license embraces the same premises sought to be licensed under the place-to-place application, I further recommend that the place-to-place transfer shall not become effective unless and until the application for additional warehouse license is withdrawn.

### Conclusions

After a careful reading, study and consideration of the entire record herein, including the transcript of the testimony, the matters introduced and received in evidence, the briefs filed by the attorneys for the applicant and the objector, the Hearer's report and the exceptions to the Hearer's report filed by the attorneys for the objector, I concur in the findings and conclusions of the Hearer and adopt his recommendations. To elaborate, however, I have the following comments:

Assuming, arguendo, that it is within my jurisdiction to make an original determination that the applicant "transacted business" in this State within the meaning of the Corporation Act without having obtained the requisite certificate of the Secretary of State prior to filing the place-to-place transfer application now under consideration, the impediment, if one did exist, has been removed by virtue of the fact that applicant is now authorized to do business in New Jersey. Menley and James Laboratories, Ltd. v. Vornado, Inc., 90 N.J. Super. 404. As to the corporate franchise tax issue raised by the objector, I agree with the Hearer that assessment of the amount, if any, of corporate franchise tax for which the applicant may be liable is a matter falling within the original jurisdiction of the Division of Taxation within the State Department of the Treasury. R.S. 54:10A-1 et seq. I should not assume that, if and when such an assessment is made, the applicant will not honor its tax obligations or abate any delinquent tax status.

I see no compelling reason to withhold grant of this application for place-to-place transfer pending tax assessment, if any, made by the proper State agency with opportunity afforded by such agency for the licensee to purge itself of any franchise tax delinquency. Adequate remedy exists if the licensee should fail to do so. Cf. Bulletin 1560, Item 5.

I am of the further opinion that the grant of a place-to-place transfer to this applicant, now the holder of a license with an operational situs in this State from which it is already privileged to service, and does service, the retail trade and, a fortiori, the public, would not be detrimental to the public good and welfare. The objector's allegation that an "enforcement and control problem may be created contrary to the intent and spirit of Revised Statutes 33:1-1, et seq." is conjectural and insufficient to support objector's contention that the application should be denied. Violation of the Alcoholic Beverage Law or State Regulations would subject the licensee to appropriate action whether occurring at the present or the proposed new situs.

Accordingly, I hereby grant the application of Kasser Distillers Corp. for transfer of its plenary wholesale license W-3 to the premises located at 1835 Burnet Avenue, Union (Union County), New Jersey, and accept its offer of withdrawal of its application for additional warehouse license for such premises.

JOSEPH P. LORDI,  
DIRECTOR

Dated: January 10, 1967

4. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE BEVERAGE DISTRIBUTOR'S LICENSE - TRANSFER APPROVED.

In the Matter of Objections to )  
the Transfer of State Beverage )  
Distributor's License SBD-30 )  
issued to )

Louis Cohen Inc. )  
Highway 130 )  
Washington Township )  
P. O. Windsor, N. J. )

CONCLUSIONS

to premises )

Route #130 )  
East Windsor Township )  
P. O. Hightstown, N. J. )

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Applicant, by Louis Cohen, President, Pro se.  
Jean Carduner, Objector, Pro se.

BY THE DIRECTOR:

On November 18, 1966, Louis Cohen Inc. filed an application for place-to-place transfer of its state beverage distributor's license from premises on Highway 130 in Washington Township, Mercer County, to premises on Route #130, East Windsor Township.

Written objections to the said transfer were filed on behalf of the East Windsor Township Committee and a hearing was duly set thereon. The reasons set forth in the objections are as follows:

"1. Area is a commercial area.

"2. Committee is aware of this company's former operation and know as personal fact that the operation is not conducted in a manner conducive to or in conformity with business operations currently being operated on Route #130 and would deteriorate the overall value and attractiveness of the community in the area."

At the hearing herein, Louis Cohen, president of the corporate applicant, testified that it sought transfer of the license because its present premises, located approximately a mile and a half from the proposed premises, are unsatisfactory for its operation. The applicant presently occupies an "old and broken down" building which is impossible to heat and has suffered considerable damage by vandalism, which has been a drain on his time, finances and energy.

The proposed building is a one-story cinder block building formerly used as a repair shop for lawn mowers and is a reasonably modern facility, located in a commercial area. Next door to this building is an empty lot which formerly was a used car lot. In the immediate vicinity are "a hot-dog stand, custard stand, bowling alley, and gasoline station." Directly across the street is a gasoline station, and a junkyard is located nearby.

The applicant is essentially a one-man operation, owns one truck, and is primarily engaged in selling soda, as well as warm beer. It services Monmouth, Mercer and Middlesex counties; only 10% of its sales are in East Windsor Township.

Jean Carduner testified that although he is a member of the East Windsor Planning Board, he appeared at the hearing in his personal capacity as a resident of the community. His primary objection seems to be that the applicant stores some of its merchandise on the outside of its present premises and he fears that, if the transfer is granted, the applicant will continue that practice. He tried to convey the impression that the use of the proposed premises by the applicant would not improve the commercial area. He did not quite define or explain clearly how the applicant's business would deteriorate the area or be a liability.

It should be further pointed out that no representative of the Township Committee appeared or testified in support of its objections.

After considering the testimony, I am persuaded that the objections to the grant of the transfer have not been adequately proved; that they are of insufficient weight to warrant denial of the application; and that a sufficient need exists for the grant of the said application.

Clearly, this is a commercial area, and it is reasonable to assume that this building, when occupied by a reputable enterprise, would more likely be an asset to the area. It seems obvious that the applicant's business would have greater value to the area than either an empty building or the lawn mower repair shop which previously occupied the said building. How this operation would deteriorate the area completely escapes me, since it is acknowledged that the area contains a junkyard, a hot-dog stand, a custard stand, a parking lot for trailers and gasoline stations.

The applicant has been in business for over nineteen years and, so far as this record indicates, enjoys an unblemished reputation. Cohen has stated that he is prepared to comply with all regulations of the municipality so far as the operation of the business is concerned.

The applicant is permitted to sell only warm beer in quantities of not less than 144 fluid ounces. There is no evidence to suggest that these premises will increase competition by reason of the said transfer. State beverage distributor licensees may deliver throughout the State and, as a rule, do not conduct any on-premises retail business of any substance. Re Buchanan, Bulletin 1548, Item 5; Re Kalb, Bulletin 1457, Item 5. After considering all of the evidence, it is my considered judgment that the objections are without merit.

Accordingly, the pending application is approved and the appropriate endorsement on the license certificate may be made, upon compliance with the prerequisites of this Division.

JOSEPH P. LORDI,  
DIRECTOR

Dated: January 11, 1967

5. ADVERTISING - HEREIN OF RADIO ADVERTISING BY RETAIL LICENSEES - ESTABLISHED POLICY OF DISAPPROVAL REAFFIRMED.

January 13, 1967

Arnold L. Zucker  
Executive Director  
New Jersey Broadcasters Association  
New Brunswick, New Jersey

I have given my most studied consideration to the request of your association for change or modification of long-standing Division policy with respect to radio advertising by retail liquor licensees.

Historically, disapproval of advertising over the air by retail dealers in alcoholic beverages extends back to the repeal of prohibition in December of 1933. It has been the unanimous view of my predecessors in office -- Commissioner Burnett, Commissioner and Governor Driscoll, Commissioner Hock, Director Cavicchia and Director Davis -- that it is undesirable from the viewpoint of sound liquor control to allow retail dealers to use the air as a means of entering the home to promote their establishments as places where the family may obtain alcoholic beverages. Analogy has been drawn between this manner of advertising and the ban on licensees soliciting from house to house, personally or by telephone (Rule 3 of State Regulation No. 20, copy enclosed), on the theory that the privacy of the home should not be invaded in this way for the purpose of inducing the purchase of alcoholic beverages. In similar vein is our restraint upon alcoholic beverage advertising in local motion picture theaters. Bulletin 203, Item 1 and Bulletin 640, Item 5, copies enclosed.

Among other arguments raised in support of request for liberalization of our Division policy has been the contention that alcoholic beverage manufacturers may advertise their products over the air while advertising by retail liquor dealers is deprecated. This argument may best be answered by stating:

1. Manufacturers using the air engage only in brand advertising (mention of any specific retailer's establishment as a place to obtain such brands is prohibited), whereas a retailer's promotion would advise the family, gathered around the radio or television, of the very place where they may go to obtain alcoholic beverages.

2. Since we have no control over out-of-state manufacturers broadcasting advertisements of their products into New Jersey over out-of-state stations, it is deemed unfair to prohibit New Jersey manufacturers from similarly advertising their products over stations in this State. In view of the interstate angle, the question of manufacturers advertising over the air can be competently handled only on a federal level.

3. As you know, it has only been manufacturers of wines or malt alcoholic beverages who advertise over the air by virtue of (1) self-imposed restraint by most of the large manufacturers of liquor (whiskey, gin, rum or other distilled spirits or composition thereof). (2) the self-imposed policy of many radio and television stations to refrain from the acceptance of liquor advertising, and (3) the unfavorable attitude of the Federal Communications Commission toward liquor advertising. While dealing with this aspect, I note, following an announcement last year by a certain TV station -- not a

subscriber to the NAB Code prohibiting liquor advertising — that it would broadcast rum commercials, warning was immediately given by certain United States senators that they would seek appropriate legislation to ban, by edict, such advertising. Such proposed liquor advertising was also viewed with, and I quote, "concern and serious criticism" by the Television Code Review Board of the National Association of Broadcasters. And, you will recall that, in the past, various congressional committees have given serious consideration to proposals for legislation, within the federal province, to curb or prohibit alcoholic beverage advertising.

Relaxation of the Division policy is also urged on the ground that advertising over the air is as proper a medium as advertising in newspapers or other publications. It must be recognized, however, that alcoholic beverage advertising has a broader social impact than advertising of other commodities and, in my opinion, a reasonable distinction may be made between this mode of advertising and advertising which commands the attention of the entire family group listening to or viewing broadcasts in the home.

Accordingly, while I am aware of, and am sympathetic with, the efforts of broadcasters in seeking new sources of revenue to sustain their operations, I must view your request in the light of what I consider to be in the best interests of the public and, after giving the matter my most careful and studied consideration, I find that I must deny your request for relaxation of the long-standing Division policy. My disapproval of retail dealers advertising over the air is not intended in any way to reflect upon the radio and television industry and I appreciate your sincere offer to supervise most carefully any material submitted by retailers for broadcast. My disapproval stems solely from my appraisal, which has led me to the belief that no appreciable convenience to the public would result and that such advertising would not be in the best interests of the public. I am hopeful that the members of your association and others in your industry will understand my position.

In closing, and for completeness, it is observed that if a retail licensee conducts another bona fide business upon his licensed premises (restaurant, hotel, bowling alley operation, grocery or other mercantile store), such other business may be advertised over the air without objection from this Division where the advertising makes no reference of any kind to the alcoholic beverage business and does not identify the premises as a place to obtain alcoholic beverages.

JOSEPH P. LORDI,  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FRANK LUDWICZAK )  
607 Grove Street )  
Jersey City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-63, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

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James F. Ryan, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 31, April 1, 6, 15 and 28, 1966, he permitted acceptance of horse race bets on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the Director for five days effective January 16, 1961 for possession of an alcoholic beverage not truly labeled. Re Ludwiczak, Bulletin 1377, Item 4.

The prior record of suspension of license for dissimilar violation occurring more than five years ago disregarded, the license will be suspended for sixty days, with remission of five days for the plea entered, leaving a net suspension of fifty-five days. Re Sokol, Bulletin 1707, Item 3.

Accordingly, it is, on this 24th day of January, 1967,

ORDERED that Plenary Retail Consumption License C-63, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Frank Ludwiczak for premises 607 Grove Street, Jersey City, be and the same is hereby suspended for fifty-five (55) days, commencing at 2:00 a.m. Tuesday, January 31, 1967, and terminating at 2:00 a.m. Monday, March 27, 1967.

JOSEPH P. LORDI  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE TO A MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Holly Distributors Inc. )  
36 East South Avenue )  
Mount Holly, N. J. )

CONCLUSIONS AND ORDER

Holder of State Beverage Distributor's License SBD-83, issued by the Director of the Division of Alcoholic Beverage Control )

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Lillian Forman-Neubauer, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on June 21, 1966, it sold two half-barrels of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Caribe Hilton Lounge, Inc., Bulletin 1704, Item 3.

Accordingly, it is, on this 16th day of January, 1967,

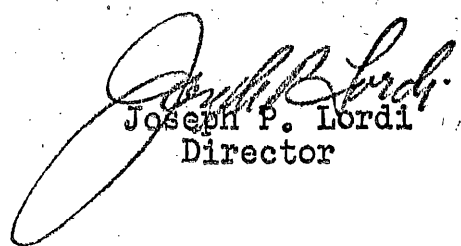
ORDERED that State Beverage Distributor's License SBD-83, issued by the Director of the Division of Alcoholic Beverage Control to Holly Distributors, Inc., 36 East South Avenue, Mount Holly, be and the same is hereby suspended for five (5) days, commencing at 9:00 a.m. Monday, January 23, 1967, and terminating at 9:00 a.m. Saturday, January 28, 1967.

JOSEPH P. LORDI  
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Wilens Brothers, Inc.  
250 W. Cambria Street  
Philadelphia, Pennsylvania

Application filed March 15, 1967 for place-to-place transfer of licensed warehouse from 926 Haddonfield Road, Cherry Hill, New Jersey, to 131 Jersey Avenue, New Brunswick, New Jersey, operated under Wine Wholesale License WW-18.



Joseph P. Lordi  
Director