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

BULLETIN 1894 January 16, 1970

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ITEM

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

BULLETIN 1894 January 16, 1970

1. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY - GAMBLING (DICE AND CARD GAMES) - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

SUBURBAN-EPPES ESSEN, INC.
141 South Harrison Street
East Orange, N.J.

Holder of Plenary Retail Consumption License C-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange.

CONCLUSIONS and ORDER

Malcolm H. Greenberg, Esq., and Joseph C. Glavin, Jr., Esq., Attorneys for licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

After partial hearing, licensee pleaded non vult to the following charges:

> "1. On Thursday night March 13, 1969, you allowed, permitted and suffered lewdness, immoral activity and foul, filthy, indecent and obscene conduct in and upon your licensed premises, viz., in that (1) you allowed, permitted and suffered female persons to perform on your licensed premises in a lewd, indecent and immoral manner and to otherwise engage in foul, filthy, indecent and obscene conduct, including engaging in acts of perverted sexual relations with each other and with male persons, and (2) you allowed, permitted and suffered the projection, exhibition and display on your licensed premises of motion picture films of male and female persons engaged in acts of sexual intercourse, acts of sexual perversion and other lewd, indecent and immoral sexual poses, acts and practices; in violation of Rule 5 of State Regulation No. 20.
>
> "2. On Thursday night March 13 into early morning hours of Friday, March 14, 1969, you allowed, permitted and suffered gambling, viz., the playing of dice and card games for stakes of money, in and upon your licensed premises; in violation of Rule 7 of State Regulation No. 20."

The facts are sufficiently set forth in the quoted charges.

Reports of the investigation disclosed that the conduct alleged in the charges occurred on the licensed premises during an affair sponsored by a fraternal organization and that one or more of the licensee's corporate officers and stockholders, its manager and several employees were present and participated in the progress of the activities alleged in the charges to the extent to establish that the licensee had knowledge thereof but failed to put a stop to them.

In view of all the facts and circumstances herein recited, I deem the only proper penalty to be outright revocation of the license. Re Hillsboro Bar-Liquors, Inc., Bulletin 1796, Item 1, affirmed on appeal by Superior Court (App.Div. 1969), not officially reported, recorded in Bulletin 1879, Item 1.

Accordingly, it is, on this 5th day of December, 1969,

ORDERED that Plenary Retail Consumption License C-21, issued by the Municipal Board of Alcoholic Beverage Control of the City of East Orange to Suburban-Eppes Essen, Inc. for premises 141 South Harrison Street, East Orange, be and the same is hereby revoked, effective immediately.

Joseph M. Keegan,
Director.

2. APPELLATE DECISIONS - WALBAN, INC. v. DEAL

Walban, Inc., Appellant,	)
v.	) On Appeal
Board of Commissioners of the Borough of Deal,	) CONCLUSIONS and ORDER
Respondent.	)

Harry L. Shure, Esq. and Louis A. Zemo, Jr., Esq., Attorneys for Appellant
No appearance on behalf of Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Board of Commissioners whereby it denied appellant's application for a person-to-person transfer of a plenary retail consumption license from George Van Houten to appellant for premises 100½ Norwood Avenue, Deal.

Respondent filed no answer, nor did it appear at the hearing herein.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15.

The sole question raised for determination is the fitness of appellant to hold a liquor license.

Before considering the totality of the evidence, it would be appropriate to restate the basic principles which guide this action. It must be determined whether or not respondent has reasonably exercised its discretion in denying appellant's application for transfer. "Reasonable" is defined as "being in agreement with right thinking or right judgment; not absurd." Webster's (3rd Edition) New International Dictionary. "Reasonable" has also been defined as "governed by reason", "sensible;" also "fair", "equitable", "fairminded" and "suitable in the circumstances." 75 C.J.S. 634. What is "reasonable" must, of course, be determined according to the context and circumstances of each particular case.

As the court pointed out in Bivona v. Hock, 5 N.J. Super. 118 (App.Div. 1949) at p. 120:

> "It seems to us that the issue is, not whether a discretionary power has been improperly exercised, but rather whether in the exercise of the power respecting transfers, R.S. 33:1-26, authority existed in the local body to refuse a transfer of a license for the reason upon which the refusal was based. Cf. South Jersey Retail Liquor Dealers Association v. Burnett, 125 N.J.L. 105 (Sup. Ct. 1940)."

The transfer of a liquor license, whether person-to-person or place-to-place, or both, is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was unreasonable, arbitarary or capricious, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1; Silver Sands Motel v. Point Pleasant Beach, Bulletin 1624, Item 1.

As the court stated in Fanwood v. Rocco, 33 N.J. 404, 414:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him .... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

See Hightstown v. Hedy's Bar, 86 N.J. Super. 561.

In advance of the hearing held herein, the respondent's attorney submitted to this Division a photocopy of minutes of meeting held on June 10, 1969, which reflected that the Board denied the application for transfer of license "on the basis of a Deal Police Investigation." Attached to minutes of the meeting was a photocopy of a report provided by the State Bureau of Identification dated June 4, 1969. At the hearing these were received in evidence as Exhibit R-1. Also at the hearing the then attorney for the appellant averred that he had been in communication with the respondent Borough's attorney and with the Borough Clerk and they informed him that the respondent would not appear at the hearing.

There was also received in evidence (as Exhibit A-1) a photocopy of license application and attachments submitted by the appellant to respondent Board.

Edward A. Bannerman, Jr. testified that he is the president, secretary and 100% stockholder of the corporate appellant. According to the entry in the report furnished by the State Bureau of Identification dated June 4, 1969, it appears that he was found guilty of a charge of being a disorderly person (drunk and disorderly) and fined $50 on July 7, 1964 in Neptune City, which he admits.

It also appears from the said report that Bannerman was on July 26, 1967 charged with carrying a concealed weapon in violation of R.S. 2A: 150-41 in either Wall Township or Belmar. The report fails to show what disposition was made of the charge. As to this, Bannerman testified that in the County Court in Freehold the charge was reduced to a disorderly person charge and he was fined $50 and that he has had no other convictions either under the disorderly persons law or under the crimes act.

Frank Scott York (a free lance writer), who resides about four or five blocks distant from Bannerman and in the same municipality, testified that he has been acquainted with Bannerman for approximately fifteen years. He then testified as follows:

"Q In your daily travels in the community of Bradley Beach have you ever had occasion to find his /Bannerman's/ name cropping up in conversation between you and other persons?
A Only in a favorable way.
Q Has anything in those conversations been detrimental or anything that would indicate anything of an undesirable character of any kind?
A No, sir.

MR. SHURE: I have nothing further.

BY THE HEARER:
Q What is his reputation in the community where he lives?
A Excellent. My family has known his family fifteen years. I know his father, his recently deceased mother. They are fine people. I have always been very proud to know him."

In reviewing the exhibits and the testimony presented herein, I find nothing to indicate that Bannerman was convicted of any crime or was otherwise unworthy or unfit to engage in the alcoholic beverage industry and there is no factual foundation in the record to support the respondent's action.

Although the care and attention given to this case by the respondent are to be commended, I find that, upon the record presented, its action in refusing to grant a transfer of the license to be unreasonable. As was stated in Marsillo v. Randolph, Bulletin 1367, Item 3, the appellant is at least entitled to prove that he will sincerely and conscientiously live up to the rules and regulations (both State and municipal) governing the operation of the licensed premises.

For the reasons above stated, I conclude that the appellant has sustained the burden imposed upon it under Rule 6 of State Regulation No. 15. It is therefore recommended that the respondent's action be reversed and that it be ordered to grant the transfer in accordance with the application.

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 entire record, including the transcript of testimony, the exhibits and the Hearer's report, I concur in the findings of the Hearer and adopt his recommendations.

Accordingly, it is, on this 3rd day of December 1969,

ORDERED that the action of respondent be and the same is hereby reversed; and it is further

ORDERED that respondent transfer the license to appellant in accordance with the application heretofore made.

Joseph M. Keegan,
Director.

3. APPELLATE DECISIONS - BORKO v. MANSFIELD (BURLINGTON COUNTY)

John Borko and Wenceslaus Borko, t/a "Corner House",

Appellants,

v.

Township Committee of the Township of Mansfield (Burlington County),

Respondent.

On Appeal

CONCLUSIONS and ORDER

Schlesinger, Manuel & Schlosser, Esqs., by Alfred A. Faxon, III, Esq., Attorneys for Appellants
Alfred O. Powell, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal challenges the action of respondent whereby it granted appellants' application for renewal of their plenary retail consumption license for the year 1969-70 subject to the following condition:

> "No music of any nature or kind shall be played upon or in said licensed premises, excepting music furnished by radio, coin operated music machine and/or television."

Appellants in their petition of appeal allege that respondent's action was erroneous in that:

> "(a) Directly across the street from the Appellants licensed premises, there is another establishment not subject to any such limitations.
> "(b) The condition imposed is without qualification as to the time when it is operative, and as such, is too broad and unreasonable.
> "(c) There is no reasonable basis, in fact, for the imposition of such a restriction."

Respondent in its answer admits the jurisdictional allegations, including the imposition of the special condition, and relies upon the grounds for such imposition as set forth in Resolution 1969-3 approved by respondent on June 23, 1969 , as follows:

"1. There have been numerous complaints as to operation of the licensed premises, primarily centered upon the 'loud' noise and uncontrolled clientele on Friday evenings and Saturday mornings when live music is furnished for patrons. These complaints emanate from both the loud activities on the premises and actions of customers outside the establishment before, during and after hours of operation.
"2. The premises are located in the center of the village of Columbus, and the neighborhood is primarily resi-

dential. Complaints in addition to the loud music and noise were aimed at patrons urinating in public, creation of traffic hazards, both as to operation and parking of vehicles, beer bottles being strewn about the adjoining residential properties and other disorderly conduct of patrons.

"3. a nuisance is created in the neighborhood during the times when 'live music' is offered on the licensed premises and is directly attributable to that type of entertainment being furnished to patrons."

Upon the filing of the appeal an order dated August 4, 1969 was entered by the Director staying the effect of the special condition pending the determination of the appeal.

The hearing on appeal was de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross-examine witnesses.

In behalf of appellants, Wenceslaus Borko (who actively manages the business conducted by the licensees) testified that they have conducted a tavern business since 1963 on the street-level floor of a building located on the northeast corner of New York Avenue and East Main Street known as and by number 1 East Main Street, in what is considered to be the center of the Village of Columbus, Township of Mansfield. A tavern business has been conducted at that location since the repeal of prohibition. A tavern business conducted under the name "Columbus Inn" is located on the northwest corner of New York Avenue and West Main Street, a gasoline station is located on the southeast corner, and a bank is located on the southwest corner of the said intersection. Additionally, there are two churches located on Main Street to the east of the licensed premises, one on each side of Main Street.

The tavern business is conducted in two large rooms, one of which contains a bar and tables and chairs and the other contains a stage and tables and chairs. A juke box has always been maintained in the premises, and during the past three or four years a live band was engaged on Friday and Saturday nights. The premises are air-conditioned and the doors are closed when the air-conditioners are being operated.

In describing the neighborhood Borko testified that immediately adjacent to his tavern to the north along New York Avenue there is a vacant lot, then a building used for storage purposes and "past that the homes start:" along Main Street to the east of the tavern he maintains a driveway and "then the homes start. Immediately to the east of the gasoline station along Main Street there is a building containing three apartments, each with separate entrances.

Because the business was not showing a profit he commenced having live entertainment about a year or two after purchasing the premises. He first heard of complaints as to the operation of his business in May 1969. No one whom he had personally interviewed complained to him. He employs a three-piece band (consisting of an electrified accordian, an electrified guitar and drums) that plays "rock" music basically. The band generally plays from 9 p.m. to 1:30 or 1:45 a.m. No local officials, local police officers or State police officers informed him of complaints relative to loud music.

After receiving the license containing the condition, he met a local minister in order to discuss the problem. Additionally, he obtained sworn statements from six persons stating, in brief, that they have not been disturbed by either the live music

or by the patronage. With one exception, all of these persons reside in the immediate vicinity of the licensed premises, the furthest being distant "approximately two hundred feet, three hundred the most." Two of the affiants, Mr. and Mrs. Kitner, reside in the building containing the tavern.

On cross examination Borko testified that he has no off-street parking facilities. To the west of the Columbus Inn and along the northerly side of West Main Street there is a vacant lot "and then residents;" to the west of the bank there is a vacant lot, a commercial building, "then residences start." Prior to May 1969 no complaints had been made to him personally concerning the operation of the licensed business, nor was he aware of any complaints being made to any of his employees or to the Police Department.

John Borko (the co-licensee and the father of the previous witness) testified that he is in attendance at the licensed premises every Friday and Saturday night. He received no complaints from neighbors concerning the music. He heard of complaints concerning people parking cars in wrong places only. He received no complaints from either the local police or the State police.

Edson Hopkins testified that he resides at 8 New York Avenue, which is located four buildings removed from the licensed premises or "at the most, two hundred feet, just taking approximately." He has resided at that address with his wife and two small children for fifteen months. Neither he nor his wife experienced any interference with his normal routine because of the entertainment at the licensed premises on Friday and Saturday nights. The entertainment has not interfered with his children's sleep. On occasions, when he and his wife have patronized the licensed premises on Friday and Saturday nights, the babysitter has never complained that his children were unable to sleep. In response to the inquiry as to whether or not he had any difficulty with the behavior of patrons of the licensed premises, the witness replied, "Occasionally you hear somebody or a car flying by, but I have no idea if they came from the Corner House or just fly around the corner. Nothing I can say is the Corner House." He further testified that, commencing in November 1968 and for a period of several months, he was employed at the licensed premises as a part-time bartender on Friday and Saturday nights and that he terminated his employment at the end of May 1969.

William Archer testified that he and his wife reside on East Main Street next door to the licensed premises. He patronizes the licensed premises "once in a while." The band does not bother him at all. He has not been awakened at night, nor have the patrons of the premises littered his yard with rubbish. He and his wife have resided at their present address many years prior to the time that the licensees have been operating at their present location. He usually goes to bed on Friday nights no later than midnight. However, if he is watching a telecast of a baseball game, he may stay up beyond midnight. He has never been disturbed from hearing the ballgame because of noise from the licensed premises.

In behalf of respondent, Mansfield Township Clerk John Evans testified that he has been the Clerk of the Township for eleven years and is personally familiar with the area involved in excess of forty years. He attended a special hearing of the Township Committee on June 23, 1969 for the purpose of considering the renewal of the license involved herein. A photocopy of

the minutes of the meeting was received in evidence as Exhibit R-1. A letter received by the Township Clerk on May 22, 1969 was received in evidence (Exhibit R-2) for the limited purpose of substantiating that it was necessary to hold a hearing to consider the renewal application. A petition by thirty-eight persons who allegedly reside in a one-block radius of the licensed premises, received by the Township Clerk and the Township Committee at its regular meeting on May 5 from Rev. Garry Hope, was received in evidence as Exhibit R-3. A paper containing twelve signatories and as Exhibit R-4. An additional petition signed by fifty-two-persons, received by the Township Committee from Reverend Hope at the special hearing held on June 23 was received in evidence as Exhibit R-5. Not all of the signatories reside within the immediate vicinity of the licensed premises. A hand-drawn sketch roughly representing the intersection where the licensed premises and the Columbus Inn are located was received in evidence as Exhibit R-6. Of the fifty-two signatories in Exhibits R-3, R-4 and R-5, approximately fourteen do not reside "within the immediate area of where the music or disturbances would be direct to them ... I'm speaking, now, within a one-block confine, say three hundred feet or four hundred feet east, south, west and north."

On cross examination the witness testified that the Township granted the applications of its two other licensees (including that of Columbus Inn) for the renewal of their licenses without condition.

Roland J. Armstrong, who has been employed by the Township as its Chief of Police for the past two-and-one-half years, testified that forms commonly referred to as complaint forms, particularly pertaining to the area where the licensed premises are located, were given to each police officer patrolling the area on Friday nights commencing May 9 to July 18, 1969. Chief Armstrong testified, "After that date there wasn't too much music." The reports, filled in by the officers, were received in evidence as Exhibit R-7.

Commencing April 1, or thereabouts, the Township generally had five officers on duty on Friday nights. Prior thereto one or two officers would normally be assigned to patrol duty. The questioning then revealed the following:

"Q Now, as chief of police can you tell us what necessitated additional patrolmen on those evenings?
A Yes. We was having so much trouble on the streets that two men couldn't handle it. So we put four and sometimes five on.
Q What streets are you referring to?
A New York Avenue, Atlantic Avenue, East and West Main Street, as well as patrolling the outlying districts of the Township ... After that date there wasn't too much music.

** * * * * *

Q And will you tell us specifically what you have observed on Friday nights during your observations of those activities?
A Well, the town was full of cars. Cars were parking in front of fire plugs, on the sidewalks, and people coming out of the house urinating on people's lawns. And as far as the music, I mean you can hear the beat of the drums down the street .... maybe a hundred fifty, a hundred seventy-five feet from the -- maybe two hundred."

"Down the street" referred to the location he parked his patrol car, that is, between the bank and the post office. Since on or about the first of August there was no activity in the area of the Corner House in so far as police work was concerned. During the time he was ingaged in police work, he did not receive any complaints concerning the Columbus Inn.

On cross examination Chief Armstrong admitted that, when parked between the bank and the post office, he could not observe patrons coming out of the Columbus Inn. He could only observe patrons coming out of the Corner House. Seven or eight complaints of loud music are noted on the complaint forms received in evidence. The reports are based on police officers' observations and not on complaints received from citizens. The substantial increase in the number of complaints in the three-month period preceding the filing of the renewal application by appellants caused the Township to increase its police force. Since July 18 the Chief has not received any complaints of loud noise in the street in the early morning hours, no complaints of the area being full of cars, and no complaints of persons urinating on lawns. He was aware of a movement among some residents to eliminate the music at the licensed premises.

Garry Hope (pastor of the Columbus Methodist Church located at 15 East Main Street) testified that he resides at 13 East Main Street, "approximately the fourth house from the Corner House." He attended the meeting of the Township Committee on May 5, at which time he presented the Committee with Exhibits R-3 and R-4. He personally obtained the signatures contained in both exhibits. Some of the signatures in Exhibit R-4 also appear in R-3. The signatories on R-4 expressed specific complaints therein.

Reverend Hope presented Exhibit R-5 to the Township Committee at its special meeting on June 23. He did not witness those signatures. Finally he testified as follows:

"Q Specifically referring to, let's take a period from January, 1969 through May of 1969, were you able to hear the music on Friday nights in your home?
A Primarily the noise of the music would be a specific problem on those evenings when I might have occasion to have my windows open, which, of course, also meant that it was also an occasion for the Corner House to have their windows open, specifically evenings in the spring, early spring, when it wasn't hot enough to have air conditioning on."

On cross examination Reverend Hope asserted that, although he recently took action in connection with the problem, he had noticed the existence of the problem shortly after he had moved into town five years before. Less than half of the signatories on Exhibit R-3 are members of his church; five of the signatories on Exhibit R-4 are members of his church. In attributing "noise" to the Corner House, he did not limit it to music. He used that word also in connection with "patrons on the street, loud conversation, cursing, slamming of car doors, arguing." He does not drink. He has never patronized a barroom. He prepared all of the petitions received in evidence.

Preliminarily it should be observed that an issuing authority may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of the Alcoholic Beverage Law. R.S. 33:1-32. Lubliner v. Paterson, 33 N.J. 428, 447 (1960).

The reasons for the imposition of the special condition on the current license are stated in the resolution recited above.

Appellants testified that neither the local authorities nor the State police complained to them that their business was being conducted as a nuisance due to the live band music furnished on Friday and Saturday nights. Two witnesses who reside in the immediated neighborhood of the licensed premises testified that neither the music nor the patronage disturbed them on these nights. Additionally, appellants produced statements signed by six persons (five of whom reside in the immediate neighborhood) stating that they were not disturbed by either the music or the patronage.

On the other hand, respondent produced the testimony of its Chief of Police indicating that it was necessary to augment the police force by two or three men on Friday nights due to the traffic jams created by patrons of the licensed premises and due to the acts of nuisances caused by the patrons after leaving the licensed premises. It is significant that, after the licensed premises ceased employing the live band, the area quieted down and the police force was reduced to its normal size.

Reverend Hope testified that he not only objected to the loud music emanating from the licensed premises but he also objected to the disturbances caused on the street, such as "loud conversation, cursing, slamming of car doors, arguing."

Additionally, the Township Clerk had received in May 1969 a petition signed by thirty-eight persons, all of whom resided in the immediate area, and received a petition in June 1969 signed by fifty-two persons, all but fourteen of whom resided in the immediate area of the tavern. The term "immediate area" meant a one-block confine or a radius of approximately three hundred or four hundred feet of the tavern. I have noted the contents of Exhibit R-4 in evidence containing twelve signers who wrote in specific complaints such as loud music, urinating outdoors, obscene language, etc.

It has been uniformly held that a licensee is responsible for conditions in and outside his licensed premises which are caused by patrons thereof, even to the extent that, under proper circumstances, denial of renewal of the license may be justified. Conte v. Princeton, Bulletin 139, Item 8; Garcia v. Fair Haven, Bulletin 1149, Item 1; Oak Inn, Incorporated v. Elizabeth, Bulletin 1483, Item 4; Kaplan and Buzak v. Englewood, Bulletin 1745, Item 1, aff'd id nom. App. Div. 1968, not officially reported, recorded in Bulletin 1809, Item 1, certif. den. 51 N.J. 464 (1968).

I am impressed not only by the testimony presented by the Township Police Chief and Reverend Hope, but also by the numerous petitions and the remarks written in by the signers of Exhibit R-4. Although the mere counting of noses cannot serve as a substitute for the considered determination of the municipal issuing suthority in fulfilling its obligation and responsibility in its designated capacity, petitions may be accorded some weight as a medium of presenting the views of a group, after proper discount for self-interest and the often irresponsible way in which they are signed as a friendly accommodation without considered thought of the contents or of the arguments on the other side. I find the petitions presented by respondent in this case to be consonant with proofs presented herein.

As in the case of a transfer or renewal of a license authorized under R.S. 33:1-26, the action of a local issuing authority issuing a license subject to condition or conditions pursuant to R.S. 33:1-32 is guided by the test of what is

reasonable and serves the best interest of the community.

It may be well to point out that no one has a right to the issuance, renewal or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup.Ct. 1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949). The decision as to whether or not a license shall be issued rests within the sound discretion of the local issuing authority in the first instance. In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision of an appeal from a zoning ordinance, cited in Fanwood v. Rocco, 59 N.J. Super. 306, 322 (App.Div. 1960), the following general principles were stated:

> "... 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 approched 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)."

Appellants allege that respondent's action was erroneous in that a licensed premises across the street was not subject to the same condition. There is nothing in the record which suggests that the actions of the patronage of the neighboring tavern caused the numerous complaints referred to herein. The cases are legion wherein local issuing authorities granted licenses or granted renewals thereof subject to special conditions. In Cesar v. Trenton, Bulletin 951, Item 2, The Director affirmed the action of the local Board in renewing a license subject to a condition similar to the one imposed in the instant case.

With respect to the contention that the condition is too broad and unreasonable because there is no limitation of its operative time, it is, of course, effective only for the duration of the currently effective license, since it is a condition to the grant thereof. It may or may not be reimposed upon the grant of future renewals of the license in the sound discretion of the municipal issuing authority.

After carefully considering the totality of the evidence herein, the exhibits and the written memoranda of counsel, I am of the opinion that respondent acted circumspectly, reasonably and in the best interests of the community in renewing appellants' license subject to the stated condition and that appellants have failed to sustain the burden of proof in showing that the action of respondent was erroneous. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of respondent and dismissing the appeal.

Conclusions and Order

No exceptions were taken to the Hearer's report within the time limited by Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 4th day of December 1969,

Ordered that the action of respondent be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

Joseph M. Keegan,
Director.

4. APPELLATE DECISIONS - ERIN HOTEL LTD. v. BELMAR.

Erin Hotel Ltd., Appellant,	On Appeal
v.	CONCLUSIONS and ORDER
Board of Commissioners of the Borough of Belmar, Respondent.	

Brian T. Kennedy, Esq., Attorney for Appellant
Harold Feinberg, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant appeals from the action of respondent Board of Commissioners (hereinafter Board) whereby the Board imposed a condition on the current renewal license permitting consumption of alcoholic beverages only in the interior area of the first floor of the licensed premises.

More specifically, the petition of appeal alleges that the action of the Board was arbitrary and unreasonable "in refusing to allow the patio in the rear of the hotel building to remain as part of the premises covered by the aforesaid liquor license. Said patio had always been a part of the premises included within the liquor license and in fact had never been used by the Appellant prior to the public hearing held on June 27, 1969."

The answer filed on behalf of the Board contends that "the chief objection to the license renewal was exterior noise and disturbances to the surrounding area and the licensing authority properly, and in the best interest of the community as a whole, prohibited persons from taking out and drinking alcoholic beverages on the porch or exterior area of the hotel. The alcoholic beverage license is a privilege and subject to proper control as to extent and area within the discretion of the issuing authority. Appellant has no right to the patio area being licensed as a matter of course."

Petitions of objectors residing in the area and of those who favored renewal of appellant's license were submitted to the Board prior to the hearing at which the application for 1969-70 license was considered.

Albert A. Farese, residing at 207 Fourth Avenue, testified that he objected to the noise, especially the loud music and singing coming from the rear of the hotel from 9 p.m. and getting worse as the night progressed until closing at 2 a.m.

Four additional witnesses living in the area also objected to renewal because of excessive noise late at night and the early morning and because of a large lighted sign on the roof of the hotel.

Police Captain William J. Byrne testified that during June 1969 he went to appellant's premises as a result of telephone calls from neighbors about noise , but did not hear any excessive noise. However, Captain Byrne stated that on either a Saturday evening or early Sunday morning, while making personal observation of conditions, people were seated on the front porch having alcoholic beverages. He called this to the attention of Mr. Cryan (president of the licensee corporation). He also found that the back door leading to the kitchen was open, through which noise came from the bar area; that the music from the band was heard through the door on the bar side when it remained open for twelve minutes while the doorman checked the identification of "six to eight young ladies."

There is nothing in the record to indicate that the patio in question was ever used in connection with appellant's business. However, appellant's attorney asserted "they may want to use the patio in the near future."

The question to be resolved in the instant appeal is whether the action of the Board was unreasonable in restricting the extent of appellant's licensed premises when its license was renewed for the current licensing term.

The objections to renewal were made by people residing in the immediate area because of noise emanating from the licensed premises, a large lighted sign erected on the roof, and noise created by patrons after the licensed premises had closed. The record discloses that, since the bar area was completely air-conditioned and sound-proofed and many of the windows closed, there appears to have been no objection by the neighbors. The Board was of the opinion that, in order to prevent objections in the future and in the best interests of appellant and the residents in the area, the patio should no longer constitute part of the licensed premises. I am of the opinion that the Board's determination was arrived at after careful consideration.

In a case such as the one now under consideration, the Director's function is to determine whether reasonable cause exists for the issuing authority's opinion and, if so, to affirm its action. How far a local issuing authority may go in attempting to adjust the delicate question as to what action should be taken to protect the rights of a single objecting neighbor is largely a matter of discretion; and a restriction imposed upon a license for the purpose of protecting the peace and quiet will not be disturbed unless it appears to be wholly unreasonable.

No evidence has been presented of improper motives on the part of the members of the Board and there is nothing to indicate that the Board acted arbitrarily or unreasonably. After examination of the entire record herein, it is apparent that appellant has failed to sustain the burden of proof that the action of the Board was erroneous.

It is recommended that the action of the Board be affirmed and that the appeal herein 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 entire record herein, I find that the respondent Board of Commissioners of the Borough of Belmar did not act arbitrarily and unreasonably in imposing the condition on the current renewal license. I therefore concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 4th day of December 1969,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph M. Keegan,
Director.

5. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against YOUNG'S TAVERN, INC. 15 W. Main St. Bound Brook, N.J. Holder of Plenary Retail Consumption License C-5, issued by the Mayor and Council of the Borough of Bound Brook.	CONCLUSIONS AND ORDER

Johnson and Johnson, Esqs., Attorneys for Licensee.
Louis F. Treole, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that, on October 12, 1969, it sold drinks of beer to three minors, ages 16, 18 and 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days. Cf. Re Ukrainian National Home, Inc., Bulletin 1630, Item 6.

Accordingly, it is, on this 17th day of December, 1969,

ORDERED that Plenary Retail Consumption License C-5,

issued by the Mayor and Council of the Borough of Bound Brook to Young's Tavern, Inc., for premises 15 W. Main St., Bound Brook, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. Monday, December 22, 1969, and terminating at 2:00 a.m. Friday, January 16, 1970.

Joseph M. Keegan,
Director.

6. DISCIPLINARY PROCEEDINGS - HOSTESS ACTIVITY - PRIOR DISSIMILAR RECORD - AGGRAVATED CIRCUMSTANCE - LICENSE SUSPENDED FOR 35 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

EMBERS LOUNGE, INC.
t/a Embers Lounge
100 Market Street
Paterson, N.J.

Holder of Plenary Retail Consumption License C-3, issued by the Board of Alcoholic Beverage Control for the City of Paterson.

CONCLUSIONS and ORDER

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Joseph G. Sproviere, Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charge alleging that on Saturday night September 20 into Sunday morning, September 21, 1969, it permitted a female entertainer to accept drinks at the expense of male patrons.

Reports of the investigation disclose that the bartender, in preparing the drinks for the entertainer, in some instances poured only a very small amount of liquor into the glass and in other instances none at all, but nevertheless charged the males full price for the drinks.

Licensee has a previous record of suspension of license by the municipal issuing authority for ten days, effective June 1, 1967, for conducting the business as a nuisance and violation of municipal hours ordinance.

Deeming the violation aggravated, the license will be suspended for thirty days (Re 2415 Pacific Corp., Bulletin 1787, Item 3), to which will be added five days by reason of the record of suspension of license for dissimilar violation occurring within the past five years (Re Sabar, Inc., Bulletin 1729, Item 3), or a total of thirty-five days, with remission of five days for the plea entered, leaving a net suspension of thirty days.

Accordingly, it is, on this 22nd day of December, 1969,

ORDERED that Plenary Retail Consumption License C-3, issued by the Board of Alcoholic Beverage Control for the City of Paterson to Embers Lounge, Inc., t/a Embers Lounge, for premises 100 Market Street, Paterson, be and the same is hereby suspended for thirty (30) days, commencing at 3:00 a.m. Monday, January 5, 1970, and terminating at 3:00 a.m. Wednesday, February 4, 1970.

Joseph M. Keegan,
Director.

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

In the Matter of Disciplinary Proceedings against Frances Gosik & Dorothy Gosik 233 Willow Avenue Hoboken, N.J. Holder of Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.	CONCLUSIONS and ORDER

Licensees, Pro se
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on October 7, 1969 they possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

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 Cal Jac Corporation, Bulletin 1885, Item 9.

Accordingly, it is, on this 8th day of December 1969,

ORDERED that Plenary Retail Consumption License C-51, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken to Frances Gosik & Dorothy Gosik, for premises 233 Willow Avenue, Hoboken, be and the same is hereby suspended for five (5) days, commencing at 6 a.m. Monday, December 15, 1969, and terminating at 6 a.m. Saturday, December 20, 1969.

Joseph M. Keegan,
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Farensbach Enterprises, Inc.
t/a Most Brands Beverages & Beer
25 Rucereto Avenue
Dumont, New Jersey
Application filed January 15, 1970 for person-to-person transfer of State Beverage Distributor's License SBD-101 from Clarence E. Hough, t/a Hough's Beverages.

Joseph M. Keegan
Director