

STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 700

MARCH 12, 1946.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark, 2, N. J.

BULLETIN 700

MARCH 12, 1946.

1. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND RICH.

ROY E. WILLIAMS, JR., R. EUGENE SHEARER and DONALD N. CORREAL,

Appellants,

-vs-

MAYOR AND BOROUGH COUNCIL OF THE BOROUGH OF ATLANTIC HIGHLANDS and JERRY R. RICH,

Respondents

ON APPEAL
CONCLUSIONS AND ORDER

Elmer O. Goodwin, Esq., Attorney for Appellants.
Snyder, Roberts & Pillsbury, Esqs., by John M. Pillsbury, Esq.,
Attorneys for Respondent, Mayor and Borough Council.
Jerry R. Rich, Pro Se.

BY THE COMMISSIONER:

This is an appeal from the issuance by respondent Mayor and Borough Council of a plenary retail distribution license to respondent Rich for the license period ending June 30, 1946. Appellants urge as a ground for reversal that there are "already sufficient numbers of licensees in the town ***." Three other stated grounds of appeal were abandoned at the hearing.

Atlantic Highlands is a summer resort, having a population, according to the 1940 census, of 2,335. The community apparently has the normal summer influx of visitors that may be expected in a New Jersey seashore community.

On the date the license was granted to Rich there were outstanding in the Borough nine plenary retail consumption licenses and one plenary retail distribution license.

The record discloses that the one plenary retail distribution license had originally been issued to Jacob and Raymond Lemberg (father and son). On October 3, 1944, after Raymond Lemberg withdrew from the partnership, the license was endorsed to disclose the individual interest of Jacob Lemberg. Prior thereto, on September 26, 1944, Raymond Lemberg filed, and later withdrew, an application for a plenary retail distribution license for premises other than those occupied by his father. Thereafter Raymond filed another application for the same type of license. This application was denied on November 10, 1944, upon the ground that "there (was) a sufficient number of licensed premises in the Borough." There were objections by residents of the community to each of the Lemberg applications.

There does not appear to have been any objection to the Rich license presented to the respondent Council prior to its action. The action of the respondent issuing authority granting a license to Rich was supported by the five members of the Borough Council. Four of these Councilmen present at the meeting had in November voted against the Lemberg application. The fifth, Councilman Stockton, was not a member of Council at the time the Lemberg application was denied.

Councilman Stockton testified that he voted in favor of the Rich application "solely" because he "felt the town needed another package store, not only because of the increase (in population) in the town but the adjacent area had increased in population, plus transients,

stevedores and others ***." This witness, the president of a gas company serving the area, estimated that the population on June 12, 1945, when the Rich license was granted, was from 15% to 20% more than in November, 1944, when the Lemberg license was denied. Councilman W. P. Smith, a member of Council for over nine years, stated that between the denial of the Lemberg application and the granting of the Rich application he had reached the conclusion that he "had been wrong in (his) judgment" that a single plenary retail distribution license was all that was required to meet the needs of the community. Councilman Van Mater testified that the summer population exceeded the winter population in Atlantic Highlands by 1,000 or 1,200 and that in addition there had been "an over-all increase (in population) in Atlantic Highlands between November 1944 and June 1945." The remaining two Councilmen testified that, because of the alleged increase in population, they too had changed their opinion in the period following the denial of the Lemberg application.

The testimony disclosed that the premises covered by the Lemberg license were on the east side of the railroad which divides the Borough, while the Rich premises are on the west side of the railroad.

The testimony offered by the appellants, while conceding some increase in population in Atlantic Highlands in recent years, tends to minimize the increase. Appellants contend that Atlantic Highlands has been "pretty well crowded" since 1943 and that, because of the difficulty in obtaining rooms, the population has been static.

Had I been a member of the Borough Council, I would have perhaps voted against the granting of the Rich license upon the ground that one plenary retail distribution license to every 3,000 persons is a proper ratio. On appeal, however, I must give due consideration to the decision of the local governing body on the issue of public convenience and necessity. My duty in these cases is not to inflict or substitute my opinion upon or for the opinion of the municipal issuing authority but, rather, to determine if "reasonable grounds" support their action and, if so, to affirm whatever their view and irrespective of my own. In this case, as in many others, the existence of "reasonable grounds" may depend upon whether or not public convenience and necessity support the granting of an additional license. Where it is apparent, as in this case, that the respondent issuing authority has carefully considered this vital issue, there exists a presumption that the issuing authority acted properly and in accord with the discretionary authority vested in it by the Alcoholic Beverage Law.

Applying this test, I cannot say that the action of the respondent Council was so unreasonable as to require a reversal of its action.

In reaching this decision I have not been unmindful of the fact that, while all nine of the consumption licensees may sell alcoholic beverages in original containers for off-premises consumption (R. S. 33:1-12(1)), there was but one plenary retail distribution license outstanding in the community when the issuing authority considered the Rich application. This case is, therefore, to be distinguished from those cases where (1) the issuing authority apparently failed to consider public convenience and necessity, and (2) from those cases where a degree of competition between "package stores" was already provided by the existence of more than one such license.

The action of respondent must, therefore, be affirmed.

In view of this decision, it is not necessary to consider the question of whether the appeal herein was perfected within the time allowed by law.

Accordingly, it is, on this 5th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

2. LICENSEES - SELF-SERVICE PLAN - RETAIL LICENSEES MAY NOT APPLY SELF-SERVICE PLAN TO ALCOHOLIC BEVERAGES.

February 26, 1946

Walter J. Freund, Esq.
Jersey City 2, N. J.

Dear Sir: Re: Grand Union Tea Company

This acknowledges your letter of February 24th concerning the "self-service" feature of the above retail liquor licensee.

As you may recall, I pointed out at our discussion in the Department some time ago the fact that the Department has ruled that there may not be any "self-service" of alcoholic beverages. See Re Mallon, Bulletin 214, Item 8, which contains the ruling.

From our said discussion and from your letter, I take it that the licensee in question is no longer permitting any "self-service" of alcoholic beverages; and that a regular clerk will be in charge of the liquor counter and that he will take and execute the orders for alcoholic beverages. From our discussion, I further understand that the clerk will not, however, accept payment but that payment will be made at the customer exits to the regular cashiers located there.

I must point out that the said clerk and the cashiers, as well as all other employees on the licensed premises, must duly qualify under the liquor laws and regulations for their employment. For these qualifications, see R. S. 33:1-25, 26, 31.

A copy of this letter is being sent to the licensee.

Very truly yours,
ALFRED E. DRISCOLL
Commissioner.

By: Nathan Davis
Acting Deputy Commissioner.

3. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND RICHARD.

ROY E. WILLIAMS, JR., R. EUGENE)
 SHEARER and DONALD N. CORREAL,)
 Appellants,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
 OF ATLANTIC HIGHLANDS and)
 ANDREW RICHARD,)
 Respondents)

ON APPEAL
CONCLUSIONS AND ORDERS

Elmer O. Goodwin, Esq., Attorney for Appellants.
 Snyder, Roberts & Pillsbury, Esqs., by John M. Pillsbury, Esq.,
 Attorneys for Respondent Borough Council.
 Alton V. Evans, Esq., Attorney for Respondent, Andrew Richard.

BY THE COMMISSIONER:

This is an appeal from the issuance of a plenary retail distribution license to the respondent, Andrew Richard, for premises 60-62 First Avenue, Atlantic Highlands.

According to the 1940 census, the population of the Borough of Atlantic Highlands, a seashore resort, is approximately 2400. For several years last past there has been outstanding in the Borough nine plenary retail consumption licenses and one plenary retail distribution license. Both types of licenses authorize the sale of alcoholic beverages in original containers and, in addition, the former permits the licensee to sell for on-premises consumption by the glass.

In November 1944 the respondent Council denied an application for a distribution license to one Lemberg, on the ground that "there (was) a sufficient number of licensed premises in the Borough." This was clearly a sound decision in view of the fact that the ratio of licenses to population was then one to every 240 inhabitants. As I have stated on countless occasions, experience in this state-wide problem has demonstrated the desirability of leveling consumption licenses to one per 1,000 of population and distribution licenses to one per 3,000. Cf. Hudson Bergen County Retail Liquor Stores Association v. Hoboken et als., Bulletin 699, Item 5.

In June 1945 the Council granted a plenary retail distribution license to Jerry R. Rich for premises on Avenue A and South Avenue, Atlantic Highlands. Upon appeal from this action, I sustained the Council upon proof of an increase in the population of the municipality after November 1944, and that the Rich premises were located in a section removed from that of the other distribution license at 75 First Avenue, Atlantic Highlands. See Bulletin 700, Item 1.

The application herein involved was granted on July 18, 1945 by a vote of four to two. Three of the four favoring Councilmen testified at the appeal hearing. They sought to justify their action on the ground that the population of the Borough had increased by some 1,000 residents since November 1944, when they had concluded that no more licensed establishments were needed in the community. This increase, it appears, also included summer vacationists. In addition, one of the Councilmen testified that his affirmative vote was influenced by the fact that "a number of people in the town..... didn't like to patronize the one store" at 75 First Avenue.

The increase in population, which resulted in a total of approximately 3,500, justified the exercise of the Council's discretion in granting a second distribution license, particularly in view of the alleged need in the particular locality where those premises are located. See Bulletin 700, Item 1. I there held that the facts appearing in that case presented a situation upon which reasonable minds might differ and that, although I personally might have voted to deny, it was not my function on appeal to substitute my opinion for that of the issuing authority.

However, the record before me impels the conclusion that there was no room for latitude of opinion on the question of whether public need and necessity warranted the issuance of a third distribution license in the Borough. On the contrary, the proven facts clearly indicate that the two distribution licenses already issued and outstanding were amply sufficient to cater to the needs of the community. In view of the number of residents in the municipality, the existence of the two distribution licenses, in the absence of any other evidence disclosing a public need or necessity, settled the issue of public need for any such additional license in the Borough at large. In the absence of some special circumstance as, for example, a need in the particular area, the guidepost of one distribution license per 3,000 of population limited the Council's action to a determination that there was no public need or necessity to be served by the establishment of a third "package" store in the municipality and the application, in the exercise of a proper and reasonable discretion, should have been denied. It is obvious that no claim of "neighborhood need" may be made for issuing a distribution license for premises at 60-62 First Avenue when one already exists at 75 First Avenue. Nor does the nebulous reason that "a number of people..... didn't like to patronize the (latter) store" present any valid justification for granting the application in question.

While I recognize, and subscribe to, the doctrine of "home rule" in the issuance of retail liquor licenses, nevertheless such doctrine must find its proper place in the over-all state-wide policy made necessary in the interest of the sound enforcement and administration of the liquor laws. The language in the case of Hudson Bergen County Retail Liquor Stores Association v. Hoboken et als., supra, is pertinent to this case. I there said:

"There must, of necessity, be a saturation point beyond which a municipality may grant no additional applications for liquor licenses. If there were no such point, there would be no discretion to be exercised by an issuing authority. All liquor license applications would be required to be granted, so long as the requisite fee was paid and the necessary qualifications of the applicants and the premises were met. It is settled, however, that such is not the law.....It is thus clear that, when liquor licenses are issued to serve the private interests of individual applicants, without any regard for the paramount issue of public necessity and convenience, the action of the issuing authority in granting such applications constitutes an abuse of discretion."

Cf. Franco v. Phillipsburg, Bulletin 392, Item 5; aff'd 125 N. J. L. 157.

The action of respondent Council is reversed and the license will be directed to be cancelled.

Accordingly, it is, on this 6th day of March, 1946,

ORDERED, that the action of the respondent, Borough Council of the Borough of Atlantic Highlands, in granting the application of Andrew Richard for a plenary retail distribution license for premises 60-62 First Avenue, Atlantic Highlands, be and the same is hereby reversed; and it is

FURTHER ORDERED, that the plenary retail distribution license issued to Andrew Richard for premises 60-62 First Avenue, Atlantic Highlands, be and the same is hereby cancelled, set aside and declared null and void, and said Andrew Richard is hereby directed forthwith to cease all alcoholic beverage activity under such license.

ALFRED E. DRISCOLL
Commissioner.

4. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND GORDON.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,)
Appellant,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDERS

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN and SYDNEY GORDON and LOUIS GORDON, t/a GORDON BROTHERS,)
Respondents.)

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq.,
Attorneys for Appellant.

John J. Fallon, Esq., by E. Norman Wilson, Esq.,
Attorneys for Respondent Board of Commissioners.

Abraham M. Nickelsporn, Esq., Attorney for Respondent-licensees,
Sydney and Louis Gordon.

BY THE COMMISSIONER:

This case comes before me on appeal from the action of the Board of Commissioners of the City of Hoboken issuing a plenary retail distribution license to Sydney Gordon and Louis Gordon, t/a Gordon Brothers, for premises 638 Garden Street, Hoboken.

The grounds of appeal advanced by appellant's petition are, in substance, (a) the granting of the license constituted an abuse of discretion by the respondent Board of Commissioners; (b) there are ample licensees in the immediate vicinity to supply the needs of the neighborhood and the community; and (c) the additional license is socially undesirable.

Samuel Moskowitz, Executive Secretary and counsel of appellant's association, testifying on behalf of appellant, stated as follows:

"I will take in a two-block area and give the court the benefit of my testimony. We have the licensed premises at 638; another at 800 Garden (a consumption license); directly across the street another outlet at 741 Garden - that is a D license. On the corner of Eighth Street - we have three corners occupied by licensees. On the corner of

Washington and Eighth Street, No. 800, there is a consumption license. Bloomfield Street: at 739 there is a consumption license; 535 Bloomfield is a consumption license; 500 Bloomfield and 421 Bloomfield - consumption license. Going up to Washington Street, 410 is a distribution license, 538 is a D license; 600 is a consumption license; 606 a D license; 630 a D license; 740 a D license; 800 a C license. On the opposite side of Washington Street, 607, a D license; and then you have two consumption licenses at No. 57 Sixth Street and 600 Hudson Street - one at each place. You have a D license at 513 Washington Street. There are consumption licenses at 413, 411 and 409 Washington Street. There are consumption licenses at 329, 321 and 301 Washington Street. Park Avenue is a block to the west of Garden Street. There is a consumption license at 701 Park Avenue and a D license at 700. On Willow Avenue, which is two blocks from the premises in question, there are consumption licenses at 801 and 833 and one at 606. The other licenses are beyond the two-block area, and I didn't want to go into that. That is the picture."

It was brought out under cross-examination of Mr. Moskowitz that some of the liquor establishments mentioned by him were at a greater distance than two blocks from the premises in question. In the main, however, his testimony was not contradicted.

The facts submitted herein are substantially the same as those disclosed in Hudson Bergen County Retail Liquor Stores Association v. Board of Commissioners of the City of Hoboken, John Novak et als., Bulletin 699, Item 5. I am satisfied from the testimony adduced in the instant case that respondent Board granted this license without considering the question as to whether or not public necessity or convenience would be served by the issuance of the license, and that, in fact, public necessity and convenience did not require the issuance of this license. Therefore, the action of respondent Board must be reversed and the license issued to respondents Sydney Gordon and Louis Gordon, t/a Gordon Brothers, must be cancelled.

Accordingly, it is, on this 7th day of March, 1946,

ORDERED, that the action of the respondent, Board of Commissioners of the City of Hoboken, in granting the application for plenary retail distribution license of respondents, Sydney Gordon and Louis Gordon, t/a Gordon Brothers, be and the same is hereby reversed; and it is

FURTHER ORDERED, that plenary retail distribution license issued to respondents Sydney Gordon and Louis Gordon, t/a Gordon Brothers, be and the same is hereby cancelled, set aside and declared null and void, and respondents Sydney Gordon and Louis Gordon, t/a Gordon Brothers, are hereby directed forthwith to cease all alcoholic beverage activity under the license heretofore issued to them.

ALFRED E. DRISCOLL
Commissioner.

5. APPELLATE DECISIONS - SIDE DOOR, INC. v. NEWARK.

SIDE DOOR, INC.,)	
Appellant,)	
-vs-)	ON APPEAL
)	CONCLUSIONS AND ORDER
MUNICIPAL BOARD OF ALCOHOLIC)	
BEVERAGE CONTROL OF THE CITY)	
OF NEWARK,)	
Respondent)	

Edward Jedel, Esq., Attorney for Appellant.
 Thomas L. Parsonnet, Esq., by Charles S. Gansler, Esq.,
 Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of the respondent whereby it suspended appellant's license for a period of fifteen days after finding appellant guilty of a violation of Rule 1 of State Regulations No. 20 and R. S. 33:1-77, on September 23 and September 26, 1945. Rule 1 of State Regulations No. 20 reads as follows:

"No licensee shall sell, serve, deliver or allow, permit or suffer the service or delivery of any alcoholic beverage, directly or indirectly, to any person under the age of twenty-one (21) years or to any person actually or apparently intoxicated, or allow, permit or suffer the consumption of alcoholic beverages by any such person upon the licensed premises."

Appellant contends that the finding of the respondent was against the weight of evidence. Counsel requested an adjournment of the appellate hearing for a period of thirty days in order to give him an opportunity to produce the minor so that the Hearer might observe his appearance and demeanor on the witness stand. The request was consented to by the respondent. The record of the proceedings before the local Board was, by stipulation, presented in evidence on the appeal. No new evidence was offered by either party on the appeal. Appellant was unable to produce the minor and, at the expiration of the thirty days, the case was closed.

An examination of the record discloses that the minor was an accordion player in an orchestra hired by appellant to play on its licensed premises. The minor held an employment permit, which has been cancelled. This permit stated the name, address and age of the minor.

An agent of the Department testified that, following receipt of a complaint that a minor was being served and permitted to consume alcoholic beverages in the appellant's tavern, he visited the licensed premises on the evening of September 26th. The witness was accompanied by another ABC agent, who remained outside the premises. The agent testified that about 9:20 p.m. a customer ordered a drink from the bartender, Carmine Tortorello, and said, "Give Frank a drink", indicating the minor. The agent further testified that the bartender said, "What will you have?"; that Frank ordered a beer, and that, immediately thereafter, the bartender drew two beers and placed one in front of the customer and one in front of Frank, who picked up the glass and started to drink the contents. The agent thereupon called his partner, seized the remaining contents of the glass of beer, and began to question the minor. The latter admitted to both agents that he had been served beer on the evening of September 23rd by the same bartender.

The record discloses a clear violation of the law. Rule 1 of State Regulations No. 20 prohibits the sale and service to minors, as well as the consumption by minors on licensed premises. The explanation offered by the appellant that the minor took the drink off the bar himself, without the bartender's knowledge, is not convincing and may be disregarded. The licensee is clearly guilty. The action of respondent is affirmed, and the fifteen-day suspension, held in abeyance pending the outcome of this appeal, will be reimposed.

Accordingly, it is, on this 7th day of March, 1946,

ORDERED, that the petition of appeal be and the same is hereby dismissed, and that plenary retail consumption license C-626, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Side Door, Inc., for premises 96-98-100 Astor Street, Newark, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. March 13, 1946, and terminating at 2:00 a.m. March 28, 1946.

ALFRED E. DRISCOLL
Commissioner.

6. APPELLATE DECISIONS - WILLIAMS ET AL. v. ATLANTIC HIGHLANDS AND RICHARD - ORDER CANCELLING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

ROY E. WILLIAMS, JR., R. EUGENE)
SHEARER and DONALD N. CORREAL,)
Appellants,)

-vs-

BOROUGH COUNCIL OF THE BOROUGH)
OF ATLANTIC HIGHLANDS and)
ANDREW RICHARD,)
Respondents)

O R D E R

BY THE COMMISSIONER:

It appearing that, by Conclusions and Orders dated March 6, 1946, a plenary retail distribution license held by Andrew Richard was cancelled, set aside and declared null and void and said Andrew Richard directed forthwith to cease all alcoholic beverage activity under the license issued to him, and

It further appearing that Andrew Richard has declared his intention to apply to a Justice of the Supreme Court for a writ of certiorari to review said Conclusions and Orders and to prosecute the writ, if granted, with due diligence, and

It further appearing to my satisfaction that Andrew Richard may suffer irreparable harm if a stay is not granted by me pending application to a Justice of the Supreme Court for said writ;

It is, on this 8th day of March, 1946,

ORDERED, that the effect of the order heretofore entered herein be and the same is hereby stayed until further order is entered herein; on condition, however, that application for writ of certiorari shall be made to a Justice of the New Jersey Supreme Court at the earliest possible date and thereafter prosecuted with diligence.

ALFRED E. DRISCOLL
Commissioner.

7. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION V. HOBOKEN, PIZZINO, MARINELLI, LEWIS AND LILLIS.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN, ROSE PIZZINO, CHARLES MARINELLI, RAYMOND A. LEWIS and JOHN J. LILLIS,

Respondents

ON APPEAL
CONCLUSIONS AND ORDERS

Samuel Moskowitz, Esq. and Samuel J. Davidson, Esq.,
Attorneys for Appellant.

John J. Fallon, Esq., by E. Norman Wilson, Esq.,
Attorneys for Respondent Board of Commissioners.

N. Louis Paladeau, Jr., Esq., Attorney for Respondent-licensee,
Charles Marinelli.

Bernard S. Glick, Esq., Attorney for Respondent-licensee,
Rose Pizzino.

Raymond A. Lewis and John J. Lillis, Respondent-licensees, Pro Se.

BY THE COMMISSIONER:

These are appeals from the issuance by the respondent Board of four plenary retail distribution licenses in the City of Hoboken. Since the issues raised are common to all four cases, they will be considered together herein.

The four licenses in question were granted in October and November, 1945, subsequent to the issuance of the five distribution licenses that were the subject of my recent decision in Hudson Bergen County Retail Liquor Stores Association v. Hoboken et als., Bulletin 699, Item 5. In that case, I reversed the action of the local Board and directed that all five licenses be cancelled. I there pointed out that the municipality, with a population of 50,115 according to the 1940 Federal census, had issued 221 liquor licenses (exclusive of club licenses) for the licensing year beginning July 1, 1945. These licenses were divided into 201 plenary retail consumption licenses (sales by the package for off-premises consumption and by the glass for on-premises consumption) and 20 plenary retail distribution licenses (sales only by the package for off-premises consumption). The net result was that, at that time, the city had one liquor license for approximately every 225 persons, including men, women and children. That ratio was far in excess of what has been determined by reason of my state-wide experience to be a reasonable and proper standard, namely, one consumption license for every one thousand of population and one distribution license for every three thousand. Accordingly, I held that the burden of going forward with proof that public necessity and convenience required the issuance of the licenses in question rested upon the applicants for the new licenses and the respondent municipality, and since there was a total absence of any such proof, that the licenses must be set aside.

The determination that one consumption license per one thousand persons and one distribution license per three thousand persons represents a proper ratio which, if followed, would promote the public welfare, is not inflexible. It does not mean that, once

that limit has been reached, no further licenses may be issued. Circumstances may vary with local needs and particular situations may require different treatment. However, in a determination of the paramount issue of public need and necessity, which is the fundamental test to be applied in the granting of liquor license applications, there must, of necessity, be a guidepost to aid the issuing authority in exercising its discretion whether to grant or deny. Where that guidepost has been reached and passed, there must be clear and convincing proof, and not mere generalities of total population, that the "common interest of the general public" was considered in the issuance of the license. See Zicherman v. Driscoll, 133 N. J. L. 586. For example, despite an excess of licenses over the ratio, there may, in certain instances, be a need shown for a liquor license in a particular section of the municipality because of the lack of sufficient facilities to service that area.

In these four cases, as in the previous five cases, the records are barren of any proof from any of the respondents on the issue of public need and necessity. All of the evidence on this issue was presented by the appellant, whose proof on the issue of whether there were sufficient licenses outstanding in the municipality as a whole, stands uncontradicted. In addition, far from there being any showing by any of the respondents of public need and necessity in the particular neighborhoods in question, the proof adduced by the appellant would indicate that there already exists an abundance of licensed establishments in each of those neighborhoods.

Objection is made that the appellant is not an "aggrieved person" within the contemplation of R. S. 33:1-22 and, therefore, not entitled to maintain these appeals. The appellant is an incorporated association not for pecuniary profit and numbers some 225 distribution licensees located in Hudson and Bergen Counties among its membership. Included in that number are all the distribution licensees operating in the City of Hoboken, with the exception of those granted licenses since July 1945. It is conceded that any of the individual members of the association located in Hoboken, as competitors, would have a standing to prosecute these appeals. That being so, no objection is discernible in their joinder as parties appellant in the name of the association even though some of its members conduct their businesses in other municipalities. The Alcoholic Beverage Law (R. S. 33:1-1(q)) defines "person" to include "association of natural persons, association, corporation, organization", etc. It, therefore, has an independent standing as an appellant. Cf. Retail Liquor Distributors, etc. v. Atlantic City et al., Bulletin 88, Item 10.

The action of the respondent Board in each case must be reversed and the license issued to each individual respondent will be cancelled.

Accordingly, it is, on this 8th day of March, 1946,

ORDERED, that the action of the respondent, Board of Commissioners of the City of Hoboken, in granting the applications for plenary retail distribution licenses of the four individual respondents herein, be and the same is hereby reversed; and it is

FURTHER ORDERED, that the plenary retail distribution licenses issued to the individual respondents, Rose Pizzino, Charles Marinelli, Raymond A. Lewis and John J. Lillis, be and the same are hereby cancelled, set aside and declared null and void, and each such individual respondent is hereby directed forthwith to cease all alcoholic beverage activity under the license heretofore issued to him.

ALFRED E. DRISCOLL
Commissioner.

8. APPELLATE DECISIONS - HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION v. HOBOKEN AND GORDON - ORDER CANCELLING LICENSE STAYED PENDING APPLICATION FOR WRIT OF CERTIORARI.

HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSOCIATION,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE CITY OF HOBOKEN and SYDNEY GORDON and LOUIS GORDON, t/a GORDON BROTHERS,

Respondents

ORDER

BY THE COMMISSIONER:

It appearing that by Conclusions and Orders herein dated March 7, 1946, Plenary Retail Distribution License D-32 held by Sydney Gordon and Louis Gordon, t/a Gordon Brothers, for premises 638 Garden Street, Hoboken, was cancelled, set aside and declared null and void, and said licensees were directed forthwith to cease all alcoholic beverage activity under the license theretofore issued to them, and

It further appearing that said licensees have declared their intention to apply to a Justice of the Supreme Court for a writ of certiorari to review the said Conclusions and Orders and to prosecute the writ, if granted, with due diligence, and

It further appearing to my satisfaction that said licensees may suffer serious harm if a stay is not granted by me pending application to a Justice of the Supreme Court for said writ;

It is, on this 8th day of March, 1946,

ORDERED, that the Order dated March 7, 1946 be and the same is hereby stayed until a further order is entered herein; on condition, however, that application for writ of certiorari shall be made to a Justice of the New Jersey Supreme Court within fifteen (15) days from the date hereof and thereafter prosecuted with diligence.

ALFRED E. DRISCOLL
Commissioner.

9. APPELLATE DECISIONS - PEARLMAN v. ENGLEWOOD.

ABRAHAM L. PEARLMAN,)
 t/a BROADWAY BAR AND GRILL,)
)
 Appellant,)
)
 -vs-)
)
 COMMON COUNCIL OF THE CITY OF)
 ENGLEWOOD,)
)
 Respondent)

ON APPEAL
 CONCLUSIONS AND ORDER

Berthold Vorsanger, Esq., Attorney for Appellant.
 F. Hamilton Reeve, Esq., Attorney for Respondent.
 Charles Fishberg, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This is an appeal from the action of respondent denying appellant's application to transfer his plenary retail consumption license from 52-54 West Palisade Avenue to 24 West Palisade Avenue, Englewood.

The testimony indicates that for the past thirteen years appellant has conducted his licensed business under the name of Broadway Bar and Grill, at 52-54 West Palisade Avenue. These premises are located approximately 180 feet from a church. It has been necessary each year for the appellant to secure a waiver, as required by R. S. 33:1-76. The distance between the present premises and the proposed premises is approximately 350 feet. The two premises, while located on the same side of the street, are not in the same block.

Appellant testified that the building where his licensed premises are now located has been purchased by a new owner who has indicated to appellant that when his lease expires in September 1946 he will demand a substantial increase in rent. Appellant contends that the increase in rent is not warranted by his business. Appellant further testified that he plans to make extensive improvements to the proposed licensed premises.

The resolution unanimously adopted by the Common Council of the City of Englewood on December 20, 1945, denying the transfer, states as ground for the refusal that "there is a sufficient number of licensed places for the sale of alcoholic beverages in the vicinity of 24 West Palisade Avenue, and that an additional license in this locality would be socially undesirable, and the public necessity or convenience does not require an additional license in this vicinity, and that the premises for which the applicant desires to transfer his liquor license is situated in the main shopping district of the city, at or near a bus stop and opposite the Municipal Building of the City of Englewood and is, in the opinion of the Common Council, not desirable for the sale of alcoholic beverages***".

Individual owners of property in the block where the proposed licensed premises are located appeared and objected to the transfer on the grounds set forth in the resolution denying the application.

A map showing the main business section of Englewood was introduced in evidence as Exhibit R-1. This map discloses the location of all premises in the central area of Englewood for which alcoholic beverage licenses are presently outstanding. Counsel for the respondent stressed the fact that licensed premises have been kept away from the main business section of Englewood described by the Clerk in his testimony and, further, that not more than "a saloon on a block" has been permitted. Exhibit R-1 supports this statement. The only testimony offered as to any previous transfer in the respondent municipality was a transfer of a license from one side of the street to the other side of the street, — both locations were within the same block.

The right to transfer is not inherent in a license. The testimony herein falls far short of that necessary to sustain the burden of proving that respondent abused its discretionary power in denying the transfer of the license. The evident policy of the respondent is a sound one and I see no reason for overruling it. While it is true that the desired transfer covers a distance of but one block and it will not result in the increase in the number of licensed premises in the same general neighborhood, nonetheless, respondent's policy of not more than "one saloon in a block" must be respected.

The personal interest of the appellant must be balanced against the public welfare of the community. While a municipality may not refuse a transfer merely because of an express desire to protect a landlord, a licensee may not compel a transfer that is contrary to the sound public policy of the community.

As stated in Alpert v. Asbury Park, Bulletin 380, Item 2, the "number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority." This principle has been restated in Baselici v. Asbury Park, Bulletin 381, Item 4, and applies with equal effect to the present appeal. See also Jasinski v. Jersey City, Bulletin 691, Item 8; Vedde v. Lyndhurst, Bulletin 693, Item 3.

The action of the respondent is affirmed.

Accordingly, it is, on this 11th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

ALFRED E. DRISCOLL
Commissioner.

10. APPELLATE DECISIONS - CPL. FRANK LESTER MEAD POST 1795, VETERANS FOREIGN WARS v. BRIDGETON.

CPL. FRANK LESTER MEAD POST 1795, VETERANS FOREIGN WARS,)
)
 Appellant,)
)
 -vs-)
)
 CITY COUNCIL OF THE CITY OF BRIDGETON,)
)
 Respondent)

ON APPEAL
CONCLUSIONS AND ORDER

Harry Adler, Esq. and William Gallner, Esq., Attorneys for Appellant.
 John A. Casarow, Esq., Attorney for Respondent City Council.
 Francis A. Stanger, Esq., Attorney for Objectors.

BY THE COMMISSIONER:

This appeal is from the denial of a transfer of a plenary retail consumption license from 51 N. Laurel Street, Bridgeton, to 313 E. Commerce Street, Bridgeton.

Respondent contends that it properly denied the transfer because it considered the proposed premises to be in a "strictly" residential neighborhood wherein a large number of residents opposed the transfer.

The proposed premises are located on the northwest corner of E. Commerce Street and East Avenue. There was offered in evidence a map (Exhibit A-1) showing the character of the neighborhood in the immediate vicinity. Two of the four corners at this intersection are occupied by private homes, the third by the appellant, and the fourth by the Martin Dyeing & Finishing Company. The north side of E. Commerce Street, between East Avenue and Church Street (one block to the west of the proposed premises), appears to be devoted exclusively to homes, with the single exception of the appellant's club. Likewise, the south side of E. Commerce Street, west of East Avenue, is devoted exclusively to homes. Likewise, East Avenue, between E. Commerce Street and Cedar Street, with the exception of the proposed premises, is exclusively residential in character. The area appears to be singularly free from neighborhood stores and gas stations, whose presence traditionally herald an approaching change in the character of the neighborhood from residential to mixed business and residential. The Martin Dyeing & Finishing Company occupies a large tract of land on the southeast corner of East Commerce Street and East Avenue. The Martin buildings are set back about 100 feet from these streets on a lot that is well below the grade of the latter, and are surrounded by an ornamental fence. The buildings themselves are of fairly modern construction, generally of one-story height. As a result of this happy combination of setback, ornamental fence, depressed lot and character of construction, these buildings, although admittedly devoted to industrial use, are not offensive to the eye.

Appellant contends that the action of respondent was erroneous in that "the location sought to be licensed is not in a strictly residential area but in fact is surrounded by industry; that the premises "are set off by extensive grounds from other homes" and, further, that the club does not cater to the public. With this contention I am unable to agree. I am satisfied that the immediate area is residential in character.

The filing of the transfer application brought forth an avalanche of objections from the residents of the neighborhood to which the transfer was sought. At the hearing before the City Council some thirty or forty persons appeared to voice their objections to the proposed transfer. These objections were renewed on the appeal.

The City Council was fully justified in giving thoughtful consideration to the objections of the residents living in homes adjacent to the proposed premises. Cf. Parker v. Newark, Bulletin 425, Item 12; Morrovitz v. Bellmawr, Bulletin 329, Item 9. A local issuing authority may, within its discretion, refuse to transfer a license to a residential area where a substantial number of the residents oppose the transfer. The presence of a business property in the vicinity which does not alter the essential character of the neighborhood does not change this rule. Cf. Borkowski v. Clifton, Bulletin 139, Item 5.

The right to a transfer is not inherent in a license. An issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Veddé v. Lyndhurst, Bulletin 693, Item 3.

The mere fact that the license sought to be transferred is a club license does not alter the general principles just enumerated. A transfer of a club license may reasonably be denied where the proposed premises are located in a residential neighborhood. Cf. Second Ward Democratic Club v. Bridgeton, Bulletin 465, Item 2.

It is now well established that my function in these cases is not to inflict or substitute my opinion upon or for the issuing authority but, rather, to determine if reasonable grounds support its decision and, if so, to affirm whatever their view and irrespective of my own. Petti v. Bayonne, Bulletin 564, Item 7. The judgment of the issuing authority, where supported by evidence, is entitled to great weight. There is reasonable ground for the action of the municipal issuing authority in this case. Accordingly, in the absence of any evidence that the issuing authority abused its discretion, its decision must be affirmed.

Accordingly, it is, on this 11th day of March, 1946,

ORDERED, that the appeal herein be and the same is hereby dismissed.

Alfred E. Griswold

Commissioner.