

Division of
**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

140 E. Front Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2468

May 23, 1996

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By statute and by regulation club licensees are only permitted to sell to and allow the consumption by bona fide club members and the guests of bona fide club members. A club member is defined as any individual in good standing who has been admitted to voting membership in the manner regularly prescribed by the by-laws of the club, who maintains such membership in bona fide manner and whose name and address are entered on the list of members. No member may be admitted by a means of an instant membership. Only those individuals who have made written application and who have been approved by the membership board no sooner than three (3) days following the submission of that written application will be considered bona fide members. Persons who hold a limited, auxiliary, or social membership are not club members and may not be sold alcohol by the licensee. The other group that may be sold or served alcohol by the licensee are guests of bona fide members. Each member is permitted nine (9) guests on the premises at any one time. These guests must be expressly invited to the club license premises by an individual member of the club and sponsored by and personally attended by the member at the premises.

The singular exception to the nine (9) guests limit per club member is in instances in which the club member is having a private function at the club such as a wedding, anniversary, bar mitzvah, or other social function. In these instances, the club member may rent or use the club's licensed premises in order to have the function. The club may sell the alcohol to be consumed at the social function to the member. This is only permitted where the individual having the function is actually a bona fide club member.

In cases in which the host of the function is not a club member the situation is slightly different. The primary concern for a club licensee, when lending or renting the facilities to a non club member, is that the club licensee may not sell the alcoholic beverages for the function. Even in situations where some members of the party renting the facilities are club members, if the group itself is not a club member, it may not buy its alcoholic beverages from the club licensee. In these situations when the club rents the facilities to a non member, the club may sell food and non-alcoholic beverages to the party renting the facilities and could require the hiring of club members as bartenders or waitresses. The group renting the facilities must provide the alcoholic beverages and may not purchase those alcoholic beverages from the club licensee.

The second concern for club licensees when renting to non members is to ensure that if the group is going to sell alcoholic beverages to those attending the function, either by means of a cash bar or through a prepaid ticket or admission, the group hosting the social function must have a social affairs permit issued by the Division of Alcoholic Beverage Control pursuant to N.J.A.C. 13:2-5.1. Although it is not a function hosted by the club licensee itself, it remains the clubs responsibility to ensure that the social affair permit is obtained. Failure to properly obtain the permit could result in a charge against the club license for allowing unlawful alcoholic beverage activity on its licensed premises.

Finally, the club must keep a true record of all scheduled affairs held at the club premises and attended by non-members. These records must be produced on demand. They also insure that the club is aware of who is using the club facilities and the purpose of such affair. Failure to keep true records or produce them when requested by the authorized enforcement authorities constitutes a violation of the alcoholic beverage control regulations, subjecting the license to a suspension. (N.J.A.C. 13:2-8.8(b))

Currently, several inquiries have been addressed to the Division by licensees regarding the legality of functions held on premises by either club members or non-club members which are promoted as "Casino Nights", "Monte Carlo Nights", or "Las Vegas Nights". These affairs are prohibited since they include prohibited gambling and could be grounds for license suspension. Except for a very few restricted situations gambling, and any gambling type activities, are not permitted on a premises holding any permit or license. This includes club licensees and social affairs held on the licensed premises by non club members. The few restricted situations which are allowed are games of chance such as bingo, raffles, and lotteries that have been approved by the New Jersey Legalized Games of Chance Commission (N.J.A.C. 13:22-23.7(b)). However, while these activities are going on, no alcoholic beverage activity may be conducted. Additionally, devices traditionally associated with gambling activities are prohibited from being present upon a licensed premises. Therefore, slot machines, video poker machines, roulette wheels, blackjack tables, etc., cannot be on the club premises. Finally, any type of lottery ticket or instant win ticket with the exception of the New Jersey lottery are also prohibited. The last items have been found repeatedly on club premises even after the Division has charged the license for similar violations.

Other provisions of the regulations of which you should take particular note are that sales may be made by club licensees for on premises consumption only. No sale of package goods are allowed to be made by a club licensee. Also, no club licensee may sell, serve, or deliver any alcoholic beverages on the licensed premises during days or during hours when retail consumption licensees in the same municipality are prohibited from alcoholic beverage activity. This means simply that if the bars and restaurants are permitted to be open for business and to serve alcohol, the club licensed premises may be open and serve during the same hours.

These are the areas about which the Division has received complaints and has charged club licensees in the past year. However, the greater concern of the Division is the increase in the number of complaints and the blatant disregard of the regulations. Therefore, this letter will serve to put the club licenses, its officers, directors, trustees and members on notice that any further violations occurring after September 1, 1995 involving activity outside the confines of the club license privilege or gambling as described in this letter will subject the license to suspension and possible revocation. THE PRESUMPTIVE PENALTY FOR THESE VIOLATIONS WILL BE SUSPENSION OF THE LICENSE AND ONLY IN THOSE SITUATIONS DEMONSTRATING EXTREME MITIGATION WILL I ALLOW A COMPROMISE OFFER IN LIEU OF THE SUSPENSION. This penalty change shall be effective September 1, 1995.

Thus I suggest that all responsible parties review the regulation, this letter, the ABC Handbook for Retail Licensees and their current operation to insure that the license is in compliance and the officers and directors are familiar with the rules and regulations. Since many new officers and directors have been or will be elected, this may be an opportune time to undertake such review.

If anyone has specific questions regarding this letter or the regulations or in anything pertaining to your license and its privileges, please feel free to contact the Division staff for assistance.

Very truly yours,

JOHN G. HOLL
DIRECTOR

2. NOTICE TO MUNICIPAL CLERKS AND ABC BOARD SECRETARIES OF BERGEN, BURLINGTON, ESSEX, GLOUCESTER, MIDDLESEX, OCEAN AND SALEM COUNTIES CLARIFYING ABC POLICY CONCERNING ISSUANCE OF AD INTERIM (TEMPORARY) PERMITS PURSUANT TO N.J.A.C. 13:2-2.10(b).

May 15, 1996

Recent changes to the Taxation and Alcoholic Beverage Control laws require issuance of a Tax Clearance Certificate as a condition of renewal for every retail licensee in Bergen, Burlington, Essex, Gloucester, Middlesex, Ocean and Salem Counties. Clearance Certificates, which are issued by the NJ Division of Taxation, are granted if it is determined that a licensee has satisfied retail sales and certain tourism tax obligations. ABC has been advised by the Division of Taxation's Tax Clearance Project Unit that a significant number of Clearance Certificates may not be issued prior to June 30, 1996.

Pursuant to N.J.A.C. 13:2-2.10(b), if a municipality is unable to act on a license renewal application prior to June 30, 1996, the licensee may apply to ABC for a special ad interim permit to operate its licensed business pending municipal action. If a license is not renewed prior to June 30, 1996 and an ad interim permit has not been issued to the licensee, the licensee will be required to cease active operation of its business at midnight June 30, 1996.

The Division has previously held that such relief is contingent upon the municipality's written verification that the licensee has timely submitted a complete renewal application and required state and local fees. The Division has determined that retail licensees who have timely filed their 1996-1997 renewal application and fees, but who have not been issued Clearance Certificates are eligible for ad interim permits, provided that they can certify that they have satisfied their New Jersey tax obligations and are eligible for Clearance Certificates. Licensees who seek such relief must complete the following application form, which must be endorsed by the appropriate municipal authority. Ad interim permits will be granted for a term of 90 days, or until September 28, 1996. If, by that date no action has been taken on the renewal application, the licensee may thereafter file an appeal with the Director of the Division of Alcoholic Beverage Control from the municipality's failure to act.

Should you have specific questions concerning the procedure to file a permit application, please contact the Licensing Bureau directly at 609-984-1914.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
CN-087
(609) 984-2830

PETITION FOR TEMPORARY PERMIT TO OPERATE PENDING ACTION BY
MUNICIPAL ISSUING AUTHORITY UPON PETITIONER'S APPLICATION FOR
LICENSE RENEWAL

This application must be filed with the State Division of Alcoholic Beverage Control in instances where a local governing body has not renewed a retail license by June 30th, and the licensee wishes to conduct business pending local action. The permit fee is \$50.00 plus 2 1/2 times the daily pro-rated municipal license fee, payable by cash (on a walk-in basis only), or by check or money order payable to the Division of Alcoholic Beverage Control. The application must be completed in full, signed by the licensee and endorsed on the reverse side by the local issuing authority.

-
1. 12-Digit New Jersey License Number _____-_____-_____-_____
 2. Name of Licensee (as it appears on your license certificate)
-
3. Address of licensed business
-
4. Has the licensee been issued a Tax Clearance Certificate by the NJ Division of Taxation? YES () NO ()

If no, does the licensee assert that it has satisfied all New Jersey tax obligations? YES () NO ()

NAME&TITLE OF AUTHORIZED SIGNATOR _____
(Please print)

SIGNATURE _____ DATE ____/____/19____
(Above signator's name must be disclosed on license application as president, vice president, sole proprietor or partner.)

(Reverse side must be completed by Municipal Clerk/ABC Secretary)

PAGE 2 - TO BE COMPLETED BY MUNICIPAL CLERK OR ABC SECRETARY

1. Date renewal application and fees were filed ____/____/19____
Amount of annual municipal fee:_____.
2. Date Governing Body will meet to act upon renewal of this license: ____/____/19____.
3. Requested effective dates for ad interim permit:
from ____/____/19____ thru ____/____/19____ (inclusive)
4. Please indicate the reason why this license cannot be renewed prior to June 30th:

5. Does the municipality object to the issuance of an ad interim permit to this licensee? yes () no ()

MUNICIPAL CLERK
OR A.B.C BOARD SECRETARY
(please print name) _____

SIGNATURE: _____ DATED: ____/____/19____

THIS AREA FOR ABC USE ONLY: prepared by ____/____/19____

Permit term [DAYS]: _____ (up to 30 days)

Local annual renewal fee: ____/365 = ____[\$DAILY]

____[\$DAILY] * 2.5 = ____[\$PRO-RATE]

____[\$PRO-RATE] * ____[DAYS] = ____[\$AI]

____[\$AI] + \$50.00 = \$_____
PERMIT FEE

IF PERMIT TERM WILL EXCEED THIRTY DAYS ALSO COMPUTE THE FOLLOWING:

____[\$DAILY] * ____[Add'l days] = ____[\$ADD'L]

____ + ____[\$ADD'L] = \$_____
PERMIT FEE TOTAL FEE

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

OAL DKT. NO. ABC 11215-94

A hearing was held on July 11, 1995 concerning the de facto denial of Appellant's application for renewal of Plenary Retail Consumption License No. 1615-33-026-001 by Respondent. No written exceptions were filed in this matter. For the following reasons, I

accept the decision of the Administrative Law Judge recommending reversal of the denial of Appellant's application for license renewal by Respondent, and order that the license be renewed for the 1994-95 license term.

I. PROCEDURAL HISTORY

This matter arose from the Resolution of September 7, 1994, by which, Respondent effectively denied the Appellant's application for renewal of Plenary Retail License No. 1615-33-026-001 for the 1994-95 license term. The Appellant filed an Appeal and requested that the Division issue an Order which would allow it to operate pending final determination of the appeal. The Director issued an Order to Show Cause and extended Appellant's license. The matter was transmitted to the Office of Administrative Law on November 21, 1994, as a contested case, pursuant to N.J.S.A. 52:14F-1 to -13.

This case was heard before Administrative Law Judge (ALJ) James A. Ospenson, on July 11, 1995. Although notified of the hearing date, Respondent did not appear at the hearing. Judge Ospenson determined, therefore, that Respondent did not contradict Appellant's assertions that the license was continuously active, and had been properly renewed for the 1993-94 license term, prior to Respondent's denial of license renewal for the 1994-95 license term. Judge Ospenson found Appellant's representations to be uncontested facts. Thus, the ALJ found that Appellant actively and continuously utilized the license prior to Respondent's action. He concluded that Respondent misinterpreted and misapplied N.J.S.A. 33:1-12.39, and held that the resolution denying Appellant's license was erroneous. Therefore, he ordered that the license be renewed for the 1994-95 license term.

II. DISCUSSION AND CONCLUSION

Having carefully considered the entire record before me, I concur in the findings and recommendations contained in the Initial Decision and adopt them as my conclusions herein. Since Respondent did not appear at this hearing, the facts in this case are undisputed.

Municipal actions are reversible when they constitute an abuse of discretion, a manifest mistake, or are clearly unreasonable. The Grand Victorian Hotel v. Borough Council of the Borough of Spring Lake, 94 N.J.A.R.2d (ABC) 43 (1993), citing Hudson-Bergen Package Stores Association v. Municipal Board of Alcoholic Beverage Control

of North Bergen, A.B.C. Bulletin No. 1981, Item No. 1 (April 28, 1981); Blank v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Paul v. Brass Rail Liquors, Inc., 31 N.J. Super. 598 (App. Div. 1955); and Rajah Liquors v. Division of Alcoholic Beverage Control of Newark, 33 N.J. Super. 598 (App. Div. 1955). It is, however, the responsibility of the Appellant to establish that the local issuing authority acted in error or bad faith, and should therefore be reversed. The Grand Victorian Hotel, A.B.C. Bulletin 2463, Item No. 6; Lyons Farm Tavern, Inc. v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970); Pilon v. Board of Alcoholic Beverage Control of Paterson, 112 N.J. Super 436 (App. Div. 1970). I find Appellant has satisfied its burden in this instance.

In reaching my decision, I note that, "active use" is defined as "meaningful full-time operation, with a present intent of the licensee to operate for an unlimited duration . . ." Opinion Letter: Interpretation of the Term "Actively Used" As Contained in the New Jersey Pocket License Statute N.J.S.A. 33:1-12.39, A.B.C. Bulletin No. 2432, Item No. 4 (August 31, 1993). There is nothing in the record before me which establishes that Appellant's use did not meet this standard. Therefore, I concur with the Administrative Law Judge and affirm his findings, and reverse the decision of the Township Commission of West Milford denying the application for renewal of Plenary Retail Consumption License No. 1615-33-016-002.

Accordingly, it is on the 30th day of August, 1995

ORDERED that the action of the Township Commission of the Township of West Milford denying Appellant's application for renewal of Plenary Retail Consumption License No. 1615-33-016-002, be and the same is hereby REVERSED and the appeal be and is hereby AFFIRMED; and it is further

ORDERED that the Township Commission of the Township of West Milford be and the same grant the renewal of Plenary Retail Consumption License No. 1615-33-016-002 issued to Reflection Lakes Inn, Inc., for premises at 1202-1204 Union Valley Road, West Milford, for the 1994-95 license term.

/s/ John G. Holl
JOHN G. HOLL
DIRECTOR

JGH/LSR/dmc

4. BELL AND JONES ASSOCIATES, T/A SATURN LOUNGE V. BOARD OF COMMISSIONERS OF THE CITY OF ASBURY PARK.

STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
Division of Alcoholic Beverage Control

APPEAL #6149
BELL AND JONES ASSOCIATES,
T/A SATURN LOUNGE,
PRCL 1303-33-024-008,
APPELLANT,
v.
BOARD OF COMMISSIONERS OF THE
CITY OF ASBURY PARK,
RESPONDENT.

ON APPEAL
FINAL CONCLUSION AND ORDER
AFFIRMING ACTION BELOW AND
RE-IMPOSING THE FORTY FIVE
DAY SUSPENSION OF LICENSE

OAL DKT. NO. ABC 10299-94

MUN. DIS. NO. 9407

Vernon McGowan, Jr., Esq., for Appellant.

Carol A. Berlen, Esq., for Respondent. (Shebell & Schibell,
attorneys)

INITIAL DECISION BELOW

HONORABLE M. KATHLEEN DUNCAN, ADMINISTRATIVE LAW JUDGE

Decided: August 14, 1995

Received: August 14, 1995

BY THE DIRECTOR:

Written exceptions dated September 1, 1995 were filed on behalf of the Appellant, Bell and Jones Associates, with regard to the above captioned Initial Decision, as provided by N.J.A.C. 1:1-18.4. The exceptions state that Mr. Jones, the sole shareholder of Bell and

Jones Associates, did not plead guilty to disorderly conduct in Municipal Court on November 7, 1994. Additionally, in its exceptions, the Appellant requests the opportunity to pay a monetary penalty in lieu of serving the 45 day suspension.

This matter was referred to the Office of Administrative Law (OAL) after an appeal was filed from the action of the Respondent which suspended the Appellant's license for 45 days and imposed a \$5,000 fine to be paid to the Board of Commissioners of the City of Asbury Park. The matter was transmitted to the OAL on October 21, 1994 for a determination as a contested case, and the matter was set down for a hearing on May 22, 1995.

The Administrative Law Judge (ALJ) assigned to the case found that the facts were established by the credible and unrefuted testimony of the Respondent's witnesses. As a result, the ALJ concluded that there was insufficient evidence to reverse the 45 day suspension.

Upon consideration of all the factors herein, for the following reasons I have determined to accept the basic findings of fact and conclusions of law of the ALJ. I hereby incorporate the basic factual findings of the ALJ contained in the Initial Decision by reference, and find that the Respondent established that violations on February 4, 1994, February 25, 1994, and March 20, 1994 had occurred by a preponderance of the credible evidence. (I have not considered the ALJ's finding that Mr. Jones pled guilty to a charge of disorderly conduct, since same is not an essential fact with respect to the violations committed by the licensee.) I further specifically find that the Appellant did not establish that the action of the Respondent was erroneous and should be reversed. N.J.A.C. 13:2-17.6.

Additionally, I note that the ALJ was correct to conclude that there was no lawful authority under the provisions of N.J.S.A. 33:1-1, et seq., for the imposition of a fine payable to a municipal issuing authority. Thus, that part of the issuing authority's order shall be reversed.

Finally, I shall re-impose the full 45 day suspension and shall not provide the Appellant with an opportunity to make a monetary payment in lieu of serving the suspension. I reach this decision in light of the fact that the Appellant served and sold alcohol after hours on three occasions within a six week period, and threatened to

incite the crowd to harm a police officer on one of those occasions. The continuing nature of the violative conduct, and the apparent hindering actions, militate against compromising even a portion of the imposed penalty.

Accordingly, it is on this 27th day of September, 1995,

ORDERED that, as modified, the action of the Board of Commissioners of the City of Asbury Park, be and the same is hereby AFFIRMED, and the appeal therefrom be and is hereby DISMISSED and it is further,


ORDERED that the action of the Board of Commissioners of the City of Asbury Park, which required the Appellant to pay a \$5,000 fine to it, be and is hereby REVERSED; and it is further,

ORDERED that Plenary Retail Consumption License Number 1303-33-024-008 issued by the Board of Commissioners of the City of Asbury Park to Bell and Jones Associates, t/a Saturn Lounge, for premises located at 162-166 Main Street, Asbury Park, New Jersey be and is hereby SUSPENDED for forty five days, such suspension commencing on Monday, at 2:00 a.m., on November 13, 1995, and continuing until Friday, at 2:00 a.m., on December 29, 1995.

/s/ John G. Holl
JOHN G. HOLL
Director

JGH/LE

Publication of Bulletin 2467 is hereby directed this
23rd Day of May, 1996



JOHN G. HOLL, DIRECTOR
DIVISION OF ALCOHOLIC BEVERAGE CONTROL