STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1161 APRIL 22, 1957.

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1161 APRIL 22, 1957.

1. COURT DECISIONS - LIPTAK v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A 713-55

ANNA LIPTAK,
Appellant,
-vs-
DIVISION OF ALCOHOLIC BEVERAGE CONTROL, DEPARTMENT OF LAW AND PUBLIC SAFETY, STATE OF NEW JERSEY,
Respondent.

Argued February 18, 1957. Decided March 8, 1957.

Before Judges Clapp, Jayne and Francis.

Mr. Charles L. Bertini argued the cause for appellant.

Mr. Samuel B. Helfand, Deputy Attorney General, argued the cause for respondent.
(Mr. Grover C. Richman, Jr., Attorney General, attorney.)

The opinion of the court was delivered by

FRANCIS, J.A.D.

In a self initiated proceeding the Director of the Division of Alcoholic Beverage Control cancelled the plenary retail consumption license of Anna Liptak. She seeks a reversal, claiming that the action was beyond his statutory authority.

The facts are not in dispute. Mrs. Liptak is the owner of premises at 270 River Road, Edgewater, New Jersey. For some years they had been leased to persons holding a plenary retail consumption license issued by the Mayor and Council of the Borough. The 1954-1955 license, which by statute and by its terms expired on June 30, 1955 (N.J.S.A. 33:1-26), was held by William Ganz, Jr. and Robert Esterbrook, trading as Pat and Mike's. Apparently the business was not prospering and in March 1955 they failed to pay their rent. Subsequently they closed the tavern, disappeared and never applied for a renewal of the license. Later, when Mrs. Liptak decided she would like to operate the place herself, she instituted a search and succeeded in locating Ganz. On August 1, 31 days after the license had expired, he signed a consent to its transfer to her, saying that he did not "want to have [anything] to do with it." On the same day she applied for a license, attaching to the application the consent of Ganz to the transfer of the partnership license to her. The Mayor and Council approved her request and the license was transferred to her as of September 1, 1955. Thereafter she operated the tavern until the Director issued an order to show cause why the license should not be cancelled as improvidently issued. The order was returnable before the

Division of Alcoholic Beverage Control. After hearing, the Director cancelled the license upon the ground that it was illegally issued and void.

It is apparent from the facts stated that the license in question had expired and was out of existence for 31 days before the proceeding for transfer was instituted. Under the statute, a renewal license is defined as follows:

> "***[A]ny license for a new license term, which is issued to replace a license which expired on the last day of the license term which immediately preceded the commencement of said new license term or which is issued to replace a license which will expire on the last day of the license term which immediately precedes the commencement of said new license term shall be deemed to be a renewal of the expired or expiring license; provided that said license is of the same class and type as the expired or expiring license, covers the same licensed premises, is issued to the holder of the expired or expiring license and is issued pursuant to an application therefor which shall have been filed with the proper issuing authority prior to the commencement of said new license term or not later than thirty days after the commencement thereof. Licenses issued otherwise than as above herein provided shall be deemed to be new licenses. (Emphasis ours; N.J.S.A. 33:1-12.13; 33:1-12.26; 33:1-96.)

The import of this legislation is that in order for a renewal to be granted there must be a valid license then in being. Greenspan v. Division of Alcoholic Beverage Control, 12 N. J. 456, 460 (1953). The condition not having been met here, obviously the license in question must be considered a new one.

The issuance of new licenses in Edgewater was prohibited by N.J.S.A. 33:1-12.14 unless and until the total number of plenary retail and seasonal retail consumption licenses outstanding became fewer than one for each one thousand of its population as shown by the last preceding Federal census. It is undisputed that at the time the Liptak license was granted, the applicable population was 3,952 and that there were already 15 plenary retail consumption licenses in existence in the Borough. Under the circumstances, manifestly it was legally improper to transfer the old license or to issue a new one to appellant.

Appellant contends, however, that the Director had no original jurisdiction to institute or entertain a proceeding to cancel the license. It is urged that action by him is limited to the prosecution of an action for cancellation in the appropriate court. Of course, if the attack came to him by way of the appeal process established by N.J.S.A. 33:1-22, there could be no question about his authority. Can it be said that if a taxpayer or other aggrieved person does not initiate an appeal under the statute, he is powerless to deal with the license as an original administrative problem? We think not. Ample legislatively delegated authority to act on his own may be found.

Under the Act he is empowered to supervise the "manufacture, , distribution and sale of alcoholic beverages in such a manner as to promote temperance * * *." N.J.S.A. 33:1-3; to "administer and enforce this chapter * * * and to do, perform, take, and adopt all other acts, procedures and methods designed to insure [its] fair, impartial, stringent and comprehensive administration * * *." N.J.S.A. 33:1-23; to make "such general

rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the * * * sale and distribution of alcoholic beverages and the enforcement of this chapter." And such rules may relate to "matters" [that] are or may become necessary in the * * * comprehensive administration of" the Act. N.J.S.A. 33:1-39.

These provisions indicate the broad scope of the Director's legitimate field of operation and they leave us without doubt that a proceeding such as the present one is within the authorized area. Moreover, in Brush v. Hock, 137 N.J.L. 257 (Sup. Ct. 1948), the right to cancel a renewal license for the illegality which infects that of Mrs. Liptak, was recognized. It is true (as the record of the case shows) that the cancellation was ordered as an incident of an appeal brought to attack an existing license. But when the license already under review was renewed pending the appeal, the Director simply brought the renewal in on his own motion and cancelled it on a finding of violation of N.J.S.A. 33:1-12.14, supra. The fact that no separate appeal had been taken was not regarded as an obstacle to original agency action. And absence of any specific rule or regulation creating such procedure, does not show want of authority to act. Cf. Greenspan v. Division of Alcoholic Beverage Control, supra, at 461.

Accordingly, the order of the Director is affirmed.

---

2. APPELLATE DECISIONS - SAFEWAY STORES, INC. v. HOBOKEN.

SAFEWAY STORES, INC., Appellant, -vs- MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF HOBOKEN, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

Carpenter, Bennett, Beggans & Morrissey, Esqs., by Arthur M. Lizza, Esq., Attorneys for Appellant.
Robert F. McAlevy, Jr., Esq., by William Gottlieb, Esq., Attorney for Respondent.
Samuel Moskowitz, Esq., Attorney for Hudson-Bergen County Retail Liquor Stores Assn., and Anthony Ruocco, Objectors.
Luke J. Antonacci, Esq., Attorney for Donna's Wine & Liquor Company, Inc., Transferor.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the denial of an application for transfer of a plenary retail distribution license held by Donna's Wine & Liquor Company, Inc. to Safeway Stores, Inc., and from premises 500 Monroe Street to premises 811 Clinton Street, both in the City of Hoboken.

"The petition of appeal alleges, in substance, that respondent denied the application without stating any reason therefor and, hence, that such action is arbitrary, capricious, without legal basis and an abuse of discretion.

"The respondent's answer alleges that the appeal is premature in that there was no final determination by it on the application.

"Respondent's basis for this contention is that, at a meeting held to consider the application, two of the three members of the respondent Board were present, one of whom made a motion that the transfer be granted but such motion was not seconded by the other member; that the respondent intended to further consider the application at a subsequent meeting but the appeal was taken in the meantime and the respondent was of the opinion that such action prevented its further consideration of the matter. Respondent's counsel at the hearing of the appeal represented that, if the matter was remanded, respondent would take formal action on the application.

"Since it appears that the respondent believed that it could not take any further action after it received notice of the appeal, and in the absence of any evidence that the members of the Board are definitely stalemated or deadlocked concerning action on the application, remand to the respondent for action thereon normally would be indicated. Higgins v. Elizabeth, Bulletin 1081, Item 5. However, because appellant so urged, evidence as to the merits of the application was received at the appeal hearing to the end that thereby it might be possible effectively to resolve the issues presented.

"It appears at the outset that the distance from the entrance to appellant's proposed premises to one of the gates of an adjoining church entrance (used by persons attending church services and entering the rectory) as measured by the correct formula (along the fence line immediately adjoining the sidewalk) is 190.4 feet. This gate constitutes an entrance from which measurement is to be made. Re Walkiewicz, recently decided. Hence, the respondent does not have the authority to grant such application unless a waiver from said church is presented. R. S. 33:1-76. Appellant asserts that by its measurement the distance is 209.2 feet (along a line extending to some portion of the sidewalk) and, hence, it did not make any effort to obtain such waiver, but represents that it has reason to believe that it can procure the same.

"Furthermore, evidence was presented concerning the number and location of licenses in the vicinity of the premises from which transfer is sought as compared to those in the vicinity of the premises sought to be licensed, which discloses a serious controversial question as to whether or not the needs of the public are adequately served by the licensed premises presently in the vicinity of appellant's proposed premises. In fairness to all concerned, the respondent should be afforded a further opportunity to decide this question, which is its responsibility in the first instance.

"I, therefore, recommend that the matter be remanded to the respondent for consideration of all the issues in the case."

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

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall remand the case for further consideration by the respondent.

Accordingly, it is, on this 21st day of February, 1957,

ORDERED that this case be and the same is hereby remanded to the respondent for its further consideration of the application on the basis of the record of the proceedings on appeal before this Division and any additional evidence which may be presented on the question of public need and convenience, the distance from the church and all other issues in the case.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - LICENSED PREMISES CONDUCTED AS NUISANCE (HOMOSEXUALS AND OBSCENE CONDUCT) - AGGRAVATED CIRCUMSTANCES - LICENSE REVOKED.

In the Matter of Disciplinary Proceedings against

ARTHUR J. KURZ
T/a SNUG HARBOR INN
Duerer St. & Darmstadt Ave.
Mullica Township
PO RFD Egg Harbor City, N. J.,

Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Mullica Township.

CONCLUSIONS AND ORDER

Arthur J. Kurz, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On December 29 and 30, 1956 and January 5 and 6, 1957, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered male and female impersonators and persons who appeared to be homosexuals in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene conduct in and upon your licensed premises; and otherwise conducted your place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20."

The reports of ABC agents in the file disclose that the licensee apparently conducted the licensed business exclusively as a "hang-out" for homosexuals and actively encouraged them to carry on their unnatural practices at the licensed premises.

The following specific details of the drastic measures taken by the licensee to exclude normal patronage and the indecent activities of the homosexuals in the licensed premises demonstrate the degradation and depravity which the licensee permitted and welcomed wholeheartedly.

On December 29, 1956 at about 10:30 p.m., an ABC agent and a male companion arrived at defendant's licensed premises. When the licensee who was outside the premises near the door observed these two men, one of whom called to him, he entered the tavern without responding and shut the door. The agent tried the door, found it locked, knocked on the door and it was then opened by the licensee, and the agent and his companion were admitted to a closed-in porch. The licensee said that he had heard the call but that when he steps outside he doesn't acknowledge anyone; that "I can't take any chances". Rose, the licensee's wife, joined the group on the porch. The agent's companion told the licensee and his wife that the agent was "all right". Rose asked the agent to present some identification, which he displayed. She then asked him various questions such as which college he attended, which courses he was taking and where he had met his companion. She finally apologized and said that all newcomers must be checked before they can even sit at the bar. The agent and his companion were then admitted to and took seats at the bar in a small barroom. From this point the agent observed a back room. There were no other patrons at the bar. After being served drinks by the licensee, the agent complimented the licensee on his establishment. The licensee said, "I've got a good thing here. If people come during the day I let them in, but after it gets dark, the door is locked. I check the cars in the lot if I don't recognize them. If a 'straight' (normal person) does happen to sneak in and gets as far as the bar, I charge a couple of dollars for a beer or highball and I insult them, they usually leave quick but nobody gets to the back room to gawk and gape at the boys". To the agent's comment that he was located so far back in the woods that he probably was never bothered by the "law", the licensee responded that he knew all the "law" and that nobody bothered him; that he doesn't advertise it but that he remains open in the morning until the kids in the back room feel like leaving or until he feels that financially it isn't worth staying open any later.

Upon closer inspection the agent observed that the back room appeared to be newly constructed and was equipped with a bar, tables, chairs and a juke box and that there were three pairs of males dancing with each other and about twelve males seated. Rose came to the bar where the agent was seated and during their conversation she remarked that if ABC agents came in she could spot them in a moment and that by the time they got in they have it rigged so that everything would look normal in the back room. Asked if Lesbians were admitted, she replied, "No more. I used to but the boys don't like them around and we aim to please the boys". She mentioned other places where homosexuals allegedly had been permitted to congregate and said they were crazy, "They let strangers in and got caught. Now we have all the business and we are running it smart. They will never crack this set-up".

About this time, an apparent homosexual came to the bar from the back room and was introduced to the agent as Bill, an employee of the licensee. Rose told the agent that Bill was "gay". While still seated at the bar Rose remarked, "It gets lonesome out here but you can't get in the back room. Maybe later, the boys are judging you now, I guess. If they like you, I'll take you back later."

Two of the males from the back room came to the door, looked at the agent and his companion and conversed in whispers. Another male also looked at the agent and his companion. Bill

came to the bar, whispered to Rose and left. She then said, "It's all right. I guess you're in" and led the agent and his companion to a table in the back room. The males there were effeminate in manner and spoke in lispy high tones, danced with each other and embraced while so engaged. Several pairs of males were kissing each other on the lips and one male sat on another male's lap, both kissing and embracing for a period of about twenty minutes. Bill insisted on dancing with the agent. A buzzer sounded and Bill walked to a door in the back room, admitted a male, embraced him and told the agent that such male was his sweetheart. There was a knock on the front door, dancing stopped, the males took normal positions and then the licensee came in and said that he did not know who it was and he got rid of him. The males in the room then resumed their dancing and displaying affection for each other.

While dancing with Bill, the agent asked whether Bill could get him a membership card. After some conversation and the licensee's surreptitious observation of the agent's car, Rose and Bill went with the agent to the front bar. There Rose produced two cards. The agent wrote his name and address on one card and was handed the other card with instructions not to write any identification thereon. Rose and Bill showed the agent how the door between the bar and the back room was closed. She said, "See, there is no handle on it and if the law should come in, we can close it and it can only be opened by the buzzer underneath the bar"; further "things have been going very good, by the summer we hope to get several small trailers set up in back so that the boys can go back there rather than go to motels". Rose then pointed out the door in the back room and told the agent that from then on he could come right to the door and press the buzzer instead of bothering to come to the front door. The agent continued to observe the aforementioned conduct of the persons in the back room until about 2:20 a.m. when he left with his companion.

On January 5, 1957 at about 11:55 p.m., the above mentioned agent and a fellow agent gained entrance to the licensed premises by pressing a buzzer at the back room entrance door whereupon Rose opened the door slightly. The agent greeted her and when he observed that she was staring at his companion remarked that they were college mates and that his companion was "all right". The agents entered the back room while Rose was reflecting upon this information. Rose went behind the bar and her husband stood near the bar.

There were eleven males and two females in the room. The males were effeminate in manner, walked with a swinging, swaying motion of their hips and shoulders, talked in high-pitched voices and two pairs of males were dancing with each other. The two females were dressed in general male attire, had short hair, wore no make-up or earrings and by their actions appeared to be Lesbians. The back door buzzer sounded from time to time and either the licensee or Rose admitted various males similar in appearance and conduct to the others and one female, until at one time there were twenty-three males and three females present in the back room. There were no patrons at the front bar.

The males danced with each other, moving very slowly and embracing, some with hands on each other's buttocks and rubbed the lower portion of their bodies together, meanwhile kissing each other on the ears, cheeks and lips. At times they simulated sexual intercourse to music of slow tempo. When dancing with one of the females on infrequent occasions, they danced in a similar manner. Two pairs of males standing at the bar were kissing and embracing each other, eyes closed and

rubbing the lower portion of their bodies against each other.

During the course of their stay, the licensee joined the agents at their table. There was some general conversation about the type of the licensee's business and during this conversation, the licensee explained to the second agent "We do have a perfect set-up here. Everyone is checked and no 'straights' get in to sit around and gape. You'll get a card but we don't give them out freely unless you are highly recommended. You won't get one tonight. You'll have to be judged and after you've been here a few times you may get a card. I am careful. I throw the riff raff and the 'straights' out. You know even 'gays' get noisy at times. Listen this is a business with me and I don't want anything to screw it up. I let the two 'dykes' (indicating the two apparent Lesbians at the bar) in tonight. They can stay as long as they sit there and don't bother the boys".

The licensee further explained that he did not generally allow Lesbians and their girl friends in the place because on occasion they remarked that the males danced with each other and he "threw them out" because the males are very sensitive and didn't like it. While addressing the agents as "you men" the licensee added "or would you prefer 'ladies', most of the boys do". The agents remained in the room until about 1:30 a.m., observing throughout the above described dancing and indecent conduct of the persons present. Thereafter, by prearrangement, other agents and State Troopers entered and disclosed their identities.

A search of the premises by the agents disclosed three index boxes containing a total of 361 male and 80 female names and addresses which Rose stated represented the names of "members"; also 137 brown membership cards (similar to the one issued to the ABC agent) and 203 green membership cards. They also discovered a button underneath the front bar which operated as a warning light in the back room. The licensee stated that the function of this light was to warn persons in the back room that patrons at the front bar were trying to "crash the party".

Clearly the licensee has no proper concept of his duty under the privilege of his license to maintain a minimum standard of conduct of the licensed business and not to bring disrepute upon the liquor industry. The licensee, off the beaten path, may not resort to shady practices to there stimulate or increase his sales of alcoholic beverages.

The distasteful details of what transpired when the ABC agents were at defendant's licensed premises have been set forth at extensive length to forcibly demonstrate that the licensee committed a highly aggravated major violation of the Rules and Regulations of this Division, much more serious than that presented in Re Mack, Bulletin 1088, Item 2, although the violation in that case was also reprehensible.

As was recently stated in Re The Paddock Bar, Inc., "Proper liquor control dictates that the congregating of homosexuals on licensed premises must be staunchly prohibited. To permit such persons to gather and congregate in large numbers as in the instant case is in itself detrimental to the public welfare and tends to encourage them to carry on their unnatural practices."

The outrageous lengths to which the licensee extended himself to carry on these condemned activities represents, as in Re Kaczka, Bulletin 1126, Item 3, a callous disregard for law and order, common decency and his responsibilities as a licensee. Here, as there, the only proper and justifiable penalty is revocation of the license.

Accordingly, it is, on this 7th day of March, 1957,

ORDERED that Plenary Retail Consumption License C-6, issued by the Township Committee of Mullica Township to Arthur J. Kurz, t/a Snug Harbor Inn, Duerer St. & Darmstadt Ave., Mullica Township, be and the same is hereby revoked, effective immediately.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against CLUB HI-DE-HO, INC. T/a CLUB HI-DE-HO Baldwin Ave. & Rte. 46 (formerly #6) Lodi, N. J., Holder of Plenary Retail Consumption License C-33, issued by the Mayor and Council of the Borough of Lodi.	CONCLUSIONS AND ORDER

Club Hi-De-Ho, Inc., Defendant-licensee, by Joseph Peraino, President.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that it sold, served and delivered alcoholic beverages to five minors and permitted the consumption thereof by said minors on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that on Monday night, December 31, 1956 and early Tuesday morning, January 1, 1957, five minors, one of whom was fifteen years, two seventeen years, one eighteen years and one nineteen years of age, purchased a bottle of beer apiece at defendant's licensed premises.

Defendant has a prior adjudicated record. Effective April 26, 1954 its license was suspended for forty-five days for permitting immoral activity and permitting female employees to accept beverages as gifts from customers (Re Club Hi-De-Ho, Inc., Bulletin 1013, Item 2). Effective March 2, 1955 its license was again suspended for thirty-five days for permitting female employees to accept beverages as gifts from customers (Re Club Hi-De-Ho, Inc., Bulletin 1053, Item 4). The minimum penalty for a sale of alcoholic beverages to a fifteen-year-old minor, subsequent to January 16, 1956, is thirty days. Considering that five minors were involved in the instant case, one of whom was fifteen and two seventeen years of age, and the

seriousness of the prior dissimilar adjudicated records which occurred within the past five years, I shall suspend defendant's license for a period of sixty days. Five days will be remitted for the plea entered herein, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 11th day of March, 1957,

ORDERED that Plenary Retail Consumption License C-33, issued by the Mayor and Council of the Borough of Lodi to Club Hi-De-Ho, Inc., t/a Club Hi-De-Ho, Baldwin Ave. & Rte. 46 (formerly #6), Lodi, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 3:00 a.m. March 19, 1957, and terminating at 3:00 a.m. May 13, 1957.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR RECORD - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against	)	
GEORGE ZIPKO T/a COLUMBIA HOUSE 262 Passaic Street Passaic, N.J.,	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-154 for the 1955-56 and 1956-57 licensing periods, issued by the Board of Commissioners of the City of Passaic.	)	

Milton J. Pashman, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant has pleaded not guilty to a charge alleging that on February 29, 1956 and March 1, 1956, he sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to two minors and permitted the consumption of such beverages by the minors in and upon his licensed premises, in violation of Rule 1 of State Regulation No. 20.

"The minors in question are Doris --- and P.F.C. Howard ---, aged 15 and 19, respectively, at the time of the alleged offense. Despite a lengthy hearing, the factual issue presented is comparatively simple.

"All of the witnesses agree that both minors were at defendant's licensed premises during the late evening of February 29, 1956 and the early morning of March 1, 1956 and remained there for about an hour and a half according to the minors, and a half hour according to defendant's witnesses. Whether or not the minors there purchased, were served with or consumed alcoholic beverages is the controlling question

which must be resolved from the conflicting evidence presented. Apparently each witness was not called upon to recollect what transpired until the lapse of three months or more after the event.

"Both minors directly and positively state that they purchased and drank alcoholic beverages at the premises. A summary of Doris' testimony is as follows: She was employed as an usherette at a theatre and upon completion of her duties on the night in question she accompanied Howard and Sergeant Scott, an adult, to the tavern where they arrived at about 11:30 p.m. George Zipko, Sr., the licensee, was tending bar. They went directly to the bar and seated themselves. The bartender asked what they wanted and Scott ordered three beers. The bartender placed a glass of beer in front of each person and she and Howard drank their beer. The minors remained in the tavern for about an hour and a half. During that period she was served with and consumed three or four glasses of beer and a drink of Vodka and orange juice. Howard also was served with and consumed a number of glasses of beer. Thereafter, the minors and Scott left the tavern together. Neither Doris nor Howard were asked their ages nor requested to sign any written representation thereof.

"A summary of Howard's testimony is as follows: He has been in defendant's tavern on more than one occasion. He was there with Doris and Scott the evening of February 29, 1956. They entered at about 11:30 p.m. They sat at the bar. He ordered three beers from a male bartender whom he cannot identify. He and Doris drank their beer and remained there for about an hour or an hour and a half. During that period he was served with and consumed two or three more glasses of beer. Doris was also served with and drank a like number of glasses of beer. Neither he nor Doris was questioned as to their ages nor requested to sign any written representation thereof.

"On cross-examination of Doris, apparently designed to impeach her credibility, she testified that she had not previously seen Scott in defendant's tavern; that Collins, a police officer, entered the tavern after they arrived; that she talked with Collins; that she did not see persons named Cotton, Brewer and George Zipko, Jr. in the premises; that Scott did not play shuffleboard but played a music machine; that she was at the music machine for a couple of minutes and danced there with Scott; that Scott left the tavern and later returned; and that she was at the tavern some time before Christmas with another person and asked for and was served a drink of Coca Cola.

"The testimony of defendant's witnesses tends to contradict her in many of these respects. In my opinion, her recollection of these incidental matters after the lapse of a considerable period of time, even if inaccurate, does not thereby render her definite recollection of what she drank at the time unworthy of acceptance.

"On cross-examination, Howard testified that when he arrived at defendant's tavern, Collins was there talking to George Zipko, Sr.; that Collins stayed there for about fifteen minutes and he conversed with Collins, during which time beer was on the bar in front of both him and Doris; that Scott left the tavern for a while; that he did not see Scott playing shuffleboard; that when Scott returned he and Doris were seated at the bar; that he was at the music box for a minute or so;

that he did not see Brewer or notice any other person there; and that Collins left the tavern before he and Doris did. Even if Howard's recollection is faulty as to some of these matters it similarly does not thereby render unworthy of acceptance his definite recollection of what he and Doris drank in the tavern.

"Scott testified at considerable length, inconsistent and at variance with, and directly contrary to his previous sworn and signed statement. At the hearing his testimony was likewise inconsistent on the major issue as to whether or not the minors, or either of them, were served with and consumed alcoholic beverages at the time in question. Originally called as a witness for the Division, the Prosecutor claimed surprise and neutralized Scott's testimony and on cross-examination he testified with respect to other matters in contradiction to that of the minors. Whatever may have been the reason for these contradictions, Scott's testimony must be completely rejected.

"Officer Collins testified on behalf of defendant. He stated that he was in the tavern when the two minors and Scott entered. They walked to the bar. Scott either said 'Give us a beer' or 'Give me a beer.' The minors walked to the music box. Scott, with a glass of beer, also went to the music box and now and then talked to the minors. At that time Collins did not see either of the minors have any alcoholic beverages. However, in his words, 'The fellow (Howard) may have pulled a fast one, but to my knowledge, no. The girl, no. She walked to the bar. Zipko looked at her. He didn't say anything to her. She goes back to the juke box....they left about five minutes after twelve.' Asked whether, while he was at the bar, he saw any drink served to either Doris or Howard, he answered 'I did not see it, but it could be the big fellow -- the tall fellow -- he could have pulled a fast one because quite a few people in there, but I don't think he left the girl at all.' He further testified that he had no reason to concentrate his attention on what the minors were doing or saying or to investigate them or to keep them under observation; that 'The tall fellow might have gotten it because people coming back and forth and some one could hand him a drink, but I don't know how he could get away with it.' He further testified that he did not have any conversation with either of the minors and that they left the tavern before he did.

"It is, in my opinion, a fair assumption from the officer's testimony that it does not definitively establish that the minors could not have obtained alcoholic beverages as they stated without his observing it.

"The testimony of Brewer, a patron, is that he was in the tavern when the two minors and their companion entered; that he saw one beer served to Scott while the minors went to the music box; that neither Doris nor Howard returned at any time to the bar or within touching distance thereof; and that at no time did he observe either of them have a glass in their hand.

"Cotton, a part-time bartender employed by defendant, testified that he was in the tavern when the minors entered; that Scott stopped in the middle of the bar; that Scott ordered a drink of beer and the two minors went to the music box and did not thereafter go to the bar; that he was playing a pool game; and that about half of the time he had no record or recollection of any observations of the two minors.

"The testimony of Brewer and Cotton does not establish that the minors could not have been served and consumed alcoholic beverages without being observed by these witnesses. Furthermore, they do not agree with Collins' recollection that the girl, at least on one occasion, went to the bar from the music box. It is, of course, difficult for them to clearly recollect an incident after the lapse of a considerable period of time, especially when at the time they had no special reason to note what occurred.

"The defendant testified that the two minors went to the juke box and thereafter did not return to the bar for any purpose; that he did not sell or serve the minors any alcoholic beverages; that the minors did not hold any conversation with him at any time during the entire period they were there; and that he did not see Doris dance.

"It is my opinion that the preponderance of the evidence presented establishes that the minors were served with and consumed alcoholic beverages at the time and in the manner testified to by them. I, therefore, recommend that the defendant be found guilty of the charge preferred.

"The minimum penalty for sale to minors, one of whom is but fifteen years of age, is thirty days. However, the licensee has a record of two previous convictions for a similar offense. Effective June 8, 1953, his license was suspended by the State Director for five days for a similar violation. Re Zipko, Bulletin 975, Item 8. Effective January 16, 1956, his license was again suspended by the State Director for fifteen days for sales to minors. Re Zipko, Bulletin 1097, Item 3. The present offense is, therefore, the third similar offense within a period of five years. I recommend that the penalty to be imposed in the instant case be a suspension of the license for fifty days."

No exceptions were taken to the Hearer's Report within the time limited by Rule 6 of State Regulation No. 16.

After carefully considering the facts and circumstances herein, I concur in the recommended conclusions in the Hearer's Report and adopt them as my conclusions herein. I shall suspend defendant's license for fifty days.

Accordingly, it is, on this 26th day of February, 1957,

ORDERED that Plenary Retail Consumption License C-154, issued for the 1956-57 licensing period by the Board of Commissioners of the City of Passaic to George Zipko, t/a Columbia House, for premises 262 Passaic Street, Passaic, be and the same is hereby suspended for fifty (50) days, commencing at 3:00 a.m. March 11, 1957, and terminating at 3:00 a.m. April 30, 1957.

WILLIAM HOWE DAVIS
Director.

6. MORAL TURPITUDE - CONVICTIONS FOR POSSESSING AND USING MARIJUANA - APPLICANT DECLARED INELIGIBLE.

February 26, 1957.

Re: Eligibility No. 672

Applicant seeks a determination as to whether or not he is eligible for employment by the holders of a liquor license in New Jersey by reason of his conviction of a crime.

When applicant called at the offices of this Division in December 1956 he executed a sworn statement wherein he said that he is twenty-seven years of age and a member of a musical organization presently employed by alcoholic beverage licensees and that he was convicted in a Magistrate's Court in September 1956 on a disorderly persons charge (possessing marijuana) and received a three months' sentence which he served. Thereafter, he was fingerprinted and his employers were notified by letter that applicant had the Division's permission to continue in his employment unless his fingerprint returns disclosed that he was ineligible, in which event they would be notified to that effect.

Applicant's fingerprint returns disclose that in 1946 he went A.W.O.L. from the United States Army and was confined in a Post Guard House for three days; that on April 4, 1948 he was committed for an indefinite term in the State Reformatory for possessing narcotics and was paroled therefrom on December 21, 1948; that he was incarcerated in a County Jail for violation of his parole and released therefrom on August 22, 1950 by order of the State Parole Department; that on September 18, 1952 he received a three-month sentence as a user of marijuana and failing to register as a drug addict; and that sentence was suspended thereon and he was thereafter indicted in a County Court on a charge of unlawful sale of narcotics and conspiracy to violate the Narcotics Act. On May 6, 1953 he was placed on probation for three years on the conspiracy charge. The other charge was nolle prossed. On September 18, 1952 applicant was sentenced in a Federal Court on a charge of acquisition of marijuana and placed on probation to run concurrently with the aforesaid State sentence. On August 29, 1956 applicant was convicted as a disorderly person (user of narcotics) and was sentenced in a Magistrate's Court to three months in a County Jail from which he was discharged after completing his sentence.

Our previous rulings that convictions of unlawfully possessing drugs do not per se involve moral turpitude are not applicable to the instant case. Re Case No. 77, Bulletin 387, Item 9; Re Case No. 301, Bulletin 358, Item 6; Re Case No. 663, Bulletin 1052, Item 9. Here it is evident that applicant has been a drug addict over a period of years and by none of said rulings was a drug addict permitted to become associated with the liquor industry. Re Case No. 402, Bulletin 490, Item 8.

I recommend, however, that applicant be advised that he is not presently eligible nor will he be eligible for employment by a liquor licensee in this State until medical evidence is submitted to the Director assuring him that applicant is no longer addicted to narcotics, but in no event will another application be entertained until after the expiration of one year from the date hereof.

I further recommend that the employer-licensees be advised to immediately terminate applicant's employment.

APPROVED:
WILLIAM HOWE DAVIS
Director.

Joseph A. Burns
Attorney.

7. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS DISMISSED.

In the Matter of Disciplinary Proceedings against

ANTHONY L. RATTI
T/a TONY'S CAFE
Oceanport Avenue
Oceanport, N. J.,

Holder of Plenary Retail Consumption License C-2, issued by the Mayor and Council of the Borough of Oceanport.

CONCLUSIONS AND ORDER

Abramoff & Price, Esqs., by F. Bliss Price, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

"Defendant pleaded not guilty to the following charge:

> 'On December 1, 1956, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to persons under the age of twenty-one (21) years, viz., Stanley S---, age 18, and Otis ---, age 19; in violation of Rule 1 of State Regulation No. 20.'

"At the hearing held herein Pvt. Otis ---, 19 years of age, testified that he, Pvt. Stanley S--- and Pvt. Stanley W--- entered defendant's premises on Saturday, December 1, 1956, between 8:00 p.m. and 9:00 p.m., and that he and Pvt. Stanley S--- each purchased a pint bottle of Canadian Club Whisky from a male bartender. Pvt. Stanley W---, 17 years of age, testified that he and the other two soldiers named above entered defendant's premises on Saturday, December 1, 1956, about 'two or three hours' after supper and that each of the other two soldiers purchased a bottle of Canadian Club Whisky from a male bartender. At the hearing neither of the above witnesses was able to identify Frank P. Ratti (who is defendant's son and who was present at the hearing) as the person who had made the sale. Pvt. Stanley S--- had gone AWOL on the morning of the hearing and, hence, the Division was unable to produce his testimony.

"An ABC agent testified that on December 10, 1956, he visited defendant's premises with the three soldiers, each of whom identified the premises as the place where the bottles had been purchased. He further testified that Frank P. Ratti and a day bartender, who is the only other employee, were then present but that none of the soldiers was able to identify Frank P. Ratti or the day bartender as the person who made the sales.

"On behalf of defendant Frank P. Ratti testified that on December 1, 1956, between 4:00 p.m. and the time he closed the premises shortly after 11:00 p.m., he was the sole bartender in the premises. He denied that any of the three soldiers was in the premises at any time on said date. Sergeant Thompson, who is in the same company with Pvt. Otis --- and Pvt. Stanley S---, and who says that he knows them well, testified that (except for a short period about 4:00 p.m.) he was in defendant's premises on the day in question for the entire period between 1:00 p.m. and closing time, and Master Sergeant Steimle testified that he was in defendant's premises on the day in question for the entire period between 7:30 p.m. and closing time. Both of these witnesses testified that they did not see any of the three soldiers enter the premises at any time while they were there.

"This case presents a very close question of fact. It is well established that the failure of minors to identify the bartender is not, in itself, fatal in disciplinary proceedings (Re Cutillo, Bulletin 1133, Item 3). However, all the testimony leaves me in serious doubt as to whether the soldiers were in defendant's premises. In statements, taken on December 2, 1956, at Fort Monmouth, where all the soldiers were then stationed, Pvt. Otis and Pvt. Stanley S--- say that on the evening of December 1, 1956, they were in a theatre until 10:30 p.m. and purchased the whiskey thereafter. If those statements be true, there is grave doubt that they could have visited defendant's premises before it closed, shortly after 11:00 p.m. In said statements Pvt. Otis --- says that the whiskey was purchased at defendant's premises while Pvt. Stanley S--- says that the whiskey was purchased at another named licensed place in Oceanport. Weighing the testimony of the witnesses produced by the Division against the positive evidence of the witnesses who testified on behalf of defendant, I conclude that the Division has not established defendant's guilt by a fair preponderance of the evidence, and recommend that an order be entered dismissing the charge herein."

No exceptions to the Hearer's Report were filed within the time limited by Rule 6 of State Regulation No. 16.

After careful consideration of all the evidence herein, I have decided to adopt the conclusions of the Hearer as my conclusions in this case and shall enter an order dismissing the charge.

Accordingly, it is, on this 28th day of February, 1957,

ORDERED that the charge herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Emily Friedermann, John J. Zullo and Frank P. Zullo t/a Allstate Beverage Distributing Company, 218 River Drive, Garfield, N.J.
Application filed April 12, 1957 for person-to-person transfer of State Beverage Distributor's License SBD-209 from Emily Friedermann, t/a Allstate Beverage Distributing Company.

Nicholas Sasso and Anthony Ronzo, t/a S & R Trucking
89-18 - 188th St., Hollis, N. Y.
Application filed April 16, 1957 for Transportation License.

William Howe Davis
Director.