STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N. J. 07016

BULLETIN 2128 January 23, 1974

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
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1. NOTICE TO MUNICIPAL CLERKS AND BOARDS - NOTICE OF APPROVAL OF NEW LEGISLATION (A-2180) ELIMINATING REQUIREMENT OF BI-MONTHLY BEVERAGE TAX REPORTS.

TO MUNICIPAL CLERKS AND ABC BOARDS:

With the passage and approval of Assembly Bill No. 2180, retail licensees need no longer file bi-monthly Beverage Tax Reports. (Form R-19--"Green Sheets").

Consequently, it is of no avail to require a transferring licensee to submit certification, in accordance with Rule 3 of State Regulation No. 6, that there is no delinquency in the payment of any taxes or in the filing of any report. Thus, we are in the process of deleting this portion of the above cited Rule.

Accordingly, transfers of licenses may be approved without submission of Beverage Tax Reports or releases from the Beverage Tax Bureau.

You will shortly be in receipt of a list of those persons in your municipality who, prior to the approval of this legislation, were delinquent in any of these respects. These persons, following receipt of the list from this Division, should be refused a transfer however until such time as they are deleted from the list.

Dated: December 27, 1973

ROBERT E. BOWER
DIRECTOR

2. NOTICE TO MUNICIPAL CLERKS AND BOARDS - EFFECTIVE DATE OF DAYLIGHT SAVING TIME LAW - SUNDAY, JANUARY 6, 1974 at 2:00 A.M.

TO ALL MUNICIPAL CLERKS AND ABC BOARDS:

PLEASE ADVISE THE POLICE AUTHORITIES AND ALCOHOLIC BEVERAGE LICENSEES IN YOUR MUNICIPALITY OF THE FOLLOWING:

The President of the United States approved a bill making Daylight Saving Time effective throughout the entire United States at 2:00 A.M. on the first Sunday in January 1974, which is January 6, 1974.

Accordingly, from 2:00 A.M. Sunday, January 6, 1974 the time will be one hour in advance of the present Eastern Standard Time. At 2:00 A.M. Sunday, January 6th, clocks are to be turned ahead one hour.

On the morning of Sunday, January 6th, there will be no difference at all in the closing hour of licensed places in municipalities with an ordinance fixing the closing hour at midnight or at 1:00 A.M. or at 2:00 A.M. There will be a difference in the closing hour on the morning of Sunday, January 6th, in municipalities with an ordinance fixing the closing hour later than 2:00 A.M. Take a municipality with a closing hour of 3:00 A.M.: At 2:00 A.M. Sunday, January 6th, the licensees in that municipality will turn their clocks ahead one hour; and then, instantly, it will be 3:00 A.M. and the premises must be closed. Thus, those licensees will lose one hour.

This will be in effect until further notice.

Dated: December 27, 1973

ROBERT E. BOWER
DIRECTOR

3. APPELLATE DECISIONS - MARGATE CIVIC ASSOCIATION v. MARGATE.

Margate Civic Association,

Appellant,

v.

Board of Commissioners of the City of Margate and George Naame and Man Aam, Inc.,

Respondents.

CONCLUSIONS and ORDER

Stephen Hankin, Esq., Attorney for Appellant
David R. Fitzsimons, Jr., Esq., Attorney for Respondent Board of Commissioners
Elias G. Naame, Esq ., by Robert H. Davisson, Esq., Attorney for Respondent Naame et al.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

Appellant Margate Civic Association (hereinafter Association) appeals from action of the Board of Commissioners of the City of Margate (hereinafter Board) which approved a place-to-place transfer of the plenary retail consumption license held by George Naame and Man Aam, Inc. (hereinafter Naame) to encompass a building immediately adjacent to it. It alleges that, by virtue of the transfer, the premises would thus be enlarged so as to encompass two buildings, the license for which would constitute a double license instead of that which was initially granted. Despite a Superior Court decisional prohibition against the joinder of the buildings, the Board approved the transfer on May 17, 1973 to the end that both buildings were included under the one license.

The answer of the Board denied the allegation of the complaint, asserting that buildings adjacent to one another need not be connected physically in order to justify the grant of transfer. Respondent Naame also denied appellant's contention, adding that the transfer was not based upon a physical connection in contemplation but was considered as an enlargement of an existing use.

This appeal was held de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded all of the parties to introduce evidence and cross-examine witnesses.

Among the items offered into evidence were well-detailed photographs of the subject buildings as well as maps and sketches showing the relationship of the premises to the area. Although not in evidence at the hearing, an extract of an ordinance adopted in respondent's municipality was submitted, the effect of which ordinance was a limitation to place-to-place

transfers of licensed premises within three hundred feet of another.

Appellant introduced testimony of nine members of its association or members of allied groups, the substance of which consisted of varied complaints about the method under which the respondent Naame's premises were being operated. These complaints referred to loitering by patrons on the sidewalk, use of obscene language by loiterers, noise from patrons arriving and departing by motorcycle, and general traffic congestion. The essence of appellant's testimony was the general objection directed to municipal approval having been given to Naame which allegedly resulted in two distinct establishments, side by side, each catering to the same group of patrons. As one witness put it, the number of licenses in a municipality will be meaningless if a limitation of number can be avoided by the mere acquisition of next-door buildings in which completely new quarters may be operated as an independent establishment.

Respondent George T. Naame, Jr., testified that he has owned Maloney's Tavern for about three years. Adjacent to the tavern was a restaurant so slovenly run that it was the bane of local health authorities. Upon closure of that restaurant he purchased the building and began plans to establish a modern and efficient restaurant in its place and to connect the two buildings so that the restaurant and tavern would be one operation. Construction began and the new restaurant facility was completed, but the effort to join the two buildings structurally never ripened since appellant obtained judicial restraint against such joinder, which proscription was based upon the local zoning ordinance.

Thereafter the restaurant began operation as "Maloney's Beef and Beer;" it served roast beef sandwiches and similar dishes as well as alcoholic beverages. Naame's license covered both premises. A full service restaurant is envisioned for a future date. In the interim the restaurant can accommodate seventy-five to eighty patrons, including those seated at a sixteen-foot bar in the rear. The tavern and the restaurant are of approximately the same size, but there are no tables in the tavern nor is food served there.

Mayor William H. Ross, III, of Margate, testified on behalf of the Board and as representative of his two fellow commissioners. He graphically described his municipality as being in transition from a summer resort to a more year-around community. The surge of summer population includes many young people and they, along with others, cause general traffic congestion on the main streets, of which the street on which the licensed premises is one.

He described the city's concern with the former restaurant which Naame took over and the vast improvement that has been made to it. He and his colleagues felt that to permit the transfer by Naame to include the adjacent premises was a significant improvement to the area and that a good restaurant was needed there for the general benefit of and to the community. He and his fellow commissioners considered the transfer to be in the best interests of the public for the reasons that the new restaurant replaced an eyesore and eliminated a problem, had police approvel, would not increase traffic problems and gave the advantage of increased ratables to the city.

More graphic than testimony, a photograph of the licensed premises reveals two distinct and individual establishments: Maloney's Tavern at 23

Washington Street and "Maloney's Beef and Beer" at 27 Washington Street. Each is located in its own building separated from each other by a fence and walkway. Each establishment is individually run with its own bar, stock, employees and cash registers. To go from one to the other it would be necessary to go out of the front (or back) door of the one, onto the sidewalk if exiting from the front door, and into the front door of the other. In consequence of the absence of a physical or structural connection between the buildings, Naame has in effect created two distinct commercial establishments,each purveying alcoholic beverages under the same license.

Hence the issue, reduced to its simplest terms, is whether or not a license may embrace two adjoining but individual liquor-purveying establishments. If so, that action of respondent municipality must be affirmed; if not, a reversal must result.

Appellant bases its contentions upon the language of N.J.S.A. 33: 1-26, which states in part:

> "... A separate license is required for each specific place of business and the operation and effect of every license is confined to the licensed premises...."

Reviewing that particular section of that statute involving the right of Bamberger's Department Store in Newark to maintain different liquor-sale outlets within its store, the Superior Court held:

> "Our determination of whether Bamberger's selling areas constitute one 'specific place of business' within the intendment of the statute should be made in the light of the obvious purpose of the 'specific place of business' requirement, that is, to prevent the splitting of licenses and indirect avoidance of the maximum license limitations...."

Essex Co., etc., Stores Ass'n v. Newark, etc., Bev. Cont., 64 N.J. Super. 314, 321 (App.Div. 1960).

Respondent Board urged the applicability of the doctrine laid down in Lyons Farms Tavern v. Mun. Bd. Alc. Bev., Newark, 55 N.J. 292 (1970) which held that in a premises-enlargement application denied by the municipal issuing authority the Director must, in the absence of an arbitrary or capricious approach, affirm the action. The rationale behind respondent's argument was that, as the transfer approved for respondent Naame was merely a premises-enlargement type, the grant by the Board must be affirmed. That in the instant matter the Board granted the enlargement application, whereas in Lyons Farms, supra, the Board denied the application, was of no consequence; the legal principles to be applied are the same.

There is a wide gulf between the instant matter and the facts upon which Lyons Farms was predicated. The issue is completely different in that the enlargement in Lyons Farms was in itself legal whereas here the enlargement is challenged as illegal. In Lyons Farms the exercise of the discretion by the Board was challenged; here it is not the Board's discretion that is in challenge - it is the Board's statutory authority.

The presumed right of a licensee to have two separate buildings on two different parcels of property covered under one license takes its origin from an opinion by the first Director, then Commissioner Burnett, who in Re Dodd, Bulletin 241, Item 8, approved the request of a society to dispense liquor on one side of the highway in the summer and on the other side in the winter. While permitting that unique situation, the Director added:

> "It all depends on the facts and on how the respective buildings are used. I can conceive of situations, such as the one you present, where in the case of a club or a society it might be permissible, while if a commercial proposition merely seeking to obtain two licensed premises for the price of one, it would not. The question is largely one of good faith."

Recently the Director reversed the grant of license to extended facilities across a highway (Longview Corp. v. South Hackensack et al., Bulletin 1494, Item 2) but approved enlargement extention to adjacent premises for motel enlargement (Springdale Park, Inc. v. Andover et al., Bulletins 1702, Item 2 and 1738, Item 2) and in both matters the continuity of the operation, or lack of it, was pivotal.

In the matter sub judice, respondent Naame operates two distinct enterprises, independent of each other save ownership. While his initial motive to have the buildings structurally joined was laudable, the non-joinder left him positioned to operate the two establishments. By so doing he falls squarely within the proscription of the statute N.J.S.A. 33:1-26. While admittedly unintended, he has split his license,which has resulted in the indirect avoidance of the maximum license limitation.

The testimony of the Mayor expressing the laudable desire to have the property upgraded for better services to be offered to the citizenry, bolstered by the testimony of Naame of the expense and efforts expended to make the premises something of which the municipality can be proud, gives evidence of the purity of intent. Such intent, however, cannot vest legality to something which is so manifestly illegal.

I conclude that the appellant has sustained the burden imposed upon it by Rule 6 of State Regulation No. 15 in establishing that the action of the Board was erroneous and should be reversed. It is accordingly recommended that the action of the Board be reversed.

## Conclusions and Order

Pursuant to Rule 14 of State Regulation No. 15 written exceptions to the Hearer's report and argument in support thereof have been filed by the respondents. Answering argument to said exceptions and argument have been filed by the appellant. Additionally, oral argument was had before me in furtherance of the issues raised in the said exceptions and answers to the said exceptions.

The Hearer's report recommends a finding that because of the structural non-joinder of the building sought to be included by way of the place-to-place transfer with the presently licensed building, such transfer would cause a splitting of the license and has resulted "in the indirect avoidance of the maximum license limitation", and in violation of N.J.S.A. 33:1-26.

The Hearer notes that "Despite a Superior Court decisional prohibition against the joinder of the buildings, the Board approved the transfer on May 17, 1973 to the end that both buildings were included under the one license."

He states that, while recognizing the "laudable desire to have the property upgraded for better services to be offered to the citizenry" and "efforts expended to make the premises something of which the municipality can be proud" "such purity of intent" cannot "vest legality to something which is so manifestly illegal." He, therefore, concludes that since the two buildings are located on different parcels of property, the respondent Naame operates two separate businesses which cannot be covered by the same license.

The Hearer views the issue as follows: "Reduced to its simplest terms may a license embrace two adjoining but individual liquor-purveying establishments? If so, that action of respondent municipality must be affirmed; if not, a reversal must result."

I have carefully examined the entire record herein and as a result I am unable to agree with the Hearer's determination that the two adjoining establishments do not constitute a single licensed unit and that the grant of the said place-to-place transfer for extension of premises constitutes a violation of N.J.S.A. 33:1-26 and the local ordinance.

I

The Hearer has erred in his statement that there was a Superior Court decisional prohibition against the joinder of the said building. Although reference to the court action relates to a matter which is peripheral and not an imperative to the central issue, the respondents, in their exceptions have clarified the exact situation with respect thereto. They allege that the appellant filed a suit in the Superior Court seeking to enjoin the respondents and the Margate Building Inspector from joining the two buildings under the authority granted by the Planning Board and in accordance with certain plans upon which the Building Inspector issued a certain building permit. The Court issued an order to the defendants there, directing them to show cause why the relief requested should not be granted, pending a final hearing in the matter. The respondents filed answers, denying the allegations of the complaint. In addition, Man Aam filed a motion for summary judgment on the pleadings, which were returnable on the return day of the Order to Show Cause.

On the return date an informal conference was held with the trial judge. He directed that briefs be filed and continued the matter for two weeks.

Briefs were filed and on the continued date, at the appellant's request, the matter was continued without date.

Apparently, this matter is still pending on Man Aam's motion to dismiss. The Margate City Civic Association etc. v. George Naame, etc.et al, Superior Court of New Jersey, Law Division, (Atlantic County Docket No. 26132-72).

II

Irrespective of the ultimate outcome of the aforementioned plenary action, I find that these two buildings owned by the same owner and adjacent to each other, separated only by a narrow walkway, are operated as a single business entity, and are so constituted and operated that they may be considered as a single place of business within the meaning of the statute.

The factual complex in the instant matter is similar to that presented in Gallagher's Avalon Liquor Store et als. v. Avalon et als., (decided October 27, 1970) Bulletin 1945, Item 1. In that matter, the licensee operated a hotel and restaurant. It operated a bar in a newer building which was annexed to the hotel premises and from which waitresses could obtain drinks for the restaurant patrons. The licensed premises included the hotel, the attached barroom, and an outside pool and patio area, and a parking area.

The licensee applied for a transfer of its license to include a separate building on a property which was adjacent to the licensed premises, but which was owned by the licensee. There were no intervening public or private property rights between the two properties. The plan and application was to construct a building which would be entirely detached from the then licensed premises, and to conduct therein a bar with a package goods section. Two street level entrances were proposed for the new structure -- one to the bar area, and a larger one to the package goods area.

In affirming the action of the issuing authority which granted the said transfer, the Director said:

> "It has been well established that a transfer of a license to cover adjacent premises or an addition to existing premises, even though an additional entrance was provided thereby, does not require a new license in the old premises, and, in addition thereto, constitutes a single place of business. See Springdale Park Inc. v. Andover et al., Bulletin 1702, Item 2 and cases cited therein, aff'd on appeal by the Superior Court of New Jersey (App. Div.) 97 N.J. Super. 270."

***

"Extension and enlargement of premises in the circumstances under one single license has been consistently upheld by the Division and the courts for many years. For example, in Re Dodd, Bulletin 241, Item 8, it was ruled that a single license could cover two social halls on the opposite side of the highway--if 'so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute.' Essex County Retail Liquor Stores Assn. et al. v. Newark and Pere, Inc., 64 N.J. Super. 314, 322.

I conclude that under the facts herein, although the buildings do not physically adjoin one another, the operation of the establishment is as a single unit and hence can be considered as one specific place of business within the meaning of the statute. Re Beisch, Bulletin 81, Item 10."

A similar situation was involved in Garrigues v. Wildwood and Stuski, Bulletin 731, Item 8 where a new ell-shaped building was constructed off the licensed premises which had a separate entrance on a different street. In affirming the action of the issuing authority the Director stated:

"It is well established that an extension of the license to cover adjacent premises, or an addition to existing premises, even though an additional entrance is provided thereby, does not require a new license, if the old premises and the addition thereto constitute a single place of business. New Jersey Licensed Beverage Assn. et al. v. Camden et al., Bulletin 215, Item 5."

This principle embodying the Director's interpretation of the statute has been followed since the early days of the administration of the Alcoholic Beverage Law. Thus, in Re Dodd, supra, The Director considered an appeal from the issuance of a license to cover two properties owned by the applicant which was separated by a public highway. The then-Commissioner stated:

"Where two separate buildings constitute the premises sought to be licensed, separate licenses will, in general, be necessary. The reason is that generally speaking each building will constitute a separate place of business. For each specific place of business (R.S. 33:1-26; Control Act, Sec.23), a separate license is required. But it does not necessarily follow that merely because there are separate buildings, separate licenses will be necessary. The buildings may be so arranged and operated that they could be said to constitute a single place of business within the meaning of the statute.

> See by way of illustration Re Beisch, supra which contemplates the licensing under one license of separate buildings in an amusement park.
>
> The same principle may be applied, notwithstanding the premises are divided by a public highway, if the whole thing is arranged in such manner that it could be said to constitute a single licensed premises and be managed as a single enterprise.
>
> It all depends on the facts and on how the respective buildings are used. I can conceive of situations, such as the one you present, where in the case of a club or a society it might be permissible, while if a commercial proposition merely seeking to obtain two licensed premises for the price of one, it would not. The question is largely one of good faith.
>
> Of course, the properties must all comprise the same tract. Barring public roads, they must be adjacent. Two pieces of property could not be said to constitute the same premises where property belonging to others intervened." (Emphasis supplied.)

The Hearer cites Springdale Park, Inc. v. Andover Township and Viebrock, in Bulletins 1702, Item 2 and 1738, Item 2, Aff'd 97 N.J. Super. 270 (App. Div. 1967), for the principle that the continuity or lack of continuity of the operation of the facility sought to be extended was pivotal. In Springdale Park, the Director affirmed the action of the Township which granted a place-to-place transfer of a license to cover a detached building on a lot adjacent to the licensed premises (a motel) which was leased by the licensee. The building was about thirty feet distant from the motel, was formerly used as a storage facility, and did not strictly conform structurally with the principal motel building. The Director found that:

> "It has been well established that a transfer of the license to cover adjacent premises or an addition to existing premises, even though an additional entrance was provided thereby, does not require a new license in the old premises and the addition thereto constitutes a single place of business. Essex County Retail Liquor Stores Association et al. v. Newark and Pere, Inc., Bulletin 1302, Item 2; New Jersey Licensed Beverage Assn. et al v. Camden and Viviani, Bulletin 215, Item 5; Garrigues v. Wildwood and Stuski, supra. Cf. Essex Co. etc., Stores Ass'n v. Newark, Bev. Cont., 64 N.J. Super. 314, 322."

Thus, it is clear that each case must be determined in the sound discretion of the local issuing authority on a case-to-case

basis, after a full consideration of the underlying facts. The test is whether the public good requires it. Cf. Blanck v. Magnolia, 38 N.J. 484, 491 (1962).

III

The Hearer's report asserts that Maloney's Tavern, the original licensed premises, serves no food, but that the building which is operated as "Maloney's Beef and Beer" to which the license is sought to be extended, serves roast beef sandwiches and similar dishes. Both buildings are separated from each other by a walkway. He further sets forth that each establishment is individually run with its own bar, stock, employees and cash registers. In consequence of the absence of a physical or structural connection between the buildings, and because of the type of operation "two distinct commercial establishments are found to be established under the same license."

This finding is contradicted by the testimony of George T. Naame, Jr., the president of Man Aam, Inc., who testified that the business is operated as a single unit; that employees were exchanged between the two buildings; that the receipts of both were mingled; that there was but one bank account; that there was but one employer; that employees were paid, hired and fired only by one employer (Man Aam). There is only one mercantile licensee--Man Aam.

Under the facts and circumstances herein, I disagree with the Hearer that these are two separate and distinct units but are, in fact, operated as a single unit. The fact that one unit may serve only alcoholic beverages (a point emphatically denied by respondent Man Aam) and the other serves food in addition to alcoholic beverages is not the controlling factor.

It is common experience that restaurants, motels or similar enterprises, have licensed premises containing a bar which serves only alcoholic beverages and the separate adjacent building which serves full meals. Nevertheless, they have been held to constitute a single unit. Since these cases all involve a "purity of intent" the discretionary action of the local issuing authority must be given great weight. Passaic County Retail Liquor Dealers Ass 'n v. Paterson, 37 N.J. Super. 187.

IV

A distinction must be made between a place-to-place transfer and an extension of premises transfer. While procedurally both actions are initiated by an application for a place-to-place transfer, a place-to-place transfer may involve the introduction of a new license into a specific area. On the other hand, an extension of premises transfer does not involve such introduction.

The relevant ordinance reads, in pertinent part, as follows:

> "That neither a plenary retail consumption license nor a plenary retail distribution license

> shall be transferred to any premises located within a circle having a radius of Five Hundred (500) feet, measured from the corner point at the main entrance of any existing licensed premises."

Thus, in construing the true intent of the local ordinance it is clear that the ordinance had in mind only the introduction of a new license as it relates to the distance requirements. Furthermore, great weight should be given to administrative interpretation of similar ordinances and of N.J.S.A. 33:1-26 by this Division and the courts. A contrary interpretation would produce an absurd result. The members of the Board testified that they interpreted the ordinance to relate to the introduction of a new license, and it did not apply to an extension of an existing license. Accordingly, I find that the administrative interpretation of the said ordinance and the statute does not support the Hearer's conclusion.

As the Hearer forthrightly concedes Man Aam had upgraded the property to which the transfer was granted, and has gone to considerable expense and efforts to make "something of which the municipality may be proud."

The Mayor described the municipality as being in transition from a summer resort to a more year-round community. He described the city's concern with the former restaurant which Namme took over and the vast improvement that has been made to it. The members of the Board felt that the said transfer to include the adjacent premises was a significant improvement to the area, and that a good restaurant was needed there for the general benefit of and to the community.

The Hearer further quotes the Mayor as stating that he and his fellow commissioners "considered the transfer to be in the best interests of the public for the reasons that the new restaurant replaced an eyesore and eliminated a problem, had police approval, would not increase traffic problems, and gave the advantage of increased ratables to the city." The Hearer admits that all of these factors "gave evidence of the purity of intent."

## VI

Since I have determined that the Board's action was legally proper, the critical issue is whether it acted reasonably and in the valid exercise of its discretion. In the consideration of matters relating to the transfer of licenses, its responsibility is "high", its discretion is "wide" and its guide is the "public interest". Lubliner v. Paterson, 35 N.J. 428, 446 (1960); see 2 Davis Administrative Law at p.456. The Director's function on appeals of this nature is not to substitute his personal opinion for that of the issuing authority but merely to determine whether

reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Freehold Suburban Tavern Owners Assn. et als v. Howell and Ho-Jan Corp., Bulletin 1687, Item 1; Broadley v. Clinton and Klingler, Bulletin 1245, Item 1; Paul v. Brass Rail Liquors, 31 N.J. Super. 211.

In Ward v. Scott, 16 N.J. 16 (1954), a Supreme Court decision involving an appeal from a zoning ordinance, cited in Fanwood v. Rocco and Div. of Alcoholic Beverage Control, 59 N.J. 306, the following general principles were stated:

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

In the Rocco case, supra,it was stated, at p.321:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof. '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original application for license, as to said premises.' 'N.J.S.A. 33:1-26. As we have seen, and as respondent admits, the action of the local board may not be reversed by the Director unless he finds 'the act of the board was clearly against the logic and effect of the presented facts.' Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra, 135 N.J.L. at page 511...."

The guidelines were recently re-stated by the Supreme Court, after a penetrating review of the facts and law, in Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Control,55 N.J. 292 (1970). There, the court said at p.302, 303:

> "Responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or so as to cover enlarged premises is primarily committed to municipal authorities.***In allocating spheres of operation between the State Division and municipal authorities the Legislature wisely recognized that

> ordinarily local officials are thoroughly familiar with their community's characteristics, the nature of a particular area and the dangers associated with the sale of alcoholic beverages. Consequently it provided for acceptance of local sentiments in a number of fields of liquor control.*** Obviously when the lawmakers delegated to local boards the duty 'to enforce primarily' the provisions of the act it invested them with a high responsibility, a wide discretion, and intended their principal guide to be the public interest.
>
> ***
>
> The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record. On judicial review the Director's factual findings as well as his ultimate determination ordinarily are accepted unless unreasonable or illegally grounded."

Thus, one should approach the present problem with a sympathetic view to the reasons upon which the local authority grounded its decision, and with an eye to sustaining the local decision so long as the exercise of its judgment and discretion was reasonable. Fanwood v. Rocco, 33 N.J. at 414, and cases cited therein.

I find, under the facts herein, that although the buildings do not physically adjoin one another, the operations of these establishments are operated as a single unit, and hence can be considered as one single place of business within the meaning of the statute. Re Beisch, Bulletin 81, Item 10; Re Gallagher's, supra.

Thus, I find that the said transfer was not violative of N.J.S.A. 33:1-26 or of the subject local ordinance.

In sum, I conclude that the respondent Board acted in the circumspect and reasonable exercise of its discretionary authority on granting the said transfer. Therefore, the recommendation of the Hearer to reverse the action of the Board is disapproved. I shall enter an order affirming the action of the Board and dismissing the appeal.

Accordingly, it is, on this 9th day of November 1973,

ORDERED that the action of the Board of Commissioners of the City of Margate in approving the place-to-place transfer herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Robert E. Bower
Director