

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

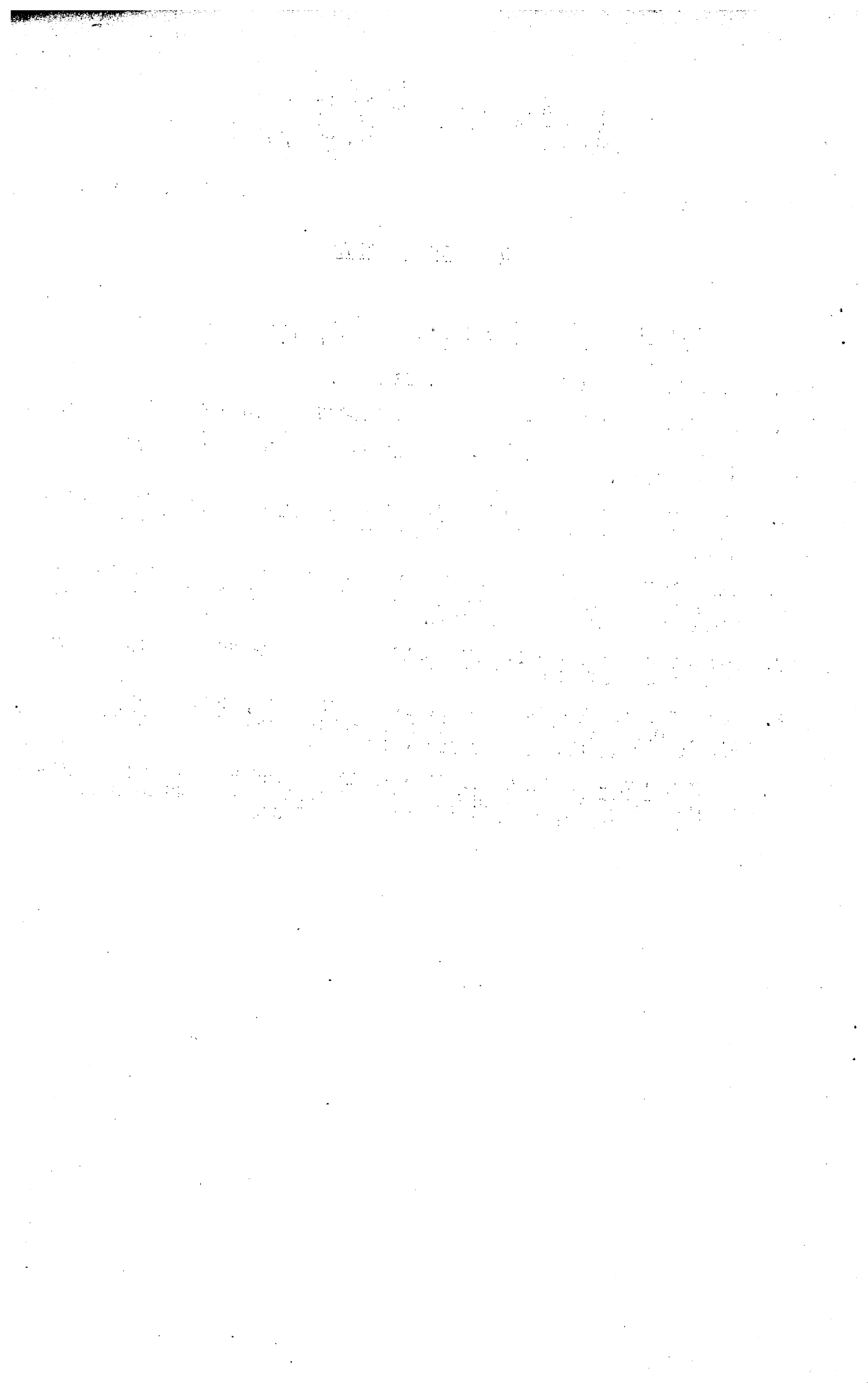
BULLETIN 951

DECEMBER 29, 1952.

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BULLETIN 951

DECEMBER 29, 1952.

1. COURT DECISIONS - GREENSPAN v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET AL. - ORDER OF DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-412-51

IRVING GREENSPAN and AARON GREENSPAN,)

Appellants,)

-vs-)

DIVISION OF ALCOHOLIC BEVERAGE CONTROL; DEPARTMENT OF LAW AND PUBLIC SAFETY OF NEW JERSEY; HUDSON BERGEN COUNTY RETAIL LIQUOR STORES ASSN., a New Jersey corporation; and JERSEY CITY RETAIL LIQUOR DEALERS ASSOCIATION, a New Jersey corporation,)

Respondents.)

Argued, October 14, 1952; decided, December 15, 1952.

Before Judges Freund, Stanton and Conlon.

Mr. Raymond Chasan argued the cause for the appellants.

Mr. Samuel B. Helfand for the respondent Division of Alcoholic Beverage Control (Mr. Theodore D. Parsons, Attorney-General, attorney).

Mr. Samuel Moskowitz for the respondent Hudson Bergen County Retail Liquor Stores Assn. (Mr. Harry Krieger, of counsel).

Mr. Sidney Simandl for the respondent Jersey City Retail Liquor Dealers Association (Mr. Harry Krieger, of counsel).

FREUND, S.J.A.D.

On May 14, 1951, the Board of Alcoholic Beverage Control of the City of Jersey City issued a transfer of a plenary retail consumption license, expiring June 30, 1951, from George L. Paris as Receiver of Empire Restaurant, Inc., to Irving Greenspan and Aaron Greenspan, from premises No. 754 Newark Avenue to No. 678 Newark Avenue, Jersey City. The respondents, Hudson Bergen County Retail Liquor Stores Association and Jersey City Retail Liquor Dealers Association, New Jersey corporations, appealed to the Division of Alcoholic Beverage Control, within the thirty days' time prescribed by statute. Pending determination of the appeal, the Greenspans applied to the local board for a renewal of the transferred license, which renewal was granted, to expire on June 30, 1952. No appeal was taken. Subsequently, the Division of Alcoholic Beverage Control ordered both the transfer and the renewal licenses cancelled.

On this appeal, two points are argued: (1) that the respondents are not proper parties to prosecute an appeal within the intent of R. S. 33:1-22, and (2) that the cancellation of the renewal license was erroneous because no appeal was taken from its issuance, as required by statute.

R. S. 33:1-22 provides that ". . . any taxpayer or other aggrieved person opposing the issuance of such license may, within thirty days after the issuance of such license, appeal to the Commissioner from the action of the issuing authority. . . ." It is admitted that the respondent associations are not taxpayers. The appellants contend that the respondents are not aggrieved persons. This point is without merit in view of the ruling of the former Court of Errors and Appeals in *Hudson Bergen &c. Assn. v. Hoboken*, 135 N. J. L. 502, (1947), wherein the identical question was considered. The Court held that inasmuch as the purpose of the organization is to regulate and control the liquor traffic, it is in harmony with the objective of the statute and is sufficiently interested in the subject matter to constitute it an "aggrieved person" within the meaning of the statute. The appellant argues that this ruling has been inferentially overruled by *New Jersey Bankers Assn. v. Van Riper*, 1 N. J. 193, (1948). There, the plaintiff was a voluntary unincorporated association organized to advance the general welfare and interests of banks and banking institutions, although it was not itself engaged in the banking business. The Court held that the plaintiff was not legally competent to maintain an action under the Declaratory Judgments Act, R. S. 2:26-66 et seq., now N.J.S. 2A:16-50 et seq., because, due to the absence of other necessary parties defendant, a declaratory judgment would not have its intended tranquilizing function.

In *Bergen County Pharmaceutical Assn. v. Bardin*, 9 N. J. Super. 480, (Ch. 1950), the plaintiff, a non-profit corporation, brought suit under the Fair Trade Act, R. S. 56:4-3 et seq. The defendant's motion to dismiss the complaint on the ground that the plaintiff had no right to maintain the suit was granted. It was held that the Fair Trade Act prescribes who may invoke the injunctive process under the Act, and that the plaintiff association did not come within the category.

Since the plaintiff in the *Hudson Bergen &c. Assn. v. Hoboken* case, supra, is a respondent here, that decision holding the association to be an "aggrieved person" within the construction of the statute is controlling. It has not been overruled by, nor is it inconsistent with *New Jersey Bankers Assn. v. Van Riper*, supra, which dealt with the Declaratory Judgments Act, nor with *Bergen County Pharmaceutical Assn. v. Bardin*, supra, which dealt with the Fair Trade Act.

The appellant further contends that the cancellation of the renewal license was erroneous because no appeal was taken from its issuance as required by statute, and that the Division was without jurisdiction notwithstanding the provisions of Rule 13, Regulation No. 15, promulgated by the Director and relied on by the Division. The rule provides: "When appeal is taken in any matter, any transfer or extension or renewal of any license involved therein shall be subject to the ultimate outcome of such appeal, unless otherwise ordered by the Director for proper cause."

The appellant argues that the foregoing rule is invalid because its subject is not within the delegated powers spelled out in the statute, and that there is no power in the Commissioner to regulate appeals since not specifically granted. The pertinent statute, R. S. 33:1-39, provides as follows:

"The commissioner may make such general rules and regulations and such special rulings and findings as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages and the enforcement of this chapter in addition thereto, and not inconsistent therewith, and may alter, amend, repeal and publish the same from time to time.

"Such rules and regulations may cover the following subjects: and such other matters whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this chapter."

We deem the appellants' contention without merit -- certainly the power to regulate appeals falls within the category of "such other matters whatsoever." Were we to hold otherwise, a useless duplicity of proceedings would ensue. A review of the chronology of this matter will show the logic of this construction. The municipality granted the transfer of the license on May 14, 1951, to expire June 30, 1951. The respondents appealed. While the appeal was pending, the municipality renewed the license for the year ending June 30, 1952. The appeal from the issuance of the transferred license was not decided until March 26, 1952, when even the question of the validity of the renewal license was about to become moot. Since the right of renewal rests upon the existence of a valid license, if the Division found invalid and cancelled the transfer of a license, it could hardly affirm the renewal of that license. Accordingly, the only realistic approach to the question is to hold the purpose of Rule 13, Regulation No. 15 definitely within the statutory intention, in that such a matter is necessary to the fair administration of the Alcoholic Beverage Law. The rule, certainly as here administered, is merely a rule of procedure; it does not enlarge the statutory powers of the Division, nor deprive the parties of their rights to a determination on the merits; it merely avoids an unnecessary plurality of suits.

The order of the Division of Alcoholic Beverage Control setting aside the issuance of the transferred license and of the renewal license is affirmed.

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2. APPELLATE DECISIONS - CESAR v. TRENTON.

HENRY CESAR, trading as CESAR'S)
CAFE,

Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE)
CITY OF TRENTON,)

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Appellant.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's imposition of the following special conditions (R. S. 33:1-32) upon the granting of a 1952-1953 license renewal to appellant:

- "1. That the licensed premises is to close at twelve midnight every night.
- "2. That no music of any nature or kind be played upon or in said licensed premises, excepting music furnished by radio or television."

Prior to its renewal granting action of June 26, 1952, respondent had received written objections to the granting of a renewal to appellant and had conducted a public hearing on June 19, 1952, at which all interested persons were given an opportunity to be heard.

Upon the filing of the appeal on June 30, 1952, an order was entered staying the operation of the special conditions until entry of a further order herein. Respondent's resolution of June 26, 1952, renewing appellant's license subject to the hereinabove-quoted special conditions was not received at the Division's offices until July 7, 1952.

The Petition of Appeal alleges that the conditions imposed by respondent are oppressive, unreasonable, capricious, discriminatory and unlawful.

On behalf of respondent, five persons resident in the immediate vicinity of appellant's premises testified that during the past year numerous disturbances occurred on the outside of said premises and that many intoxicated persons left appellant's premises and committed nuisances in an alley adjoining those premises. All five of these witnesses testified that the orchestra music played on appellant's premises between 11:00 p.m. and 2:00 a.m. on Friday, Saturday and Sunday nights was an extreme annoyance to them and to members of their families.

Officer McDonough of the Trenton Police Department testified that during the six months prior to the hearing he had received a total of eight or nine calls to visit appellant's premises because of complaints concerning disturbances and loud noise. Officer McDonough and fellow Police Officer Morrison testified that during the early part of the 1951-1952 licensing year orchestra music in appellant's premises could be heard at least a half-block away from said premises.

Mrs. Edith H. Moore, for eighteen years a license investigator for the City of Trenton, testified that she had visited appellant's premises numerous times during the license year 1951-1952 and that many times she had heard loud music emanating from appellant's premises after midnight. Among Mrs. Moore's numerous written Reports (to Trenton's Director of Public Safety, Andrew J. Duch) indicative of appellant's "Unsatisfactory Supervision" of the licensed establishment, is the following:

"4/11/52 - Friday - Remained on premises over an hour...
Music very loud. Observation on exterior - activity of patrons leaving this licensed premises suggestive and disgusting. Music could be heard on Centre Street.
 Licensee has had numerous warnings regarding this condition."

On behalf of appellant, three persons who reside in the immediate vicinity, two persons who reside some distance away but who patronize appellant's premises, and four of appellant's employees testified that the licensed premises have always been conducted in a proper manner and that the music has never been unnecessarily loud or annoying to them. Anthony DiCesare, who is a brother of appellant and who is employed by him as manager and bartender, testified that the licensed premises have been conducted in a proper manner. He admitted, however, that he had called the police three or four times during the past licensing year, and stated that "the only noise is when people go out, it might be a couple of minutes." He stated that he knew nothing about the alleged conditions in the alley. This witness further testified that prior to January 1, 1952, a band, consisting of five or six pieces, had played upon the licensed premises, but stated that since February 1952 the only music played upon the licensed premises was furnished by a pianist and a drummer.

Our State Alcoholic Beverage Law (in R. S. 33:1-40) empowers the governing body of each municipality to limit, by ordinance, the hours between which the sale of alcoholic beverages at retail may be made. It would seem clear that the intentment of the statutory authorization in this regard in R. S. 33:1-40 (taken together with R. S. 33:1-94) is that a given municipality's hours for the sale of alcoholic beverages may be fixed by ordinance only and not by a special condition under R. S. 33:1-32. It has long been held that municipal hours of sale and closing must be uniform with respect to all licensees of the same class. (See Re Grillo, Bulletin 253, Item 4; Re Harrington, Bulletin 118, Item 13; Re Lamson, Bulletin 118, Item 6; Re Wenzel, Bulletin 19, Item 7.)

Pursuant to Trenton's alcoholic beverage ordinance tavern owners are permitted to remain open for business until 2:00 a. m. week round. I find that respondent had no jurisdiction to impose the "midnight closing" special condition herein on appeal. That special condition is disapproved and held to be of no binding force or effect.

In Betsy Ross, Inc. v. Union Township, Bulletin 435, Item 12, an 11:00 p.m. curfew was imposed upon a single licensee in the face of an ordinance fixing the municipal closing hour at 3:00 a.m. The special condition in that case may have been an expedient and happy solution but there is serious doubt, even under the peculiar circumstances there present, as to its legal soundness. In any event the situation was entirely different from that in the appeal before me. And quite apart from the legal question involved, it is to be remarked that in the cited case the then Acting Commissioner was aware of the very real danger courted when he stated (Bulletin 435, Item 12, page 13):

"It should be pointed out that the imposition of this type of condition in a license is, however, to be sparingly and most cautiously exercised. Otherwise, the resultant confusion of diversified conditions will render nugatory practical enforcement of local regulations."

As already indicated, the second special condition herein appealed from is:

"That no music of any nature or kind be played upon or in said licensed premises, excepting music furnished by radio or television."

I find no merit in the allegation that said condition is oppressive, unreasonable, capricious, discriminatory and unlawful. From the probative and convincing testimony herein, I am unable to find that this special condition was not fairly and properly imposed. The special condition is approved.

Accordingly, it is, on this 4th day of December, 1952,

ORDERED that the action of respondent imposing the "midnight closing" special condition be and the same is hereby reversed; and it is further

ORDERED that the action of respondent imposing the special condition prohibiting the playing of music other than music furnished by radio or television be and the same is hereby affirmed, and that the appeal from respondent's imposition of said special condition be and the same is hereby dismissed.

DOMINIC A. CAVICCHIA
Director.

3. APPELLATE DECISIONS - WAYS AND WITTEBORN v. EGG HARBOR TOWNSHIP.

MILTON WAYS and HARRY WITTEBORN,)
Appellants,)
-vs-)
TOWNSHIP COMMITTEE OF THE TOWNSHIP)
OF EGG HARBOR, and RUSSELL'S BAR)
AND RESTAURANT, INC., and LORETTA)
G. FORCE and HARRY E. FORCE, trading)
as SEA SNACK RESTAURANT,)
Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Coulomb, McAllister & Hunter, Esqs., by Robert N. McAllister, Esq.,
Attorneys for Appellants.
Harry Souchal, Esq., Attorney for Respondent Township Committee.
William Charlton, Esq., Attorney for Respondent Russell's Bar and
Restaurant, Inc.
Morgan E. Thomas, Esq., Attorney for Respondents Loretta G. Force and
Harry E. Force, trading as Sea Snack Restaurant.

BY THE DIRECTOR:

This is an appeal from respondent Committee's action on July 24, 1952, whereby it granted the application of respondent Russell's Bar and Restaurant, Inc. for a renewal of its plenary retail consumption license (for the 1952-53 license period) for premises on Verona Avenue, between Brenta and Sorrento Avenues, West Atlantic City, Egg Harbor Township, "for the sole purpose of a transfer to another

person and other premises", and also from its action on July 24, 1952, whereby it granted the application of respondents Forces for a transfer of such renewed license to themselves and to premises at Margate Traffic Circle and Black Horse Pike, Egg Harbor Township.

Appellants allege that such action was illegal and should be reversed for the following reasons:

"(a) That the license for the license year July 1, 1951 to June 30, 1952, was never actually issued by the Clerk of Egg Harbor Township up to July 24, 1952;

(b) That the Resolution of the Township of Egg Harbor, #167, passed at a meeting held on July 25, 1951, providing that a license be granted for period July 1, 1951 to June 30, 1952 to respondent, Russell's Bar and Restaurant, Inc., subject to express condition that the license shall not be issued unless and until the premises are first completed in keeping with the filed and approved plans and specifications, was never complied with by said respondent in that the new premises to be constructed according to plans and specifications then on file with the Township Clerk was never completed;

(c) That Resolution #165, passed by the Township Committee at a meeting held June 30, 1952, amending Resolution #167 aforesaid and authorizing the issuance of said license for said premises, effective immediately, for the sole purpose of the granting of a renewal application for license year 1952-1953 is illegal and void for the reason that it violates R. S. 33:1-12.13 in that the respondent, Russell's Bar and Restaurant, Inc., did not own, control or have the right of possession by lease or otherwise of the premises sought to be licensed, allegedly situate at Verona Road, between Brenta and Sorrento Roads, West Atlantic City, New Jersey, and therefore the attempted renewal of said license under R. S. 33:1-12.13 does not cover the same licensed premises;

(d) That the application for renewal for license year 1952-1953 and the subsequent issuance of a license for said term is likewise illegal for the reason that respondent, Russell's Bar and Restaurant, Inc., does not own, control or have the right of possession by lease or otherwise of the premises sought to be licensed for said term;

(e) That the issuance of said license was in effect the issuance of a new license and therefore illegal and void in violation of R. S. 33:1-12.14;

(f) That since April 25, 1951, when the buildings at said premises were totally destroyed by fire, there were no premises to be licensed since the same was a vacant lot;

(g) That the failure of Russell's Bar and Restaurant, Inc. to apply for a renewal of its license was not due to circumstances beyond its control;

(h) That renewal, issuance and transfer of said license or licenses were illegal and void in that the same constituted a mere subterfuge, to circumvent and evade the provisions of Chapter 94 of the Laws of 1947 limiting the number of licenses to be issued by said statute."

The facts are not in dispute. Respondent Russell's Bar and Restaurant, Inc. held a plenary retail consumption license for premises on Verona Avenue, between Brenta and Sorrento Avenues, West Atlantic City, Egg Harbor Township, on April 25, 1951, at which time the building where the licensed business had been conducted was entirely destroyed by fire. Thereafter the licensee filed with the local issuing authority (respondent Committee) plans and specifications for new premises to be constructed at the same location and, on July 25, 1951, respondent Committee passed a resolution renewing the license for the 1951-52 license period, "... subject to the express condition that the license shall not be issued unless and until the premises are first completed in keeping with the filed and approved plans and specifications". Up to this point, the procedure followed by the Committee was legal. Passarella v. Board of Commissioners, 1 N. J. Super. 313 (1949). Respondent Russell's Bar and Restaurant, Inc. did not complete (nor, for that matter, even commence) construction of new premises. On the contrary, by deed dated February 28, 1952, and recorded the following day, said respondent conveyed the real estate which had been the site of its licensed premises, as aforementioned, to one Edith Brooke Martin, after which time said respondent had no interest in or right to possession of said premises. In fact, it was admitted that a motel has been conducted upon said premises.

Thereafter, respondent Russell's Bar and Restaurant, Inc. filed an application for renewal of its 1951-52 license for the current (1952-53) license period for the same premises (although it had neither title nor right to possession thereof). On June 30, 1952 respondent Committee amended its previous resolution of July 25, 1951 and issued the license for the 1951-52 licensing year for the sole purpose of permitting the requested renewal thereof. Respondents Forces filed an application for transfer of the renewed license from respondent Russell's Bar and Restaurant, Inc. to themselves (Forces) and to new premises at Margate Traffic Circle and Black Horse Pike. Appellants filed objections to both the proposed renewal and the proposed transfer and, on July 24, 1952, hearings were held by respondent Committee, at the conclusion of which the renewal was granted to Russell's Bar and Restaurant, Inc. for its former premises at Verona Avenue for the sole purpose of permitting a place-to-place and person-to-person transfer, and the person-to-person and place-to-place transfer applied for by respondents Forces was also granted.

All of the respondents contend that, from time to time, appellants have taken inconsistent positions with respect to the basis of their objections, first objecting only to the transfer to a new location and later objecting only to the issuance of the license for the purpose of the renewal, as aforementioned, and for this reason respondents question appellants' bona fides. Respondents also contend that appellants have abandoned certain of their grounds of appeal and that certain questions raised by the appellants are now moot. On the record there would appear to be little merit in either of these contentions. In any event, in view of the jurisdictional defect hereinafter set forth, it is unnecessary to consider the aforementioned questions raised by respondents.

Since respondent Russell's Bar and Restaurant, Inc. had no right to possession of the premises on Verona Avenue (or any other premises) when the application for the 1952-53 "renewal" was filed or when the license was "issued", respondent Committee had no jurisdiction to grant such "renewal". Terlizzi v. Union City et al., Bulletin 860, Item 2; Montclair Athletic Club v. Montclair, Bulletin 859, Item 1. "It is well established that an applicant for a liquor

license must have possession or right to possession of, or interest in, the premises sought to be licensed. If the applicant does not have possession of, or right to possession, or any interest in, the premises, no license may be lawfully issued." Re Haneman, Bulletin 449, Item 4. This principle was first enunciated in Procoli v. Trenton, Bulletin 28, Item 6. It has been consistently followed to this date: Caplan v. Trenton, Bulletin 29, Item 11; Re Pennsauken, Bulletin 48, Item 8; Re Sakin, Bulletin 67, Item 13; White Castle, Inc. v. Clifton, Bulletin 97, Item 13; D'Annibale v. Fredon, Bulletin 139, Item 7; Agzigian v. Pequannock, Bulletin 216, Item 1; Eavenson v. South Orange, Bulletin 283, Item 8; Vasapoli v. Plainfield, Bulletin 301, Item 7; Licata v. Camden, Bulletin 342, Item 1; Hindin v. Egg Harbor, Bulletin 399, Item 1; Gimber v. Galloway, Bulletin 427, Item 9; Bodrato v. Northvale, Bulletin 433, Item 1; Berry v. Newark, Bulletin 433, Item 8; Alberts v. Roselle, Bulletin 444, Item 1. Terlizzi v. Union City et al., supra.

Respondents endeavor to support the action of respondent Committee by relying upon Atlantic County Licensed Beverage Association et al. v. Township of Hamilton et al., Bulletin 879, Item 5 and Passarella v. Board of Commissioners, supra. Neither of said cases are in pertinent point because in both of those cases the applicant had right to possession of the premises sought to be licensed at the time the license application was filed and at the time said license was granted. It is true, as contended by respondents, that (1) the issuance, renewal or transfer of a retail liquor license rests, in the first instance, in the sound discretion of the local issuing authority (Biscamp v. Teaneck, 5 N. J. Super. 172 (1949)); (2) that unless such issuing authority clearly abuses its discretion its action should not be disturbed (Zicherman v. Driscoll, 133 N. J. L. 586 (Sup. Ct. 1946)) and (3) that the State Limitation Law (R. S. 33:1-12.13 et seq.) was not intended unreasonably to interfere with the transfer or renewal of existing licenses (Passarella v. Board of Commissioners, supra). It is also true that the issuing authority's discretionary powers are very broad and that, on appeal, the burden of establishing that its action was erroneous and should be reversed rests with the appellant (Rule 6, State Regulations No. 15). Obviously, however, the presumption in favor of the validity of the issuing authority's action is not conclusive. Cf. Olko v. Saddle River et al., Bulletin 914, Item 3. On the contrary, its action is subject to review by the Director on appeal, and where, as here, such action was beyond its jurisdiction it must be set aside. Terlizzi v. Union City et al., supra.

In view of the foregoing it is unnecessary to consider the other matters set forth in the petition of appeal.

Inasmuch as the renewal of the license was illegally granted, I shall set aside both the renewal-granting resolution of July 24, 1952 and the resolution of the same date granting the transfer from respondent Russell's Bar and Restaurant, Inc. to respondents Loretta G. Force and Harry E. Force and from premises on Verona Avenue to premises at Margate Traffic Circle and Black Horse Pike. Terlizzi v. Union City et al., supra.

Accordingly, it is, on this 4th day of December, 1952,

ORDERED that the respondent Township Committee's action of July 24, 1952, whereby it purported to renew the license in question for the present license year for premises on Verona Avenue, be and the same is hereby reversed; and it is further

ORDERED that the respondent Township Committee's action of July 24, 1952, whereby it purported to transfer the license from Russell's Bar and Restaurant, Inc. to Loretta G. Force and Harry E. Force and from premises on Verona Avenue to premises at Margate

Traffic Circle and Black Horse Pike be and the same is hereby reversed; and it is further

ORDERED that the license now held by Loretta G. Force and Harry E. Force for premises at Margate Traffic Circle and Black Horse Pike, be and the same is hereby cancelled and declared null and void; that all operation under the aforesaid license cease immediately; and that the license certificate be surrendered forthwith to the Township Committee of the Township of Egg Harbor for cancellation.

DOMINIC A. CAVICCHIA
Director.

4. STATE REGULATIONS NO. 34 - CONSTRUCTION OF RULE 1 AS TO ITEMS "IN TRANSIT".

TO ALL MANUFACTURERS AND WHOLESALERS OF ALCOHOLIC BEVERAGES OTHER THAN MALT ALCOHOLIC BEVERAGES:

Recent complaints, investigations and inquiries received from manufacturers and wholesalers have indicated that there exists some confusion as to whether or not alcoholic beverages, other than malt alcoholic beverages, physically delivered at the licensed premises of a purchaser on one date may be deemed, within the contemplation of Rule 1 of State Regulations No. 34, to have been "sold" on any other date, such as the date when loaded on the seller's truck or delivered to a carrier for ultimate delivery to the purchaser.

It has been the long established interpretation of my predecessors that, at least so far as Regulations No. 34 are concerned, alcoholic beverages are deemed to be sold at the time and on the date when such beverages are physically delivered at the licensed premises of the purchaser. I concur in that interpretation and hereby reaffirm it.

Accordingly, all concerned are advised that, within the intendment of Rule 1 of State Regulations No. 34, alcoholic beverages other than malt alcoholic beverages must be sold at the wholesale price in effect on the date when physical delivery of the merchandise is made to the purchasing wholesaler or retailer, and that there is no "in transit" exception to such requirement.

DOMINIC A. CAVICCHIA
Director.

Dated: December 22, 1952.

5. MORAL TURPITUDE - COMMERCIALIZED GAMBLING - CRIME OF POOL SELLING AND BOOKMAKING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

December 15, 1952.

Re: Case No. 637

On April 13, 1951, subject pleaded guilty to a charge of pool selling and bookmaking (taking bets on horses) and as a result thereof was fined \$150.00 and costs and sentenced to three months in a county prison. It was provided in the sentence that if the fine imposed and costs of prosecution were paid, the period of the prison sentence would be reduced to fifteen days. The fine and costs were duly paid and as a consequence thereof subject was released from the penal institution at the expiration of fifteen days.

The above conviction followed subject's arrest on March 9, 1951, when law enforcement officers conducted a raid upon premises in which subject and others were allegedly participating in gambling activities. At the hearing herein subject testified that after he was apprehended, he pleaded guilty to a charge of maintaining a gambling establishment. However, he denied that he ever engaged in gambling, but stated that he entered a plea of guilty to the charge because of his desire to protect the real offender who had a previous criminal record for gambling. However, petitioner may not in this collateral proceeding attack or contradict his own confessional plea. Re Case No. 319, Bulletin 398, Item 8.

The explanation given by subject that the plea was entered as a "chivalrous" gesture to the guilty party and not from any awareness of guilt, does not, under the circumstances, ring true.

From a review of all of the evidence, I am satisfied that subject was engaged in gambling and bookmaking as a principal. Therefore, I conclude that the crime of pool selling and bookmaking, to which he pleaded guilty on April 13, 1951, involves the element of moral turpitude. Cf. Re Case No. 626, Bulletin 892, Item 9; Re Case No. 635, Bulletin 946, Item 10.

I recommend, therefore, that subject be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude and hence is disqualified from being associated in any capacity with the alcoholic beverage industry; and that, in the opinion of the Director, any licensee in this State who employs him, or permits him to be associated in any capacity with his business, would subject his license to suspension or revocation. R. S. 33:1-26.

Clarence E. Kremer
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

6. MORAL TURPITUDE - COMMERCIALIZED GAMBLING - CRIME OF ENGAGING IN AN ILLEGAL LOTTERY AS A MINOR EMPLOYEE HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

December 18, 1952.

Re: Case No. 638

Applicant, a non-resident of New Jersey, seeks a determination as to whether or not he is ineligible, in the opinion of the Director, for employment by the holder of a liquor license in New Jersey by reason of his conviction of a crime.

On October 18, 1934, applicant was convicted of the crime of engaging in an illegal lottery and as a result thereof was sentenced to one year in a county prison. He was released on parole on March 11, 1935.

The commission of the crime in question and the conviction therefor occurred in another state. Engaging in an illegal lottery is a misdemeanor under the laws of that state.

At the hearing herein, applicant testified that for a period of about three months prior to the time he was apprehended by the law enforcement officers he engaged in writing "numbers"; that he engaged in this activity because he had been unemployed; that he was employed on a commission basis and was not a principal in the illegal enterprise and that his earnings from the gambling activities averaged about \$5.00 per week. Although the original prison sentence was for one year, the records received at this Division disclose that he was released on parole from prison after serving less than five months. Applicant testified that for the past fifteen years he has been employed as a waiter in a hotel.

Conducting commercialized gambling in the form of a large-scale lottery ordinarily involves moral turpitude. Re Case No. 283, Bulletin 337, Item 14. There, the Commissioner denied an "ARC" permit to a "lieutenant" who was intimately connected with the operation of an extensive lottery. However, where, as here, the applicant was neither a principal nor otherwise closely associated with the lottery, but, at most, a minor employee, it was held that the conviction of the crime did not involve moral turpitude. Re Case No. 354, Bulletin 435, Item 2.

Applicant's record is otherwise clear. After a careful examination of the facts in the instant proceeding, I am of the opinion that applicant's conviction of engaging in an illegal lottery does not involve the element of moral turpitude.

Although applicant is not disqualified by statute because of the aforesaid conviction, he failed to divulge in an application for an employment permit that he had been convicted of a crime. Applicant testified, when asked for the reason why he withheld the information concerning his criminal record, that the application was filled out by another person during his absence and that he did not read it prior to affixing his signature. I am not impressed with this explanation. There is no excuse for failure to give truthful information at all times. Applicant's employment permit was ordered cancelled on November 10, 1952. However, since the undisclosed crime is one which does not disqualify him, applicant has been penalized for his false statement in the application. If and when applicant files another application for an employment permit all answers to questions must be truthful.

Under the circumstances I recommend that the applicant be advised that, in the opinion of the Director, he is not disqualified by said conviction from being employed by a liquor licensee. Since applicant is a non-resident of New Jersey, he must obtain a proper employment permit from this Division before he may serve or sell alcoholic beverages as an employee in a bona fide hotel. R. S. 33:1-26.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

Clarence E. Kremer
Attorney.

7. MORAL TURPITUDE - CRIME OF RECEIVING STOLEN GOODS HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

December 18, 1952

Re: Case No. 639

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

In July 1948, applicant pleaded guilty, in a County Court, to the crime of receiving stolen goods, as a result of which he was fined \$50.00 and released.

On October 6, 1952, applicant, who resides in another state, filed with this Division an application for an employment permit but failed to disclose his aforementioned conviction in said application. Consequently his permit, which had been issued, was cancelled, whereupon applicant requested a hearing to determine his eligibility.

At the hearing herein, applicant admitted the conviction which resulted from his plea of guilty. However, he claimed that, at the time of his arrest, he maintained his innocence and entered a guilty plea only upon advice of assigned counsel who told him that, if he entered such a plea, he would be released from custody while, if he pleaded not guilty, he would remain in jail for a long period of time. Applicant now reasserts his claim that he was innocent.

The crime of receiving stolen goods ordinarily involves moral turpitude. Re Case No. 620, Bulletin 880, Item 10. Nothing appears in the instant case to free applicant's conviction of that element.

Despite his claim of innocence applicant may not now in this collateral proceeding attack or contradict his own confessional plea of guilt pursuant to which he was convicted. Re Case No. 319, Bulletin 398, Item 8.

I recommend, therefore, that applicant be advised that, in the opinion of the Director, he has been convicted of a crime involving moral turpitude and that any licensee who employs him or permits him to be connected in any business capacity with his licensed business would subject his license to suspension or revocation. R.S. 33:1-25, 26.

Anthony Meyer, Jr.
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

8. MORAL TURPITUDE - CRIME OF VIOLATING TITLE 18, SECTION 80, OF U.S. CODE (SALE OF CERTIFICATE OF ELIGIBILITY) HELD NOT TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

December 19, 1952.

Re: Case No. 640

Applicant seeks a determination as to whether or not he is ineligible, in the opinion of the Director, for employment by the holder of a liquor license in New Jersey by reason of his conviction of a crime.

In August 1949, applicant pleaded guilty, in a Federal District Court, to an indictment charging that he violated Title 18, Section 80, of the United States Code (1946 Ed.) which prescribes a maximum fine of \$10,000.00 or a maximum term of five years' imprisonment, or both, for any person who, in any matter within the jurisdiction of a department or agency of the federal government, knowingly and wilfully, conceals by any trick, scheme or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses a false writing or document, knowing it to be false. As a result he was fined \$25.00.

On September 2, 1952 applicant filed with this Division an application for an employment permit (which was subsequently issued) but failed to disclose the above conviction in that application. However, shortly thereafter, on October 27, 1952, he voluntarily surrendered the permit and requested a determination as to his eligibility. Pursuant to such request a hearing was held at which applicant and his attorney gave testimony, under oath, with respect to the aforementioned conviction.

Applicant testified that, after he was honorably discharged from the armed forces of the United States, he intended to engage in business for himself; that he planned to purchase a light delivery truck suitable for use in transporting clothing in the dry cleaning business; that he proposed to pick up and deliver clothes and to "farm out" the actual cleaning work to a cleaner and dyer. He further testified that, when he applied to the War Assets Administration for a certificate of priority so that he might purchase a surplus truck, then available only to former members of the armed forces, he actually intended to use the truck for his own purposes as aforementioned and that it was not until some time later that he changed his mind because of an emergency arising out of the serious illness of his father-in-law, which necessitated his immediate search for gainful employment. At the time he was a student not otherwise employed. He claims that he (like several hundred others similarly situated) was approached by persons who apparently made a practice of buying from ex-servicemen their certificates of eligibility to purchase federal surplus property. He admits that, being "hard pressed for money", he sold his certificate for \$50.00. While he further admits he knew that the certificates were being issued "... to give GI's an opportunity to go into business ..." and that he was not supposed to sell his certificate, he denied that he knew at the time that he was defrauding the government. Applicant attempts to explain his failure to reveal his conviction in his permit application by saying that he did not realize "the severity" of his conviction until after talking with his attorney upon whose advice he voluntarily surrendered his permit.

Applicant's attorney substantially corroborated applicant's testimony and further testified that, while others paid much heavier

finer, applicant was persuaded to enter a confessional plea on the promise of a light fine for his cooperation with the authorities and was, in fact, fined only \$25.00. The attorney also testified that he is seeking a Presidential pardon for applicant and that it was through a conference with applicant in connection with the petition for such pardon that applicant's false answer in his permit application came to light.

The statute under which applicant was convicted is extremely broad in scope and encompasses not only false statements but also knowingly concealing material facts and thus is apparently aimed at both perjury and fraud. From the foregoing recitation of facts it would appear that applicant was guilty of fraud rather than perjury. While convictions involving fraud normally involve moral turpitude (Case No. 628, Bulletin 911, Item 8) there are circumstances under which it does not. For example, it has been held that fraudulently remaining on relief did not, under certain circumstances, involve moral turpitude. See Case No. 185, Bulletin 217, Item 4.

Considering all of the facts and circumstances in the instant case, including applicant's original bona fides in obtaining the certificate of priority and the almost inconsequential punishment meted out by the Federal Court, it is my opinion that the crime of which applicant was convicted, while reprehensible, did not involve moral turpitude and that he is not disqualified, within the meaning of R. S. 33:1-25, 26, by reason of such conviction, from being employed by or connected with the holder of an alcoholic beverage license in this State and that he should be so informed.

Since applicant has been without his permit for more than six weeks and the undisclosed crime is not one which disqualifies him, I believe that he has been sufficiently punished for the false answer in his permit application, as aforementioned, and I recommend that he be given leave to file a new application forthwith.

Anthony Meyer, Jr.
Attorney.

APPROVED:
DOMINIC A. CAVICCHIA
Director.

9. ADVERTISING - CONTRIBUTION OF "DINNERS ON THE HOUSE" BY LICENSEE-RESTAURATEURS TO BE AWARDED AS DOOR PRIZES AT AFFAIRS HELD BY CHARITABLE AND OTHER ORGANIZATIONS DISAPPROVED.

December 23, 1952.

Martin L. Horn, President
Horn-Sale, Inc.
T/a Pals Cabin
West Orange, N. J.

Dear Mr. Horn:

This acknowledges your letter of December 9th concerning the contribution of "dinners on the house" by licensee-restaurateurs to charitable and other organizations to be awarded by such organizations as door prizes at luncheon bridges, fashion shows and other social affairs.

It is noted that you are aware of the fact that door prizes of any kind may not be awarded on liquor licensed premises. We assume that you understand that the award of any prize by means of a drawing on licensed premises may be deemed to constitute the conduct of

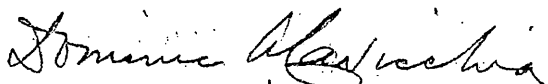
a lottery contrary to Rule 6 of State Regulations No. 20, violation of which is cause for suspension or revocation of license.

With respect to the mere furnishing of free dinners, when they are to be awarded to their ultimate recipients as door prizes (or by any other means involving their advertising off the licensed premises of the donor-licensee), you are advised that such a practice is, in our opinion, closely akin to the promotion of alcoholic beverage business by off-premises or exterior advertising of "free lunch" (which, in a sense, is what the "free dinners" are) which has long been prohibited by well established rulings of my predecessors. See Re Hamilton, Bulletin 787, Item 8, copy enclosed, which summarizes our position with respect to free lunch and the advertising thereof. Basically, the objection is to any practice of offering any free food (or drinks) by any advertising medium since such offers, strongly inducing as they do persons to visit the licensed premises when ordinarily they might not, constitute practices unduly designed to increase the consumption of alcoholic beverages. As you know, this is contrary to the fundamental philosophy of alcoholic beverage control in New Jersey.

* * * * *

Your interest in communicating with us with respect to this problem is appreciated.

Very truly yours,



Dominic A. Cavicchia
Director.