

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
NEWARK INTERNATIONAL PLAZA  
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

June 2, 1980

BULLETIN 2354

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
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BULLETIN 2354

June 2, 1980

1. HEIR, et al. v. DEGNAN, et al. - OPINION OF THE NEW JERSEY SUPREME COURT, 82 N.J. 109 (February 11, 1980).

SUPREME COURT OF NEW JERSEY  
A-102/103 September Term 1979

IRVING HEIR, individually and on behalf of a class consisting of all licensed wholesale solicitors of alcoholic beverages of the State of New Jersey, WINE AND LIQUOR SALESMEN OF THE STATE OF NEW JERSEY, LOCAL 19, and ALFRED M. D'AGOSTINI, individually,

Appellants,

v.

JOHN J. DEGNAN, Attorney General of the State of New Jersey, JOSEPH H. LERNER, Director, Division of Alcoholic Beverage Control, Department of Law and Public Safety, and DIVISION OF ALCOHOLIC BEVERAGE CONTROL, Department of Law and Public Safety,

~~Respondents.~~

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WINE & SPIRITS RETAILERS OF NEW JERSEY, INC., a not-for-profit New Jersey corporation, THE PACKAGE SHOP, INC., a New Jersey corporation, JOCAR, INC., a New Jersey corporation, and V.J.F. LIQUOR RETAILERS, INC., a New Jersey corporation,

Appellants,

v.

JOHN J. DEGNAN, Attorney General of the State of New Jersey, JOSEPH H. LERNER, Director, Division of Alcoholic Beverage Control, Department of Law and Public Safety, and DIVISION OF ALCOHOLIC BEVERAGE CONTROL, Department of Law and Public Safety,

Respondents.

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Argued December 10, 1979 -- Decided February 11, 1980

On certification to the Division of Alcoholic Beverage Control, Department of Public Safety, State of New Jersey.

Martin F. Kronberg argued the cause for appellants Heir, et al. (Porzio and Bromberg and Martin F. Kronberg, attorneys; Myron J. Bromberg, Martin F. Kronberg and Carl Greenberg, of counsel; Martin F. Kronberg and Richard M. Chisholm, on the briefs).

Jonathan L. Goldstein argued the cause for appellants Wine & Spirits Retailers of New Jersey, Inc., et al. (Hellring, Lindeman, Goldstein and Siegel, attorneys; Jonathan L. Goldstein, of counsel; Charles Oransky, on the briefs).

John J. Degnan argued the cause for respondents (John J. Degnan, Attorney General of New Jersey, attorney; Stephen Skillman, Assistant Attorney General, and Dennis P. O'Keefe, Deputy Attorney General, of counsel; Mart Vaarsi, Deputy Attorney General, on the brief).

The opinion of the Court was delivered by

SULLIVAN, J.

These appeals are before this Court on direct certification granted while the matters were pending unheard in the Appellate Division. Involved is the validity of regulations adopted by the Director of the Division of

Alcoholic Beverage Control (ABC). These regulations eliminate retail price maintenance in the alcoholic beverage industry except for sales below cost and otherwise modify significantly the previous policy of the ABC regarding price controls and competition.

Two appeals have been filed from the adoption of the new regulations, one on behalf of liquor retailers, and the other on behalf of wholesale solicitors. Both appeals challenge the power of the Director to make these changes in the absence of specific legislative authorization. Furthermore, it is alleged that the procedures utilized in adopting the new regulations violated due process. Finally, specific attack is made on six of the regulations that (1) authorize quantity discounts, (2) regulate credit practices, (3) require purchases from New Jersey wholesalers, (4) ban cooperative advertising, (5) prohibit sales below cost and (6) provide emergency measures for the collection of sales tax. Our

conclusion is that elimination of retail price maintenance and allowance of price competition, the basic thrust of the new regulations, is well within the powers granted to the Director by the Legislature. We find that the procedures employed in the adoption of the regulations satisfy due process and that the challenges to specific regulations are without merit except as to the regulations prohibiting cooperative advertising and providing emergency measures for the collection of sales tax.

It is undisputed that the liquor industry is ~~affected with a public interest~~. ~~Consequently, it has been~~ subject to intense State regulation and control for the purpose of curbing relationships and competitive practices which improperly stimulate sales and thereby impair the State's policy favoring trade stability and the promotion of temperance. A succinct outline of the history of State regulation of the sale of liquor is given by Justice Jacobs in Grand Union Co. v. Sills, 43 N. J. 390, 398-402 (1964).

The present system of control in this State commenced in 1933 following repeal of national prohibition. L. 1933, c. 436. However, it was not until 1938 that price

maintenance was established through the use of fair trade contracts. N.J.S.A. 33:1-23.1. Regulation 30 adopted at that time provided for manufacturers and wholesalers to file fair trade contracts and price lists with the ABC which published the information and generally enforced the price lists against all retailers, whether signers or non-signers. See Gaine v. Burnett, 122 N.J.L. 39, 41 (Sup. Ct.), aff'd, 123 N.J.L. 317 (E. & A. 1939).

This method of retail price regulation was changed as a result of a decision by the United States Supreme Court in Schwegmann v. Calvert Distillers Corp., 341 U. S. 384, 95 L. Ed. 1035 (1951). In Schwegmann the Supreme Court held that non-signers of a fair trade contract could not be held to its terms and that a law so providing was invalid. Accordingly, in 1951 the Director, by regulation, changed the method of retail price control from fair trade contract to a price posting system which survives without significant change to this day. N.J.S.A. 33:1-93; see N.J.A.C. 13:2-1.

The price regulation system, still in effect by virtue of a stay of the new regulations granted by this Court,

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<sup>1</sup> N.J.S.A. 33:1-23.1 enacted in 1938 is still part of the Alcoholic Beverage Law but is a nullity, since, by L. 1975, c. 107, the Legislature repealed sections 56:4-3 to 4-6 of the New Jersey Fair Trade Law, N.J.S.A. 56:4-1 et seq., which provided for fair trade contracts.

is as follows. Every manufacturer of wine or distilled spirits who sells to a New Jersey wholesaler must file a price schedule with the ABC on a quarterly basis for such products offered to wholesalers. N.J.A.C. 13:2-36.1 to -36.2. Once filed, the prices are binding for that period on both manufacturers and wholesalers. N.J.A.C. 13:2-36.1. Also, every manufacturer must "affirm" that its prices for distilled products in New Jersey are at the lowest price at which such products are being sold anywhere in the United States. N.J.A.C. 13:2-36.2(c). Manufacturers also file with the ABC a quarterly schedule of "minimum consumer resale prices" ~~for all package~~ alcoholic beverages sold within the State. N.J.A.C. 13:2-33.1(a). This schedule is binding on all retailers who are prohibited from selling below the listed price. N.J.A.C. 13:2-33.5.

The regulations do not establish any standards or guidelines for the manufacturer when it fixes its wholesale and retail prices, except for the affirmation heretofore noted. N.J.A.C. 13:2-36.2(c). Thus, the manufacturer has almost absolute control of its prices to wholesalers in this State and is also free to set the minimum price at which its product is sold to the consumer. The ABC's function is

only to oversee the filing and publication of the wholesale and retail price lists and to enforce adherence to them.

At the wholesale level, prices from wholesaler to retailer in this State are fixed by the wholesaler who must file quarterly price listings for all of its alcoholic beverages other than malt alcoholic beverages. N.J.A.C. 13:2-36.2(f). However, the regulations allow wholesalers to inspect price lists filed by other wholesalers and to raise or lower their own prices "to meet a higher or lower and competing price." N.J.A.C. 13:2-36.5. In practice these regulations have resulted in the functional equivalent of horizontal price fixing among wholesalers carrying the same brand products.

The present regulations also limit the extension of credit to a retailer by requiring the retailer to pay for delivered goods within one month after delivery. N.J.A.C. 13:2-39.1. If payment is not made within that time, the wholesaler must notify the ABC and the retailer is placed on a "default list." N.J.A.C. 13:2-39.3. Until removed from the list the retailer may purchase alcoholic beverages on a cash basis only. N.J.A.C. 13:2-39.4. A retailer who is on the list for 39 consecutive weeks is placed on the "non-delivery" list and may not purchase any alcoholic beverages. N.J.A.C. 13:2-39.3 to -39.4. Additional regulations severely restrict numerous sales activities by retailers



and wholesalers. See N.J.A.C. 13:2-24.1 et seq. These regulations deal with equipment signs and other advertising material and their use for sales promotion. N.J.A.C. 13:2-24.1 et seq. In essence, the regulations use a price regulation anti-competitive approach in the interest of trade stability and temperance.

In 1976 the Attorney General began an investigation into persistent reports of widespread disregard and abuse of the ABC regulations, and illegal trade practices at every level of the alcoholic beverage industry. He sought to determine whether or not the reports were true and, if so, ~~whether the present regulations were a contributing factor.~~ The investigation disclosed the existence of widespread abuses and resulted in administrative charges being filed against numerous wholesale licensees.

Also, in August 1977, the Attorney General established a "Task Force" to determine whether existing regulations should be modified to improve control over the trade practices of the alcoholic beverage industry. In January 1979 the Task Force released its findings in a comprehensive report. The report found illicit trade practices not only among wholesale licensees, but at all levels of the industry, and identified present ABC regulations as a contributing factor. Major changes in these regulations in the area of industry marketing

and pricing practices were recommended, the most salient of which were the elimination of retail price maintenance and the existing method of wholesale price posting. Changes in the regulation of credit and greater latitude in marketing and promotional activities were also recommended.

On the basis of his investigation and the Task Force Report, the Attorney General submitted a "Statement of Policy Concerning Price Deregulation of the Alcoholic Beverage Industry" to the Governor. The statement seriously questioned the legality of the retail price maintenance system in New Jersey in the light of recent court decisions that similar kinds of retail price maintenance, in which the state played no role in setting the retail prices, were invalid under the Sherman Antitrust Act. See Rice v. Alcoholic Bev. Control Appeals Bd., 21 Cal. 3d 431, 579 p. 2d 476 (1978).<sup>2</sup> However, the Attorney General found it unnecessary to decide the question of the legality of New Jersey's retail price maintenance system since he concluded that from a public policy standpoint it was in the public interest to abandon retail price maintenance. This, he stated, could be accomplished by a revision of the ABC regulations. See Annotation, "Validity

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<sup>2</sup> See also California Retail Liquor Dealers Ass'n. v. Midcal Aluminum, Inc., 90 Cal. App. 3d 979, 153 Cal. Rptr. 757 (Ct. App. 1979), cert. granted, 62 L. Ed. 2d 31 (1979), involving wine retail price maintenance statutes.

of state statute or regulation fixing minimum prices at which alcoholic beverages may be sold at retail," 96 A.L.R. 3d 639 (1979).

Public informational hearings were held on February 8 and 9, 1979 on the subject of price deregulation. Numerous expert witnesses testified on the issue and its impact on the industry. The Task Force Report and its findings and recommendations were discussed extensively.

Following the hearings, proposed amendments and supplements to the ABC regulations were drafted and notice of intention to adopt the same was duly published pursuant to section 4 of the Administrative Procedure Act, N.J.S.A. 52:14B-4. ~~In response, additional comments were received from~~ the liquor industry and the public and were reviewed by the Director.

On April 4, 1979 the proposed amendments and supplements were adopted and filed. The new regulations substantially modify the anti-competition policy which had previously existed. Retail price fixing has been eliminated except for a prohibition against sales below cost. N.J.A.C. 13:2-24.8 (amended). The system of wholesale price posting has been changed to permit price competition among wholesalers by eliminating the prior practice of allowing wholesalers to examine other wholesalers' price lists and raise or lower their posted prices to meet a higher or lower and competing price. N.J.A.C. 13:24-6(c)(3) (amended). Other amended regulations deal with

quantity discounts and credit practices, require purchases from New Jersey wholesalers, ban cooperative advertising, prohibit sales below cost and provide emergency measures for the collection of sales tax.

A.

Preliminarily, appellants argue that they have not been afforded a "meaningful opportunity" to be heard concerning the revised regulations as required by the New Jersey Administrative Procedure Act, N.J.S.A. 52:14A-1 et seq., and the Due Process Clause, particularly with respect to the denial of their request for a hearing on the proposed regulations.

This argument lacks merit. The Task Force Report was the subject of two well attended public hearings. The changes in regulatory approach recommended by the report were discussed extensively and considerable expert testimony for and against these changes was received. Some of the present appellants participated actively in these hearings. Thereafter, proposed amendments and supplements to the ABC regulations were drafted and, in accordance with the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-4, notice of intention to adopt the same duly published. In response, further comments were received from the liquor

industry and the public and were reviewed by the Director prior to final adoption.

An administrative agency is not obligated to hold a hearing on proposed regulations before adopting them. The Administrative Procedure Act does provide for timely opportunity to submit data and argument (here provided), but does not require a formal public evidentiary hearing as part of the rule-making process. Motyka v. McCorkle, 58 N. J. 165, 180-181 (1971). Nor are findings of fact, sufficient to justify the regulations, a required part of the same process. Consolidation Coal Co. v. Kandle, 105 N. J. Super. 104, 115-118 (App. Div.), aff'd o.b., 54 N. J. 11 (1969). We conclude that the Director in amending and supplementing the regulations here under review substantially complied with the provisions of the Administrative Procedure Act and the requirements of due process.

B.

The basic contention of appellants is that the system of price maintenance set forth in the present regulations contributes to the stability of the liquor industry, promotes temperance and is an integral part of the public policy of this State. They say, therefore, that the present system of price maintenance can be changed only by legislative action or authorization and not through unilateral action of the Director. Duff v. Trenton Beverage Co., 4 N. J. 595, 608 (1950), is cited for the proposition that price regulation

is essentially a legislative function. Appellants remind us of our observation in Grand Union Co. v. Sills, supra, that

\* \* \* our State has fared well in its administration of the highly volatile liquor field. Any suggestion that there be a change of course in favor of freer competitive practices \* \* \* would be entirely a matter for the New Jersey Legislature.

[43 N. J. at 403].

This observation, it must be noted, was made in connection with our ruling that a State statute limiting retail liquor licenses to two per person was constitutional and in response to the plaintiffs' argument that freer competitive practices such as the multiple holding of retail licenses would serve the public interest. In Grand Union we declined to strike down the legislation in the absence of a showing that it lacked a rational basis. Id. at 397.

Appellants' contentions that the new regulations impair the long-standing public policy of maintaining stability in the liquor industry and promoting temperance are lacking in merit. On the contrary, the record before us, including the Task Force Report, demonstrates that these worthwhile goals will be promoted by the new regulations.

We have no statute in this State calling for alcoholic beverage retail price control except for N.J.S.A. 33:1-23.1,<sup>3</sup> the outmoded fair trade contract provision.

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<sup>3</sup> N.J.S.A. 33:1-39.2 refers to maintenance of prices at which malt alcoholic beverages may be sold.

Although the Alcoholic Beverage Control Act (the act) was adopted in 1933, L. 1933, c. 436, it was not until 1938 that the Director, by regulation 30, first structured a system of retail price maintenance. Gaine v. Burnett, supra, 122 N.J.L. at 41. While this regulation stemmed from the 1938 statutory enactment authorizing the Director to enforce fair trade contracts in the liquor field, it was held in Gaine that the regulation was an exercise of the Commissioner's (Director's) inherent power and that the 1938 enactment was unnecessary to confer power to enact regulation 30. Id. at 42.

The act has delegated to the Director the authority to make such rules and regulations as may be necessary for the proper regulation and control of the manufacture, sale and distribution of alcoholic beverages. N.J.S.A. 33:1-39. Of course, regulations to be valid must be "within the ambit of delegated authority." New Jersey Guild of Hearing Aid Dispensers v. Long, 75 N. J. 544, 561-562 (1978). While N.J.S.A. 33:1-39 does not specifically empower the Director to establish a system of price maintenance, Gaine v. Burnett, supra, as above noted, held that adoption of a retail price fixing regulation was within the inherent power of the Director.

Gaine also held that leaving price control to the discretion of the Director was not an unconstitutional delegation of authority, as the legislative policy expressed in the act was clear and provided a definite enough rule of action. 122 N.J.L. at 43-44. The real issue is whether the Director, once having established a system of retail price maintenance by regulation, has the power to substantially modify it. Appellants say that he may not because it will result in an increase in liquor consumption and force marginal retailers out of business, thereby subverting the established public policy of temperance and industry stability. It is also ~~argued that changing~~ of the regulatory approach from anti-competitive to pro-competitive is such a drastic change of policy that it can be accomplished only by legislative action.

These contentions are similarly lacking in substance. Assuming that price regulation is essentially a legislative function as stated in Duff v. Trenton Beverage Co., supra, 4 N. J. at 608, the act has delegated that function to the Director and has provided him with a definite enough rule of action. Gaine v. Burnett, supra, 122 N.J.L. at 43-44. Appellants concede that the Director had the power to establish price control by regulation, but strain to deny him



the power to modify or change regulations once adopted, even though the act specifically provides that he may alter, amend, or repeal the same. N.J.S.A. 33:1-39.

One advantage of administrative regulations is their flexibility and ability to keep pace with current needs. Here they enable the Director to respond expeditiously once the need for change is demonstrated. He has determined that the old regulatory approach of anti-competition and rigid price regulation should be substantially modified if he is to carry out the broad purposes of the act and serve the public interest.

This decision has not been shown to be arbitrary, capricious or unreasonable. United Hunters Assn. of N.J. v. Adams, 36 N. J. 288, 292 (1962). As noted, appellants say it will lead to increased consumption and frustrate the policy of temperance. However, under present regulations much liquor is available at low prices, and it has not been shown that removing retail price controls will open up a substantially larger consumer market, even though the Task Force Report concludes that the elimination of retail price maintenance will result in a considerable reduction in liquor

prices. Deference must be given to the Director's expertise in this field and regulations duly adopted by him are to be accorded a presumption of validity. New Jersey Guild of Hearing Aid Dispensers v. Long, supra, 75 N. J. at 560-562. That presumption is overcome only when it is shown that the regulation is clearly arbitrary and unreasonable and has no rational relationship to the purpose intended. Consolidated Coal Co. v. Kandle, supra, 105 N. J. Super. at 117. Appellants have not made such a showing. The most that appears is that appellants and their experts disagree with the studies, analyses, conclusions and recommendations made by and on behalf of the Attorney General and the Director. Flanagan v. Civil Service Department, 29 N. J. 1, 12 (1959).

C.

We consider next the particular challenges to the validity of specific regulations adopted on April 4, 1979.

N.J.A.C. 13:2-24.1 (amended) generally prohibits discrimination in terms of sale of alcoholic beverages.

However, paragraph (b) of that regulation allows

(1) differentials which make only due allowance for actual differentials in the cost of manufacture, sale, or delivery resulting from differing methods or quantities in which alcoholic beverage products are sold or delivered to, or paid for

by, purchasers including discounts for prompt payment;

(2) differences in terms of credit, when justified by history or risk \* \* \*.

Appellants argue that these exceptions effectively swallow up the provision against discrimination. They also contend that the permitted price differentials are contrary to N.J.S.A. 33:1-89, which provides that it is unlawful for a person selling to retailers

\* \* \* to discriminate in price, directly or indirectly, between different retailers purchasing alcoholic beverages other than malt beverages bearing the same brand or trade name and of like age and quality.

Furthermore, appellants contend that even if the exceptions are lawful, they favor retailers who purchase liquor in large quantities, thereby discriminating against the small store operator.

We find no statutory prohibition against the new exceptions allowing discounts. N.J.S.A. 33:1-89 must be read in conjunction with N.J.S.A. 33:1-90 which prohibits wholesalers from denying any retailer a discount available to another retailer purchasing goods "of like age, quality and quantity." Taken together, these sections support the Director's position that the act does not classify quantity discounts as discriminatory and prohibit them. Such

discounts are not allowed under N.J.A.C. 13:2-36.10, but that regulation is now being repealed. The new exceptions simply incorporate the generally accepted business practice whereby sellers give discounts to purchasers when justified by actual differences in costs to the seller in providing goods to a particular buyer. Contrary to appellants' argument, small retailers are not prejudiced by the allowance of quantity discounts as they are allowed to purchase on a cooperative basis and thus avail themselves of the discount. N.J.A.C. 13:2-26.1 (amended). The discount need not be given if multiple deliveries are called for under the cooperative purchase since the savings in costs to the seller — the basis for a discount — does not arise. We conclude that N.J.A.C. 13:2-24.1 (amended) is a proper exercise of administrative authority.

A further challenge is made to the credit provision of N.J.A.C. 13:2-24.4 (amended) which provides that if a retailer becomes delinquent in credit, the wholesaler or distributor may notify other wholesalers and distributors who sell like or similar alcoholic beverages. Thereafter, those notified may not sell or offer to sell like or similar alcoholic beverages to the delinquent retailer. Appellants charge that this enables wholesalers and distributors to blackmail retailers.

Other provisions of the new regulations which prohibit sales below cost, N.J.A.C. 13:2-24.8 (amended), and require payment upon delivery of cooperative purchases, N.J.A.C. 13:2-26.1(6) (amended), are challenged as discriminatory, illegal, void and contrary to the public policy of this State. The retailer appellants contend that they should be allowed to sell below cost to meet the competition of large retailers. The wholesaler appellants argue that by allowing sales at cost but not below, the regulation will inspire competition among retailers to sell at the lowest possible price in violation of the avowed public policy against predatory pricings. The requirement of payment upon delivery of cooperative purchases is attacked as weakening the purchasing power of the cooperatives.

These contentions are without substance. The act specifically authorizes the Director to promulgate regulations respecting sales on credit. N.J.S.A. 33:1-39. Prior credit regulations have been expressly sustained by this Court. F. & A. Distrib. Co. v. Div. of Alcoh. Bev. Contr., 36 N. J. 34, 36 (1961). The new regulations are designed to prevent discriminatory extensions of credit and predatory price cutting and the unwholesome results therefrom. However, ABC participation is minimized and the burden of maintaining and exchanging credit information and obedience

to credit restrictions is placed upon the wholesaler or distributor. No bases for invalidation have been shown.

Appellants' attack on N.J.A.C. 13:2-25.1 (amended) is frivolous. This regulation requires wholesalers and distributors to deliver alcoholic beverages to retailers from inventory stored in a New Jersey warehouse for at least 24 hours. The regulation is similar to the one presently in force and is bottomed on N.J.S.A. 33:1-11, which requires every plenary wholesale licensee and wine wholesaler licensee to make delivery of alcoholic beverages and wines sold to retailers from inventory in a warehouse located in New Jersey. ~~The constitutionality of this~~ statute was sustained in Kasser Distillers Products Corp. v. Sills, 85 N. J. Super. 351 (Ch. Div. 1964). The regulation implements the statute and serves the valid purpose of preventing the diversion of alcoholic beverages and assuring the proper collection of taxes under the Alcoholic Beverage Tax Law, N.J.S.A. 54:43-1. The argument that both the new and the old regulations are anti-competitive and therefore invalid fails to consider the purpose of the statute and regulations, supra, and the benefit to the State resulting therefrom.

N.J.A.C. 13:2-24.11(a)(8) (amended) prohibits joint advertising by competing independently owned retailers

(cooperative advertising). Appellant retailers argue that this regulation discriminates against small retailers in their efforts to compete with large retailers and also implicates First Amendment rights by infringing on free speech. The regulation, however, does not prohibit a retailer from advertising. It is aimed at cooperative advertising by competing retailers. At least where price advertising is involved, such cooperative advertising would undoubtedly involve horizontal price fixing, a per se violation of Federal and State antitrust laws. See 15 U.S.C. 1 et seq.; N.J.S.A. 56:9-1 et seq.; United States v. Socony-Vacuum Oil Co., 310 U. S. 150, 84 L. Ed. 1129 (1940). On this basis the regulation is aimed at preventing illegal marketing practices and is a reasonable exercise of the Director's power. However, cooperative advertising which does not involve prices does not come under the rationale for the regulation. No other reason is advanced in support of the regulation and under these circumstances such a restriction runs afoul of the First Amendment's prohibition against unwarranted governmental interference with "commercial speech." See Freidman v. Rogers, 440 U. S. 1, 59 L. Ed. 2d 100 (1979); Bates v. State Bar of Arizona, 433 U. S. 350, 53 L. Ed. 2d 810 (1977); Virginia Pharmacy Bd. v. Virginia Consumer Council, 425 U. S. 748, 48 L. Ed. 2d 346 (1976). We therefore hold N.J.A.C. 13:2-24.11(a)(8) (amended)

to be invalid insofar as it proscribes cooperative advertising of matters other than prices.

Finally, we consider the validity of N.J.A.C. 13:2-41.5 (amended), which establishes an interim method of collecting the sales tax on sales of alcoholic beverages. This regulation continues the last filed Minimum Consumer Resale Price List for tax computation purposes, even though such lists have been eliminated under the new regulations.

When the Sales and Use Tax Act was passed in 1966, L. 1966, c. 30, the tax on receipts from retail sales of alcoholic beverages was collected by the retailer at the time of sale and remitted to the State. This system created problems of enforcement because of the 12,000 licensed retailers in the State. Accordingly, in 1972 the Sales and Use Tax Act was amended and the term "retail sales" redefined, in the case of alcoholic beverages, to include a sale by the wholesaler to a retailer. N.J.S.A. 54:32B-2(e)(2)(B). At the same time section 2(d) of the same act was amended to provide:

For the purposes of this act, receipts from the sale of alcoholic beverages \* \* \* shall be deemed to be the minimum consumer retail price as filed with the New Jersey Division of Alcoholic Beverage Control \* \* \*.



Under the 1972 amendments, therefore, the wholesaler collects the tax from the retailer at the time of the sale to the retailer and remits it on a monthly basis to the Division of Taxation. Computation of the tax is made by the wholesaler by using the current minimum consumer resale prices on file with the ABC as the "receipts from the sales of alcoholic beverages" upon which the sales tax is imposed. N.J.S.A. 54:32B-2(d).

The amended regulations have eliminated these retail price lists so that the provisions in the Sales and Use Tax Act for the computation of the tax on sales of alcoholic beverages are no longer pertinent. To meet this problem the Director adopted N.J.A.C. 13:2-41.5 (amended) which provides for the emergency collection of the sales and use tax on receipts from the sale of alcoholic beverages by continuing the last Minimum Consumer Resale Price List in effect solely for the purpose of determining the resale price for the collection of the sales and use tax pursuant to N.J.S.A. 54:32B-2(d).

Appellants have attacked this transitional provision as being violative of equal protection and substantive due process, and as an usurpation of legislative power. We conclude

that the regulation goes beyond the limits of the Director's regulatory power. His concern that the computation and collection of the sales and use tax on the sale of alcoholic beverages should not be impaired is understandable. However, the regulation substantially changes the application of N.J.S.A. 54:32B-2(d) and establishes a new basis for computation of the tax where alcoholic beverages are concerned. This can be done only by the Legislature. Nevertheless, sales of alcoholic beverages are still subject to the tax which should be collected and paid to the Division of Taxation. Therefore, we will allow N.J.A.C. 13:2-41.5 (amended) ~~to remain in effect for six months~~ commencing with the date of this opinion, (1) to preserve the continuity of sales tax collection on the sale of alcoholic beverages and (2) to enable the Legislature to take appropriate action.

The change in administrative approach as reflected in the new regulations is not immutable. Should experience demonstrate the need for further change, modification or even repeal, the Director would have the statutory obligation to take prompt action to see to it that the promotion of temperance and industry stability, the basic purposes of the ABC act, will be maintained.

The action of the Director in adopting these amendments is affirmed, other than the ban on non-price cooperative advertising, and subject to the six-months limitation on N.J.A.C. 13:2-41.5 (amended). The stay heretofore entered is vacated.

2. HEIR, et al. v. DEGNAN, et al. - ORDER OF STAY OF THE NEW JERSEY SUPREME COURT (February 19, 1980) - DISSOLVED (March 11, 1980).

SUPREME COURT OF NEW JERSEY  
M-484 September Term 1979

IRVING HEIR, etc., et al., :  
Plaintiff-Movant, :  
v. :  
JOHN J. DEGNAN, etc., et al., :  
Defendants-Respondents. :

ORDERED  
FILED  
SUPREME COURT  
FEB 20 1980

*Stephen A. Sullivan*  
Clerk

This matter having been duly considered by the Court, it is ORDERED that the motion for a stay of the judgment of this Court is granted until Monday, March 10, 1980 pending an application to the United States Supreme Court for a stay pending a writ of certiorari; provided, however, that said application for a stay is made to the United States Supreme Court on or before Monday, March 3, 1980; and it is further

ORDERED that the failure to file the application for a stay with the United States Supreme Court on or before March 3, 1980, shall cause the immediate dissolution of the stay granted herein.

WITNESS, the Honorable Mark A. Sullivan, Presiding Justice, at Trenton, this 19th day of February, 1980.

A TRUE COPY

*Stephen A. Sullivan*  
CLERK

*Stephen A. Sullivan*  
Clerk

3. NOTICE TO WHOLESALERS AND DISTRIBUTORS - SALES AND USE TAX - N.J.A.C. 13:2-41.5 - DEFAULT AND NON-DELIVERY LISTS (March 17, 1980).

NOTICE TO WHOLESALERS AND DISTRIBUTORS  
SELLING TO RETAILERS

MARCH 17, 1980

RE: Sales and Use Tax - N.J.A.C. 13:2-41.5  
Default and Non-Delivery Lists

A. Questions have arisen with respect to the amount of Sales and Use Tax to be collected on products not listed in the January 1, 1980 "Minimum Consumer Resale Price List".

1. Under the terms of N.J.A.C. 13:2-41.5 as modified by the State Supreme Court in Heir v. Degnan, N.J. (1980), the Sales and Use Tax will be affixed for six months upon the price as established in the January 1, 1980 "Minimum Consumer Resale Price List".

2. Any brand and type of alcoholic beverage product (including identical vintage and proof) for which a price was established in the January 1, 1980 "Minimum Consumer Resale Price List" ('M.C.R.P.L'), but for which a new size metric bottle or package is to be offered to the trade, will have its tax established by reference to the price of that product in the January 1, 1980 "M.C.R.P.L." and conversion according to the following equation (January 1, 1980 "M.C.R.P.L." before tax price X "factor" = new size price "A"; price "A" X .05 = tax) and table:

<u>Conversion From</u>	<u>Conversion To</u>	<u>Factor</u>
1 Gallon (128 oz.)	4 Liter (135.2 oz.)	1.06
96 oz.	3 Liter (101.4 oz.)	1.06
1/2 Gallon (64 oz.)	1.75 Liter (59.2 oz.)	.925
52 oz.	1.5 Liter (50.7 oz.)	.975
Quart (32 oz.)	1 Liter (33.8 oz.)	1.06
5th (25.6 oz.)	750 ml (25.4 oz.)	.992
Pint (16 oz.)	500 ml (16.9 oz.)	1.06

<u>Conversion From</u>	<u>Conversion To</u>	<u>Factor</u>
4/5 Pint { 12.8 oz. }	375 ml { 12.7 oz. }	.992
1/2 Pint { 8 oz. }	200 ml { 6.8 oz. }	.85
1/10 Qt. { 3.2 oz. }	100 ml { 3.4 oz. }	1.06
1.6 oz.	50 ml { 1.7 oz. }	1.06

In summary, di minimus size changes to conform to Federal Government requirements concerning conversion to the metric measurement system will result in the tax being affixed on the price that would equate to that product according to the prices already filed and effective in the January 1, 1980 "M.C.R.P.L."

3. Any new brand or type of alcoholic beverage product (including changes in vintage or proof) which was not listed in the January 1, 1980 "Minimum Consumer Resale Price List" shall have its price based for Sales and Use Tax purposes upon "cost" pursuant to N.J.A.C. 13:2-41.2 and 24.8. Therefore, through May 9, 1980, the "price" for Sales Tax purposes will be the proportionate invoice price of a bottle of a product to the retailer plus 18% thereof (cost + 18% of cost = price "B"; price "B" X .05 = tax). From May 10, 1980 through July 8, 1980, the price shall be the proportionate invoice price to the retailer plus 9% thereof (cost + 9% of cost = price "C", price "C" X .05 = tax). Thereafter, the tax shall be based upon the proportionate invoice price (retail cost X .05 = tax).

B. Another area of general inquiry to the Division has been the continuance of the "Default" and "Non-Delivery" Lists through April 14, 1980 as indicated in the letter, NOTICE TO ALL LICENSEES, of March 11, 1980 (Bulletin No. 2342 Item 1). Both lists are being continued only to effectuate the transition provisions of N.J.A.C. 13:2-41.4. Neither the "Default" nor "Non-Delivery" provisions of former regulations are to be enforced upon retailers by the Division or the industry. As of March 11, 1980, the new amended regulations govern credit transactions. Therefore, retailers previously on the "Default" and "Non-Delivery" Lists may be sold alcoholic beverages, subject to the provisions of N.J.A.C. 13:2-24.1(b)(2), 24.4, 39.3 and 41.4.

Joseph H. Lerner  
Director

4. NOTICE TO WHOLESALERS AND SUPPLIERS - BRAND REGISTRATION and BRF. 80-1, ABC (April 14, 1980).

April 14, 1980

NOTICE TO WHOLESALERS, DISTRIBUTORS  
BREWERS, VINTNERS AND SUPPLIERS

Effective May 1, 1980, no product may be sold within this State unless it is "registered" with this Division and the authorized distributors are designated by the brand owner or its agent. N.J.A.C. 13:2-33.1 et seq., Bulletin 2342, Item 1. Since the Division possesses a paucity of information with respect to brand owners, it will be the primary responsibility of wholesalers and distributors to insure that their supplier-manufacturer or importer brand owners are notified and that retail private label product brands are registered.

Brand Registration filings must be made in triplicate and contain a copy of the filed United States Treasury Department, Bureau of Alcohol, Tobacco and Firearms Certification of Label Approval Form (A.T.F. 1649) for each product registered. If a self-addressed postage paid envelope is provided with the Registration, a filed copy will be returned to the Registrant. The fee for each product registration is \$10.00.

The Division Brand Registration Form (BRF. 80-1, NJABC), which is attached, shall be prepared with reference to the following terms:

Class: American or Imported

Nature: Whiskey; Gin; Vodka; Rum; Brandy; Tequila; Cordials;  
Liqueurs & Specialties; Pre-Mixed Cocktails; Still  
Wine; Sparkling Wine; Beer; Ale; Porter & Malt  
Liquor; Other (Specify).

Descriptive Type: For Example: Blended Whiskey; Straight  
Bourbon; Estate Bottled Bordeaux; Rose;  
Table White; Creme Sherry; Brut Champagne;  
Whiskey Sour; Strawberry Margarita;  
Peppermint Schnapps; White Creme de Cacao;  
Apricot or Napoleon (Brandy);

Lager or Dark (Beer); Other (Specify).  
Note: Each different type requires a separate  
Brand Registration.

Proof or Alcoholic Content: As is stated on bottle.  
Note: Each different proof or alcoholic content  
requires a separate Brand Registration.

Vintage or Age: As is stated on bottle; otherwise indicate  
not applicable (N/A).

Universal Numeric Code: The 13 digit computer "UNIMERC" code  
is to be entered, if assigned; otherwise  
indicate not applicable (N/A).

The Registration Form requires the identification of all bottle sizes in which the registered product will be offered to the trade within this State. Special packages, such as decanters, should be described following the "other" category even if the content size of the package has previously been indicated.

The Registrant is required to designate all wholesalers or distributors authorized by the brand owner to wholesale the given product in this State. While not specifically required to be provided with the Registration, the Registrant should maintain in its files appropriate documentation of the distribution authorization. Where an agent is registering the product on behalf of a retailer or manufacturer, authorization documentation also must be available for inspection by representatives of this Division.

JOSEPH H. LERNER  
DIRECTOR

STATE OF NEW JERSEY  
 DEPARTMENT OF LAW AND PUBLIC SAFETY  
 DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
 Newark International Plaza  
 U.S. Rts. #1-9 (Southbound)  
 Newark, New Jersey 07114

BRAND REGISTRATION  
 N.J.A.C. 13:2-33.1 et seq.

I. The Registrant, \_\_\_\_\_ (Name) \_\_\_\_\_ (Address) \_\_\_\_\_ (City)  
 \_\_\_\_\_ (State) \_\_\_\_\_ (Zip Code) hereby applies to register the  
 following Brand & Label of an alcoholic beverage product pursuant  
 to Subchapter 33 of the Regulations of the New Jersey Division of  
 Alcoholic Beverage Control as:

( ) Brand Owner      ( ) Agent for Brand Owner, Producer, Manufacturer

\_\_\_\_\_  
 (Name)  
 \_\_\_\_\_  
 (Address)  
 \_\_\_\_\_  
 (City)      (State)      (Zip)      (Country)

( ) Agent for Brand Owner Retailer

\_\_\_\_\_  
 (Name)  
 \_\_\_\_\_  
 (Address)  
 \_\_\_\_\_  
 (City)      (State)      (Zip)  
 \_\_\_\_\_  
 (New Jersey License Number)

II. Brand Name \_\_\_\_\_  
 Class \_\_\_\_\_ Nature \_\_\_\_\_  
 Type \_\_\_\_\_ Proof or Alcoholic Content \_\_\_\_\_  
 Vintage or Age \_\_\_\_\_ Universal Numeric Code: \_\_\_\_\_  
 -----

III. The product will be made available in New Jersey in the following size(s)  
 \_\_\_4L. \_\_\_3L. \_\_\_1.75L. \_\_\_1.5L. \_\_\_1L. \_\_\_750Ml.  
 \_\_\_500Ml. \_\_\_375Ml. \_\_\_200Ml. \_\_\_187Ml. \_\_\_100 Ml.  
 \_\_\_50Ml. \_\_\_Other (e.g. decanter) approved by BATF (Specify)



- IV. The following New Jersey licensees are authorized to distribute the product at wholesale to retailers in New Jersey:

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City) (Zip)

\_\_\_\_\_  
(New Jersey License Number)

- V. The undersigned certifies that he/she is authorized to make the representations contained herein, and that the contents of the application and the statements contained herein are true to his or her own personal knowledge.

Note: File in triplicate with one complete copy of Federal Label Approval Form (ATF 1649). Enclose a self-addressed, postage-affixed envelope for return of filed copy.

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Signature) (Date)

\_\_\_\_\_  
ABC Use

Fee Rec.

Approved by

Reg. No.

\_\_\_\_\_  
BRF. 80-1 NJABC

5. NOTICE TO ISSUING AUTHORITIES - DUTIES AND POWERS CONCERNING RETAIL LICENSE  
ISSUANCE, TRANSFER and RENEWAL. (April 14, 1980).

NOTICE TO LICENSING ISSUING AUTHORITIES:

Re: Duties, Powers and Regulations concerning retail  
license issuance, transfer and renewal

The license renewal period is an appropriate time to review various provisions of the alcoholic beverage laws and compare your system of license control with the summary of various principles and requirements hereinafter set forth.

I. ISSUING AUTHORITIES' DUTIES, OBLIGATIONS and POWERS

The governing body of a municipality, or its duly delegated municipal board, has the duty to administer the issuance, transfer and renewal of all retail licenses. N.J.S.A. 33:1-19.

The only exceptions in the "retail" category are those which are within the sole jurisdiction of the Director, Division of ABC, namely, Plenary Retail Transit licensees (N.J.S.A. 33:1-18); and those instances where a member of the local governing body has an interest, directly or indirectly in a retail license (except club licenses) whereupon the Director assumes jurisdiction in the issuance, renewal or transfer thereof N.J.S.A. 33:1-20.

Some of the specific obligations include:

- (1) acceptance and processing of applications;
- (2) investigation of all applicants;
- (3) inspection of premises sought to be licensed;
- (4) conduct of appropriate public hearings;
- (5) maintenance of proper records and minutes; and
- (6) enforcement of the ABC law and regulations (N.J.S.A. 33:1-24).

To facilitate the above, the issuing authority is empowered by N.J.S.A. 33:1-35

to:

- (a) inspect and search licensed premises, premises sought to be licensed, and the books, records, documents and papers of licensees referable to the licensed business;
- (b) require licensees or applicants for license to exhibit any of the afore-said documentation, and be questioned under oath;

- (c) issue subpoenas and inspect without search warrant; and
- (d) penalize the hindering of any such investigation, inspection or search through a disciplinary proceeding pursuant to N.J.S.A. 33:1-31.

## II. FACTORS TO CONSIDER IN LICENSE ISSUANCE, RENEWAL OR TRANSFER

The issuing authority must insure that the individuals exercising the beneficial interest in a liquor license are qualified, that the premises licensed are appropriate, that applicable regulations are observed, and that application forms are properly completed.

### A. Qualifications for Licensure

There are seven basic requirements for licensure:

1. A person must be 18 years of age or older;
2. Not convicted of a crime involving moral turpitude (both N.J.S.A. 33:1-25);
3. Be a reputable person who would operate the licensed business in a reputable manner. Narducci & Testa v. Atlantic City, Bulletin 2305, Item 3; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946);
4. Absent exceptions may not have an interest in more than a total of two (2) retail licenses (N.J.S.A. 33:1-12.31);
5. Have no interest in any other non-retail class of liquor license (N.J.S.A. 33:1-43);
6. Not be ineligible for licensure for 2 years or more in consequence of prior revocation(s) of license (N.J.S.A. 33:1-31); and
7. Not be a regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage law (N.J.A.C. 13:2-23.31).

### B. Review of Licensed Premises

The following basic concepts are applicable:

1. A license is required for each specific place of business, and the operation and effect of every license is confined to the licensed premises (N.J.S.A. 33:1-26);
2. The licensee must have a possessory interest in the licensed premises, (Hershorn v. Estelle Manor, Bulletin 1326, Item 1);
3. Absent "grandfather" provisions or waiver, no license can be located within 200 feet of any church, public school or private school conducted not for profit. N.J.S.A. 33:1-76. The 200 feet is measured in the normal way a pedestrian would lawfully walk from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed. See Karam v. West Orange ABC, 102 N.J. Super. 291 (App. Div. 1968); Presbyterian Church of Livingston v. Div. of ABC, 53 N.J. Super. 271 (App. Div. 1958);

4. No premises can be licensed in contravention of a municipal ordinance. Petrangeli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954). A transfer of license can be approved subject to ultimate compliance with, or variance from, local building or zoning ordinances. Holiday Inn v. Paramus, Bulletin 2315, Item 3; and
5. All local distance-between-premises ordinances must be satisfied, or the license may thereafter be subject to cancellation proceedings in consequence of an improvident transfer. Re City Hall Sandwich Shop, Inc., Bulletin 2334, Item 1.

C. Applicable Statutes and Regulations

1. New license issuance - when permissible, the procedure is governed by N.J.S.A. 33:1-19.1 and 19.2 and N.J.A.C. 13:2-2.1 et seq. Review of the holdings in W.C. Three, Inc. v. Washington Tp., 142 N.J. Super. 291 (App. Div. 1976) and Blanck v. Borough of Magnolia, 38 N.J. 484 (1962) would be of assistance in such situation.
2. Renewal of licenses - defined in N.J.S.A. 33:1-12.26 and must be issued for immediately following license term, covering the same premises and issued to same holder of expiring license. The issuing authority has the power to renew licenses until July 30th of any given year. Thereafter, any late renewal (technically considered a new license) can only be authorized after petition to the Director before September 29th of such year, pursuant to N.J.S.A. 33:1-12.18. Absent timely renewal or Director's authorization, that license lapses.

An inactive license, i.e., a license not in substantial full-time operation in connection with a licensed premises for the two immediately preceding license terms, cannot be renewed unless authorization is received by the licensee from the Director, Division of Alcoholic Beverage Control after a hearing, and for good cause shown, N.J.S.A. 33:1-12.39.

Attention must be made to N.J.A.C. 13:2-2.1 and the various objection; hearing and decision making provisions and timetables covering renewal applications. Specific note is directed to revisions of N.J.A.C. 13:2-2.9 which add the following requirements.

No application can be approved unless the issuing authority affirmatively finds and reduces to resolution (emphasis added) that:

- (i) the submitted application form is complete in all respects;
- (ii) the applicant is qualified to be licensed according to all statutory, regulatory and local governmental ABC laws and regulations; and
- (iii) the applicant has disclosed and the issuing authority has reviewed the source of all funds used in the

purchase of the license and the licensed business (new license issuance or transfer situations) and/or any additional financing obtained in the previous license term for use in the licensed business (renewal situations).

With respect to club licenses, N.J.A.C. 13:2-8.6 was revised to require the above stated affirmative finding reduced to resolution that:

- (i) the submitted application is complete in all respects, including submission of the club member list;
- (ii) the officers and directors of the club are qualified according to all statutory, regulatory and local governmental ABC laws and regulations; and
- (iii) the club maintains all records required by N.J.A.C. 13:2-8.8 (special events open to non-club members) and N.J.A.C. 13:2-8.12 (true books of account for receipts and disbursements).

3. Transfer of licenses - the procedure is governed by N.J.S.A. 33:1-26 and N.J.A.C. 13:2-7.1 et seq. Review the regulation for publication, objection, hearing, and decision-making provisions and timetables covering transfer applications.

N.J.A.C. 13:2-7.7 has been revised and provides the identical affirmative finding reduced to resolution requirements previously set forth concerning renewals of licenses.

#### D. License Application Form

The requirement to truthfully and accurately complete the license application form is statutory. Knowing misstatement is a misdemeanor. Fraud, misrepresentation, false and misleading statements, or evasions and suppression of material facts are grounds for suspension or revocation of license. N.J.S.A. 33:1-25.

Careful review of the application form is required to determine if it is completely and accurately answered, and which should disclose various disqualifying situations. Independent review should be made of facts and information contained therein in order to ascertain whether false, evasive or misleading statements are made.

Lastly, when changes occur in any fact contained on a license application form during the course of the license term, amended pages of the application must be filed by the licensee with the local issuing authority and the Division within 10 days of the occurrence. N.J.S.A. 33:1-34 and N.J.A.C. 13:2-2.14. When the change involves corporate stockholdings, publication is also generally required. N.J.A.C. 13:2-2.15 and 2.16.

## 6. NOTICE TO WHOLESALERS AND SUPPLIERS - BRAND REGISTRATION (April 23, 1980).

## NOTICE TO WHOLESALERS, DISTRIBUTORS, BREWERS, VINTNERS AND SUPPLIERS:

I have received significant input with respect to my April 14, 1980 Notice concerning Brand Registration. Particular concern was directed to the date of compliance (May 1, 1980) and the fee required to be paid (\$10.00 per registration).

Having carefully considered the comments, I have determined that I will extend the date for compliance with the Brand Registration regulation to June 1, 1980, continuing in effect the other provisions of the Special Ruling of March 11, 1980 (Bulletin 2342, Item 1 at page 2); and further, no single Registrant shall be required to pay total registration fees in excess of \$1,000.00.

In instances where a Registrant cannot have available by June 1, 1980, documentation that it is authorized to register a product on behalf of a brand owner, due to the fact that the brand owner is a foreign supplier, the following procedure is adopted. A conditional registration must be made by June 1, 1980 accompanied with an affidavit and supportive documentation establishing the reasons for inability to immediately procure proof of authorization. In no event shall such registration be valid after August 1, 1980, unless written authorization is filed prior thereto with the Division.

"Private Label" Brand Registrations may be made by the brand owner or its agent. Where a "Back Label" is owned by one company and the "Front Label" owned by another, separate registrations must be made by or on behalf of the label owners. In such instances, the phrase "BACK LABEL REGISTRATION ONLY" or "FRONT LABEL REGISTRATION ONLY" is to be printed or typed on the bottom of page 1 of the relevant Brand Registration Form.

When a bottle size is to be offered to the trade in other than a metric size indicated on the Brand Registration Form (e.g. malt beverages or special decanters); the designation thereof is to be made in the space provided in the Brand Registration Form following point III on page 1. Registrants are cautioned that this Division has adopted both Federal (ATF) labeling and standards of fill requirements. N.J.A.C. 13:2-27.1.

JOSEPH H. LERNER  
DIRECTOR

Dated: April 23, 1980

7. NOTICE TO WHOLESALERS AND DISTRIBUTORS - TRANSITION CREDIT N.J.A.C.  
13:2-41.4 (May 9, 1980).

NOTICE TO WHOLESALERS AND DISTRIBUTORS

RE: Transition Credit N.J.A.C. 13:2-41.4

By now, every licensee who sells to retailers in this State should have received a copy of the Division's Final Delinquency List of May 1, 1980 published pursuant to Transition Credit Regulation N.J.A.C. 13:2-41.4. Also, a Notice which is printed on the reverse side of this Notice has been mailed to all retailers on that list.

The credit delinquency information possessed by this Division has been supplied to it by the wholesaler in the industry prior to "deregulation" without regard to the nature of products sold by individual wholesalers. It is, therefore, each wholesaler's responsibility to correct any of its errors in the Final Delinquency List. It must also notify the Division and every wholesaler and distributor of spirit, wine or malt products when a retailer has satisfied its payment obligations arising from deliveries prior to "deregulation" (March 11, 1980), or has reached a subsequent repayment understanding approved by the Director relating thereto. N.J.A.C. 13:2-39.3(a) (4) and 41.4. Failure to comply with this directive may result in Division disciplinary action.

All communications with this Division relating to the Transition Credit Provisions must be in writing, addressed to "Transition Creditor", in care of the Division at the above address, and must contain the twelve digit license number of the particular retail licensee to whom the communication relates.

JOSEPH H. LERNER  
DIRECTOR

Dated: May 9, 1980

Sample

The final "Default" or "Non-Delivery" records of this Division (compiled as of April 29, 1980) indicate that you have not paid for the delivery of alcoholic beverages which took place prior to the effective date of the recent amendments to Division Regulations (March 11, 1980). Under the provisions of a new Division Regulation (N.J.A.C. 13:2-41.4, adopted April 4, 1979), unless (1) all of the wholesalers to whom you owe payment for deliveries which took place before March 11, 1980 notify the Division that you have, in fact, paid the prior debt, or unless (2) you individually reach a written "repayment agreement" with each of the wholesalers to whom you continue to owe for deliveries which occurred before March 11, 1980; effective June 7, 1980, no wholesaler will be permitted to sell or deliver alcoholic beverages to you.

All proposed "repayment agreements" must be in writing, must set forth the complete terms and conditions of both the debt and the method of its repayment, must be submitted as a Petition establishing good cause for the relief sought, and must be approved by the Director prior to June 6, 1980.

I urge that you review all of your business records, including previous Notices of Default or Non-Delivery, and contact the wholesaler or wholesalers involved as quickly as possible so that you may make the appropriate business decisions.

All communications by you or by wholesalers to whom you owe payment with the Division concerning this Notice must be in writing, must contain your license number and the name on your license, and be addressed to:

Transition Credit  
c/o Division of Alcoholic Beverage Control  
Newark International Plaza  
U.S. Rt. #1-9 (Southbound) & International Way  
Newark, New Jersey 07114



Joseph H. Lerner  
Director