

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. 07102

BULLETIN 2347

April 28, 1980

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1. APPELLATE DECISIONS - MUTUAL BENEFIT LIFE INSURANCE COMPANY v. NEWARK, et al.

#4317

Mutual Benefit Life Insurance
Company, }

Appellant,

v.

Board of Alcoholic Beverage Control
of the City of Newark and Polo
Chez, Inc., t/a Gary's Bar, }

Respondents. }

CONCLUSIONS

AND

ORDER

William V. Kennedy, Esq., Attorney for Appellant.
Salvatore Perillo, Esq., Corporation Counsel, by Hugh B.
Gallagher, Esq., Assistant Corporation Counsel, Attorneys
for Respondent, Newark Board of Alcoholic Beverage Control.
D'Alessandro, Sussman, Jacovino, & Dowd, Esqs., by Edward G.
D'Alessandro, Esq., Attorneys for Respondent, Polo Chez, Inc.

Initial Decision Below

Hon. Edward D. Beslow, Administrative Law Judge, c/b

Dated: August 9, 1979 - Received: August 10, 1979

BY THE DIRECTOR:

Written Exceptions to the Initial Decision were filed by the respondent, Polo Chez, Inc. and written Answers were submitted thereto by the appellant, pursuant to N.J.A.C. - 13:2-17.14.

In its Exceptions the respondent, Polo Chez, Inc., argues that the appellant's objections to the place-to-place transfer approval are rendered moot by virtue of appellant's objections to and participation in the pending appeal from the approval of renewal of the Polo Chez, Inc. license for the 1979-80 term. It further contends that adequate notice was provided in connection with the place-to-place transfer application; and that appellant's written objection thereto, which was submitted beyond the fourteenth day after second publication of transfer notice, but before actual hearing by the local issuing authority, was defective.

In its reply to the Exceptions, the appellant asserts that its objection was timely filed, and the respondent Board's failure to provide a hearing was erroneous, and requires a remand.

Despite the more than adequate notice of Polo Chez's intent to apply for a transfer of the license and the receipt by the Board of a written objection on the date of the hearing, once the written objection preceded actual determination by the Board, it became incumbent upon the Board to provide the appellant with a hearing. Absent same, the provisions of N.J.-A.C. 13:2-7.8 are rendered nugatory. Therefore, I reject the Exceptions as without merit.

I am very concerned, however, with the extensive delay attendant this proceeding. A transfer application was filed in December 1978 and subject to a Resolution of approval on January 10, 1979. Appellant appealed to this Division on January 24, 1979 and respondent, Polo Chez, Inc., filed its Answer on February 2, 1979. This Division forwarded the file to the Office of Administrative Law on February 7, 1979 for its Initial Decision, which was rendered six months later, on August 10, 1979. The resultant delay has critically affected the successful applicant who has lost the possessory interest to the former licensed premises, and now operates at the new situs. In the present posture it would be inequitable to reverse the transfer approval upon remand to the Newark Board.

Therefore, I shall order a remand of the transfer application to the Newark Board of Alcoholic Beverage Control under the following terms and conditions:

1. The local issuing authority's transfer approval shall remain in full force and effect unless an adverse determination by the Board is made on the remanded hearing;
2. The Newark Board of Alcoholic Beverage Control shall schedule and hear to conclusion the proofs on this remand within ten (10) days from the date of this Order, and shall render its determination no later than seven (7) days thereafter;
3. The remand hearing shall be limited to testimony produced by appellant as an objector to the place-to-place transfer. The proofs adduced shall not be duplic-

ative of those produced by appellant before the Board at the hearing on renewal of the Polo Chez, Inc.'s license, and, specifically, shall be solely limited to those factors which deal with the suitability of the proposed situs for a liquor license. The Board may, if it desires, incorporate by reference, any testimony by appellant at the renewal hearing as to other objections concerning the actual operations of the licensee; and

4. In the event there is an appeal filed with this Division from the determination of the Board on this remand, such appeal shall be consolidated with Appeal No. 4386 (Appellant's appeal from grant of Polo Chez, Inc.'s application for renewal for 1979-80 term).

Having carefully considered the entire record herein, including the transcript of testimony, the exhibits, the Initial Decision, the written Exceptions filed by respondent, Polo Chez, Inc, and the written Answers submitted thereto by appellant, I concur with the findings and recommendation of the Administrative Law Judge and, subject to the special conditions set forth hereinabove, I affirm said Initial Decision and shall remand this matter for further hearing. The Division does not retain jurisdiction herein.

Accordingly, it is, on this 26th day of September, 1979,

ORDERED that the within matter be and is hereby remanded to the Newark Board of Alcoholic Beverage Control for hearing consistent with the terms and conditions heretofore set forth and incorporated herein by reference.

JOSEPH H. LERNER
DIRECTOR

Appendix A - Initial Decision Below

MUTUAL BENEFIT LIFE)	<u>INITIAL DECISION</u>
INSURANCE COMPANY)	
)	
APPELLANT)	O.A.L. DKT. NO. A.B.C. 104-79
)	
-v-)	
)	
BOARD OF ALCOHOLIC BEVERAGE)	
CONTROL OF THE CITY OF NEWARK)	
AND POLO CHEZ, INC. T/A GARY'S)	
BAR.)	
)	
RESPONDENTS.)	

APPEARANCES:

William V. Kennedy, Esq., Bloomfield, New Jersey, for appellant

Hugh B. Gallagher, Esq., Assistant Corporation Counsel, City of Newark, for respondent, Newark Board of Alcoholic Beverage Control

Edward G. D'Alessandro, Esq., D'Alessandro, Sussman, Jacovino & Dowd, East Orange, New Jersey, for respondent, Polo Chez, Inc., T/A Gary's Bar

BEFORE THE HONORABLE EDWARD D. BESLOW, A.L.J. c/b:

Mutual Benefit Life Insurance Company (appellant) has appealed to the Bureau of Alcoholic Beverage Control (Division) from the granting, by respondent Board of Alcoholic Beverage Control of the City of Newark (board), of the application of respondent Polo Chez, Inc., t/a Gary's Bar (Polo Chez) for a place to place transfer of Retail Plenary Consumption License C-220 from premises located at 488 Broad Street, Newark, New Jersey to premises located at 474 Broad Street, Newark, New Jersey.

Notice of this application, conforming to N.J.A.C. 13:2-7.4, was published on December 15, 1978 and December 22, 1978, pursuant to the provisions of N.J.A.C. 13:2-7.7. In addition, Polo Chez caused a bright yellow sign, measuring three (3) feet by four and a half (4½) feet with two and a half (2½) inch black lettering, to be placed in the front window of the proposed premises. This sign, whose message, was similar in content to the published notice, was displayed from approximately the first week in December, 1978, until January 9, 1979. It was also established that by letter dated December 15, 1978 the attorney then representing Polo Chez directly notified the appellant of the transfer application. This letter stated, in part, as did the published notice and window sign, that:

Objection, if any, should be made immediately in writing to James H. Slaughter, Chairman of the Alcoholic Beverage Control of the City of Newark, New Jersey, City Hall, Newark, New Jersey.

Said letter was received by appellant on December 18, 1978.

The record reflects that by a letter dated January 5, 1979, the appellant notified the board of its objections to the application and requested a hearing be scheduled. This letter was received and signed for by the board on January 8, 1979. On the evening of January 8, 1979, public hearing on the application was held with subsequent approval by the board.

In its notice and petition of appeal to the Division, dated January 24, 1979, one of the contentions expressed by the appellant was that it was denied its right to appear at the hearing below because the board's office, upon receipt of the letter of objections, failed to notify the appellant that a hearing had in fact been scheduled for that evening.

Respondents have moved that this matter be dismissed as appellant does not have standing because of its failure to participate in the hearing before the board. Full arguments were made on the record at the hearing on appeal and the subject was fully briefed by the parties. The setting forth of these arguments herein is unnecessary.

There can be no doubt that the responsibility for the administration and enforcement of the alcoholic beverage laws relating to the place to place transfer of a liquor license is primarily committed to municipal authorities. N.J.S.A. 33:1-19,24. The purpose for this is that local officials are more familiar with the characteristics of their community and the nature of a particular area. Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of the City of Newark, 55 N.J. 292 (1970). The Lyons court made it clear that to effectuate the legislative purposes behind the alcoholic beverage laws, the Director, although conducting a de novo hearing in the event of an appeal, should not substitute his judgment for that of the local board or reverse its ruling if reasonable support for it could be found in the record.

After reviewing all of the arguments presented by the parties, I feel compelled to return to the fact that the board was in receipt of the appellant's letter of objection prior to the public hearing. While the local boards are given the authority in matters of place to place transfers because of their familiarity with the condition of the community, it is also certain that members of those communities must have an opportunity to be heard and their testimony considered by the boards. See Lyons, supra. Because the letter of objection was received prior to the scheduled public hearing, albeit on the same day, the board should have made some attempt to notify the appellant of that fact. For this reason, the motion of respondents to dismiss must be denied.

To allow the appellant to present its evidence in this proceeding, however, would work, in effect, to substitute the judgment of an Administrative Law Judge, and ultimately that of the Director of the Division, for the judgment of the local board. Accordingly, this matter should be remanded to the board for further hearing limited solely to the objections of Mutual Benefit Life Insurance Company.

Therefore, based on a review of the entire record in this matter,

I FIND:

1. On January 8, 1979, the board received a letter of objection from the appellant with record to the place to place transfer application of Polo Chez;

- 2. On the evening of January 8, 1979, public hearing in this matter was held and the application approved;
- 3. The board made no attempt to notify the appellant that the hearing was scheduled for the evening of January 8, 1979 albeit the notice of objection was received that day.

In view of the foregoing I CONCLUDE that the motion of the respondents be HEREBY DENIED. I FURTHER CONCLUDE that this matter should be remanded to the board for hearing limited solely to the objection of Mutual Benefit Life Insurance Company to the place to place transfer of Polo Chez.

This action cannot be effected prior to the effective date of this order, which is forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control my Initial Decision in this matter and the record in these proceedings.

DATE

EDWARD D. BESLOW, ALL.J. c/b

RECEIPT ACKNOWLEDGED:

DATE

FOR AGENCY HEAD

MAILED TO PARTIES:

DATE

OFFICE OF ADMINISTRATIVE LAW

2. APPELLATE DECISIONS - MA-BE, INC. v. TINTON FALLS.

Ma-Be, Inc.,
t/a Tinton Falls Inn,

Appellant,

v.

Mayor and Council of the
Borough of Tinton Falls,

Respondent.

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ON APPEAL
CONCLUSIONS
AND
ORDER

Anschelwitz, Barr, Ansell & Bonello, Esqs., by Charles M. Moriarity, Esq., Attorneys for Appellant.
Gagliano, Tucci and Kennedy, Esqs., by James A. Kennedy, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the Mayor and Council of the Borough of Tinton Falls (hereinafter Council) which, by Resolution dated February 14, 1978, found appellant guilty of a charge alleging that, on November 19, 1977, it violated a local municipal Ordinance regulating the closing hours of alcoholic beverage licensed premises. In consequence of such finding, a five day suspension of license resulted; however, this penalty was suspended and no effective date was imposed.

Appellant in its Petition of Appeal contends that the action of the Council was not based upon proper evidence before it, hence, the finding was erroneous. The Council denies this contention in its Answer.

An appeal de novo was heard in this Division pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. Although no stenographic transcript of the proceedings before the Council was prepared, certain police records which had been submitted to the Council were attached to the pleadings and offered in evidence.

Tinton Falls Police Sergeant Donald H. Mueller, testified at the Division hearing on behalf of the respondent. On November 11, 1977, at five minutes after two o'clock in the morning, he received a time-confirmation on his police radio as he observed a number of automobiles in the parking lot of appellant's premises. For the next twenty minutes he peered into the windows and observed three men and a woman at the bar apparently drinking beer and other alcoholic beverages. Two bartenders were serving these persons.

At 2:25 a.m. he gained entry, but between his knock at the doors and actual entry, the bar was cleaned and the drinks gone. The manager of the appellant maintained that the persons drinking were employees, but made no admission that any of the drinks were alcoholic beverages. No proof was supplied to Officer Mueller that any of the persons within the establishment were employees.

Sergeant Mueller was the only witness presented at the hearing and he verified the police reports which were attached to the pleadings.

In oral argument, appellant maintained that, since none of the drinks alleged to have been in front of the persons at the bar, had been seized and analyzed, there was no proof whatever that alcoholic beverages were served. Hence, a guilty finding was in error. Further, since no proof was supplied that the persons within the premises were not employees, a presumption existed that they were such employees and that presumption was uncontroverted. Therefore, no proof whatever buttressed the guilty finding.

The burden of establishing that the action of the issuing authority is erroneous and should be reversed rests entirely with appellant, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15).

The local ordinance under which the subject charge was brought provides in relevant part that no licensee shall sell, serve, deliver or allow the sale or consumption of alcoholic beverages on a weekday between the hours of 2 A.M. and 7 A.M. It further provides that:

During the hours sales are hereinabove prohibited the entire licensed premises shall also be closed, and no person other than the licensee and his bona fide employees shall be permitted to enter or remain thereon, provided, however, that this closing of premises requirement shall not apply to bona fide hotels, to restaurants as defined in Revised Statutes 33:1-12(5).

The Resolution of the Council, which is the subject of this appeal, provided inter alia, that the violation of the municipal ordinance and N.J.S.A. 33:1-31H has been sustained.

That there were a number of persons within the appellant's establishment after closing hours is undisputed. The first defense, that these persons were not drinking alcoholic beverages is immaterial. That they were within the premises was sufficient to establish the charge. The burden then shifted to appellant to explain their presence in order to establish that the exception provided for in the ordinance applied to that situation. In short, if appellant had a just and meritorious defense, it should have come forward with such proofs.

However, at no time was proof offered to identify the persons present within the establishment at the time and, with substantiation through the required employee forms (E141), that such persons were in truth bona fide employees. This was not done either before the Council or at the hearing in this Division.

Further, no proof was supplied that appellant's premises came within the exception of the ordinance as it applied to bona fide hotels, restaurants or clubs. To the contrary, Sergeant Mueller's description of the premises clearly indicate same to be a typical tavern or bar.

Appellant's contentions on this appeal are without merit. I find that appellant has not maintained its burden of establishing that the action of the Council is erroneous and should be reversed, as required by N.J.A.C. 13:2-17.6.

It must be noted that the declination of the Council to make effective the five day suspension is illustrative of its gentle attempt to provide a warning to the appellant that it will not tolerate hours violations; that future similar violations would result in more severe penalties.

I recommend that the action of the Council be affirmed and the appeal filed herein be dismissed.

CONCLUSIONS AND ORDER

Written Exceptions to the Hearer's Report were filed by the appellant, pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the appellant argues that the pleadings and exhibits filed by the respondent required proof that "service and consumption" of alcoholic beverages occurred in appellant's premises after closing hour. Consequently, the Hearer's finding that such factors need not be proven, but rather, presence after closing hours on the licensed premises was sufficient, was erroneous.

The charges filed by the respondent and the Resolution of February 14, 1978 set forth an allegation and finding that the appellant violated the local "hours" ordinance. The said Ordinance, as indicated by the Hearer, prohibits the presence of non-employees on licensed premises after 2:00 a.m. Neither the charge nor the Resolution itself delineated the alleged offensive conduct to preclude applicability of the "presence on premises" prohibition.

Additionally, an appeal to this Division is de novo, N.J.A.C. 13:2-17.6. The record as a whole is reviewed and the Hearer reaches his own conclusion based upon his evaluation of the facts; and his recommendations were predicated thereon.

The recommended finding of the Hearer is supported by the facts sub judice. The charge was an "hours" ordinance violation, and the Hearer found that the charge was supported by the record. The appellant was not prejudiced in any manner because it was aware of the charged violation, and had the ability to attempt to establish any relevant exemptions provided therein, including the employee exemption to the prohibition against presence on the licensed premises. Once the Hearer found a violation of one provision of the Ordinance, further review was not necessary.

Parenthetically, I note that the proofs also amply support a delivery and consumption of alcoholic beverages after closing hours. The confirmation of the source of draft beer and labels or bottle shapes testified to by the police officer established prima facie, that the beverages had alcoholic content. No testing is required under these circumstances, N.J.A.C. 13:2-23.22, N.J.A.C. 13:2-23.23, N.J.S.A. 33:1-1.1 and N.J.S.A. 33:1-88.

Therefore, I find the Exceptions of appellant to lack merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's Report and the written Exceptions filed thereto by the appellant, I concur with the findings and recommendations of the Hearer, and adopt same, as supplemented hereinabove, as my conclusions herein.

Since the service of the five days suspension imposed by the Borough of Tinton Falls was waived by the Council, no effective suspension will be reimposed herein.

Accordingly, it is, on this 26th day of September, 1979,

ORDERED that the action of the Mayor and Council of the Borough of Tinton Falls be and the same is hereby affirmed, and the appeal be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

- 3. DISCIPLINARY PROCEEDINGS - EMPLOYMENT OF BAND HAVING 2 POLICE OFFICERS AS MEMBERS - LICENSE SUSPENDED 15 DAYS - DIRECTOR ACCEPTS FINE IN LIEU OF CLOSING.

In the Matter of Disciplinary Proceedings against
 Charlie O's, Incorporated,
 t/a Smuggler's Cove
 595-7 Morris Avenue
 Springfield, N.J. 07081
 Holder of Plenary Retail Consumption Lic. 2017-33-002-001, issued by the Township Committee of Springfield Township.

CONCLUSIONS
 AND
 ORDER

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Bloom & Javerbaum, Esq., by Kenneth S. Javerbaum, Esq., Attorneys for the Licensee.
 Mart Vaarsi, Esq., Deputy-Attorney General, Appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to the following charge: On or about October 8, 1977, and prior thereto, you employed and had connected with you in a business capacity persons; viz., Michael Monetti and Glenn Dinetz, who during the said times were also regular police officers; in violation of Rule 30 of State Regulation No. 20 (now N.J.A.C. 13:2-23.31).

The Division and licensee do not disagree as to the essential facts underlying the charge. The licensee admittedly engaged the services of a band called "The Fuzz" which performed on the licensed premises on October 8, 1977. One member, Michael Monetti, was a regular police officer employed by the Town of Maplewood; another, Glenn Dinetz, was employed as an investigator by the New Jersey Division of Criminal Justice.

- I -

Licensee maintains that the charge pertaining to Dinetz must be dismissed since he is neither a regular police officer, as alleged in the complaint, nor within the meaning of N.J.A.C. 13:2-23.31.

Dinetz is by education an accountant. His tasks are restricted to investigating Medicaid fraud perpetrated by doctors, dentists, pharmacies, hospitals and nursing homes. He does not qualify to be a member of his Division's P.B.A. or the Police and Firemans' Pension Fund. He has had no police training in any of the various aspects required of a lawman. He has taken courses at the State Police Academy relative to criminal investigations, only. He was not subjected to the physical training courses, but was instructed in police implements such as guns, hand cuffs, billy clubs, etc. Lastly, he carries a firearm in the course of his duties.

The Division maintains that Dinetz is one of those persons prohibited from employment in a licensed premise as the rule clearly states it is applicable to "any peace officer or any other persons whose powers include the enforcement of the Alcoholic Beverage Law".

It concedes that the charge merely states regular police officer and does not state the remaining language of the aforecited regulation. However, it maintains that since the charge cites the specific regulation which licensee was alleged to have violated, the remaining language of the regulation is incorporated by reference. Licensee does not urge that it was prejudiced by this technical defect, nor, as the Division maintains, could it, because the licensee was made aware of the nature of the charge and fully capable of preparing its defense.

- II -

Licensee next maintains that it did not employ or have connected with him in any business capacity whatsoever, any police officers, within the meaning and intent of N.J.A.C. 13:2-23.31. The relationship of the bands to the licensee was that of an independent contractor. It cites various cases in support of its position, as well as the mode of payment (lump sum to band), without withholding Federal or State income tax, social security or any other deductions required in the employer-employee relationship.

The Division responds that the word "employ" as used in its regulations is not to be construed in its narrow technical sense to describe specific kinds of legal relationships between licensee and others. Rather, it is to be construed in a broader sense to encompass all persons whose services are utilized in furtherance of the licensed business.

In support of its position the Division cites Kravis v.

Hock 137 N.J.L. 252, 255 (Sup. Ct. 1948) as directly on point. In that case the licensee argued that he had not violated Rule 21 of Division Regulation No. 20 (N.J.A.C. 13:2-23.18), which at that time prohibited "any female employed on the licensed premises" from accepting food or beverage from a patron. It argued that the females were "independent contractors", rather than employees. Our former Supreme Court found this claim to be "Specious", noting that long-standing construction of the term "employed" by the agency militated against the narrow interpretation of that term urged by the licensee. Rather, it was the clear intent and plain meaning of the regulation that it applied to "all persons whose services are utilized in furtherance of the licensed business, including independent contractors. Id. at 255. See Also In re Gutman, 21 N.J. Super. 579 (App. Div. 1952). Likewise, it is the clear intent of N.J.A.C. 13:2-23.31 that the term "employ" be construed to include all persons utilized in furtherance of the licensed business, and not merely those standing in a particular kind of legal relationship with the licensee.

- III -

Next, the licensee urges that the rule not be construed to prohibit employment of off-duty police officers from other communities who lack proper authority to enforce Alcoholic Beverage Control regulations in the licensed premises.

The Division argues that no such interpretation may be drawn from subject rule as written, since it contains no limitations on its scope. The rule seeks to cover potential as well as actual conflict which may arise from the employment of officers from any municipality. Further, it cites the recent enactment (March 2, 1978) C.436, L 1977, which extended statewide arrest powers to municipal police.

- IV -

The final point raised by licensee is that, should the subject rule be interpreted as including a restriction on out-of-town policemen, then the Division of Alcoholic Beverage Control has exceeded its regulatory authority.

Division responds that N.J.S.A. 33:1-39 grants to the Director the authority to promulgate rules and regulations covering a broad variety of specific subjects "...and such other matters, whatsoever as are or may become necessary in the fair, impartial, stringent and comprehensive administration of this Chapter."

- V -

The citations put forth by licensee in support of its position that the relationship between band and licensee is that of independent contractor are, for the purposes cited, undoubtedly controlling. However, the issue here is not one of tort (or other) liability between litigents. As Justice Van Syckel stated in Paul v. Gloucester County, 50 N.J.L. 585 at p. 595:

The sale of intoxicating liquor has, from the earliest history of our state, been dealt with by legislation in an exceptional way. It is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied.

I find, as a fact, that this argument has no merit. The band members are, for purposes of Alcoholic Beverage Control, employees of the licensee.

The defense that the rule does not apply to off-duty officers, in jurisdictions other than that which employs them, likewise lacks merit. The rule as written is clear and unambiguous. Had it been the intent to limit the scope as licensee argues, the authors would have so provided in language equally clear and unambiguous. I cannot find any basis whatsoever which would support this strained interpretation of the rule.

Similarly, I find no merit to the argument that the Director exceeded his authority in so restricting out-of-town policemen. Here too, the language of the rule is so precise that the attempted interpretation put forth by licensee is patently invalid. Even if this were not so, and there did exist a genuine issue, the language of the cited statute (N.J.S.A. 33:1-39) would, as maintained by the Deputy Attorney General, prevail.

For the reasons discussed, I find that the Division has established that the licensee is guilty of violating N.J.A.C. 13:2-23.31 by employing upon its licensed premises, Michael Monetti, a regular policeman employed by the Town of Maplewood.

Having established the guilt of the licensee to subject charge through Police Officer Monetti, the issue of Glenn Dinetz is rendered moot and I shall not, therefore, address

myself to it. Whether licensee hired one or two police and/or peace officers to perform at its premises that night, the penalty imposed would not vary as the offenses would merge for this purpose.

Although the various defenses interposed by licensee fail as a defense to the charge, there is within them some merit which should be considered as mitigating when determining the degree of penalty.

I note too, that in certain instances, for the first offense of this nature, a letter is sometimes sent advising that such person(s) cannot be employed and that failure to comply with directive will result in disciplinary proceedings.

While the Division is not estopped from bringing charges after initial occurrence, as it did here, it is some evidence of a tendency toward leniency in that instance.

I, therefore, recommend a suspension of license for fifteen (15) days instead of the precedent thirty (30) days.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by the licensee, pursuant to N.J.A.C. 13:2-19.6.

In its Exceptions, the licensee reiterates the arguments previously advanced at the hearing concerning its interpretation of the import and intent of N.J.A.C. 13:2-23.31. These arguments have been adequately and correctly resolved in the Hearer's Report, and I reject same as without merit.

In addition thereto, the licensee has made application for the payment of a fine, in compromise, in lieu of suspension, in accordance with N.J.S.A. 33:1-31.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations and briefs of the parties, the Hearer's Report and the written Exceptions filed thereto by the licensee, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

I have also carefully considered the fine application of the licensee and I have determined to accept an offer, in compromise, by the licensee, to pay a fine of \$1,500.00 in

lieu of suspension of license for fifteen (15) days.

Accordingly, it is, on this 21st day of September, 1979,

ORDERED that the payment of a \$1,500.00 fine by the licensee is hereby accepted in lieu of a suspension of license for fifteen (15) days.

A handwritten signature in cursive script, appearing to read "Joseph H. Lerner".

JOSEPH H. LERNER
DIRECTOR