

*Handwritten initials and signature*

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N. J. 07102

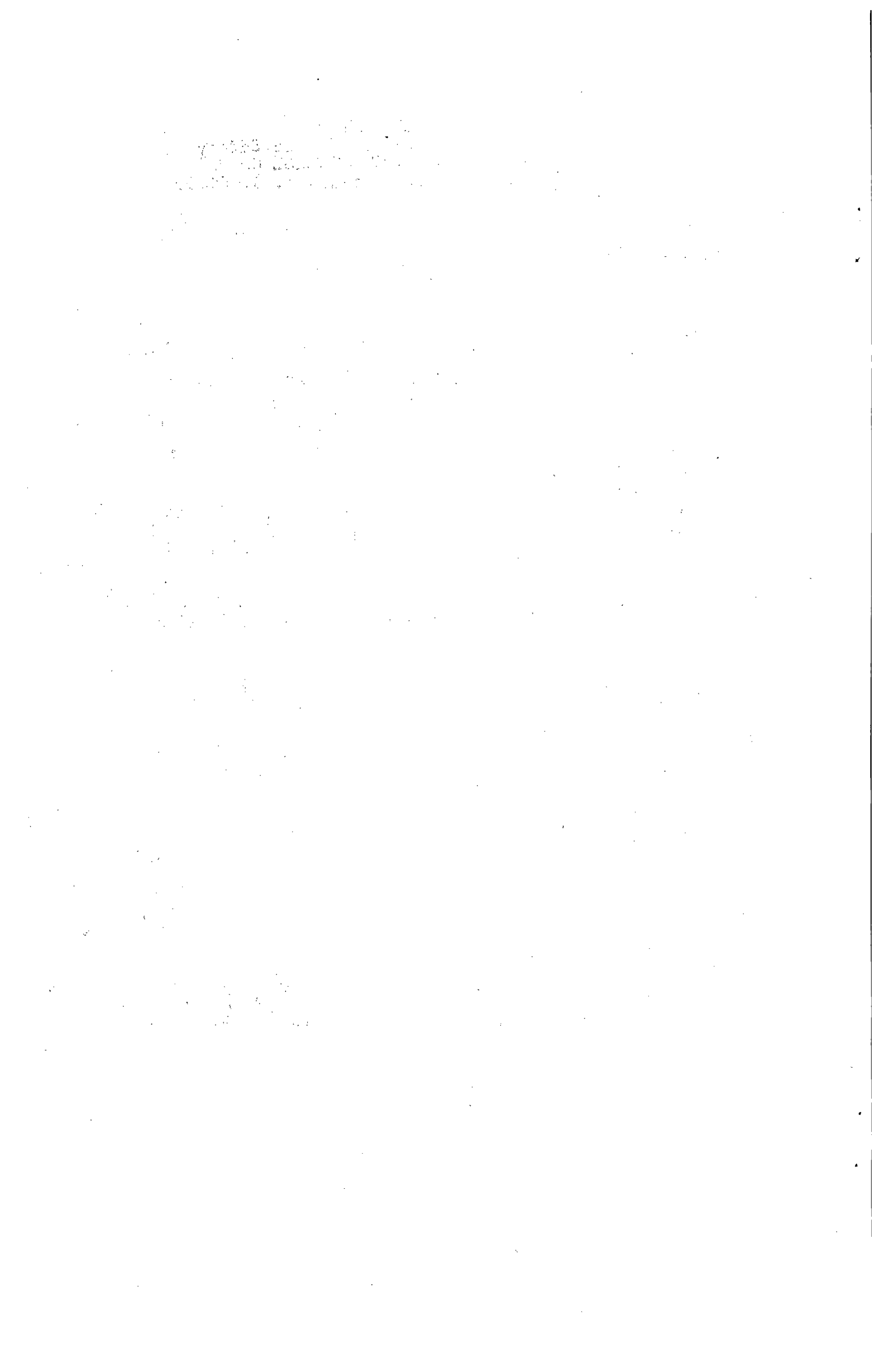
BULLETIN 1975

May 25, 1971

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - R. H. MACY & CO., INC. v. WAYNE
2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1970 TO MARCH 31, 1971 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 47 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20).
3. SEIZURE - FORFEITURE PROCEEDING - UNLICENSED SALE OF ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT LIEN HOLDER - ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY ORDERED FORFEITED.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.
5. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE DISTRIBUTION LICENSE - TRANSFER APPROVED.
6. DISCIPLINARY PROCEEDINGS (Mansfield Twp., Warren County) - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.
7. DISCIPLINARY PROCEEDINGS (Camden) - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
8. DISCIPLINARY PROCEEDINGS (Hoboken) - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.
9. DISCIPLINARY PROCEEDINGS (Sparta) - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.



STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1975

May 25, 1971

1. APPELLATE DECISIONS - R. H. MACY & CO., INC. v. WAYNE.

#3434, 3502 )  
R. H. Macy & Co., Inc. )  
Appellant, ) On Appeal  
v. )  
Municipal Council of the ) CONCLUSIONS  
Township of Wayne, ) and  
Respondent. ) ORDER

-----  
Lum, Biunno & Tompkins, Esqs., by Walter J. Fessler, Esq.,  
Attorneys for Appellant  
Joseph J. DeLuccia, Esq., by Robert S. Moraff, Esq., Attorney  
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 Municipal Council of the Township of Wayne (hereinafter Council) which adopted a resolution denying place-to-place transfer of appellant's plenary retail consumption license from a proposed building to a designated area in appellant's large department store, both embraced in an extensive shopping center within the municipality called Willowbrook.

The controversy between the appellant and the Council has been a lingering one and extends beyond the scope of this application and appeal. A brief history of that controversy is necessary as a backdrop to this present action.

In June 1962 the appellant acquired a liquor license and had such license transferred to Willowbrook subject to completion of a building in which such license would be housed. Renewal of such license continued on a subject-to-completion basis until 1968 when its application for renewal was denied. From that action appellant then appealed to the Division and that appeal was resolved in favor of appellant. The municipal action was reversed and it was ordered to renew the application subject to completion of premises. R. H. Macy & Co., Inc. v. Wayne, Bulletin 1888, Item 2.

The Council's objection to renewal then was that the proposed building encroaches on a roadway and the building would eliminate parking space. The Director found there were insufficient facts upon which to warrant the denial.

Thereafter the appellant here apparently changed its plans and elected to abandon the proposed building in favor of

changing a restaurant it already operates in the department store so that drinks could be served with meals and that there be a cocktail lounge as part of the restaurant. To accomplish this an application to transfer the license covering the embryonic restaurant building to the one inside the department store was filed.

The Council denied the said application on three grounds: (1) the distance between the nearest entrance of appellant's department store and that of an existing license is less than 1000 feet, and the local ordinance prohibits transfers closer than 1000 feet; (2) congestion of people (teenagers in particular) coupled with proposed liquor use will be detrimental; (3) an over-congestion of liquor uses in conjunction with other uses in proximity would result, with detrimental effect.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, and the attorneys for the respective parties were given full opportunity to present testimony and to cross-examine witnesses. An answer was filed by the Council and both counsel filed briefs.

Testimony was offered only by appellant who introduced Arnold M. Gross, store manager of appellant's store at Willowbrook. A sketch indicating the measurement of distances from and to the old and proposed license sites, along with copies of applicable ordinances and photographs of existing restaurant, were admitted into evidence. The witness explained the method of measuring the distance was by way of the nearest pedestrian walkways and he noted the distances involved. He indicated the intention of the appellant was to use the license merely so that alcoholic beverages could be served with food; there would be no public bar, but there would be a cocktail lounge. The present facility permits patronage of one hundred sixty-six persons. Off-premises consumption sales would not be made (a plenary retail distribution license already exists somewhere else in the store). The distance from the department store building to the existing licensed premises is about eight hundred feet and the licensed premises in the store would be three hundred eighty-four feet from the front door.

There being no other testimony of appellant and none whatever on behalf of the Council, the issue to be resolved is obviously not of disputed facts. The existence of licensed premises within the shopping center posed no problem except as related to the question of distance. From the exhibits submitted, that distance from the licensed premises to proposed premises of the existing restaurant is well in excess of one thousand feet, measured in the statutory manner. Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con., 53 N.J. Super. 271 (App. Div. 1958). So that portion of the offending resolution concluding that the application should be denied because of the 1000-foot rule being violated was in error. An exemption to that rule is contained in the local ordinance (section 3-8) which provides that licenses in existence on June 26, 1963 are exempt from this limitation if within a shopping center, etc. The question of applicability of this section is moot as the limitation is not violated.

The distance between the entrance to the proposed licensed premises (being the restaurant presently called The Carriage House, located on the second floor of the department

store) and the existing licensed premises is 1118 feet minimum (walking distance). This figure is uncontroverted and susceptible of proof via the surveys accepted into evidence.

"... the rule hereafter will be that the measurement will be made in the direction indicated by the statute in straight lines along the side of walls and street lines nearest to church (or school) and tavern thus to get the shortest distance between them. The courses will commence and terminate at the nearest point on the nearest doors of the respective premises. That is the place where the pedestrian would leave or enter, taking the shortest course, if the door were open."  
Aldarelli v. Asbury Park, Bulletin 186, Item 12.

Cf. Presbyterian Church, etc. v. Div. of Alcoholic Bev. Con., supra.

The Council contends that the measurement should be made to the outside walls or doorway of appellant's store. Such is not the requirement. The distance to be measured is from the licensed premises to the licensed premises. The restaurant could be moved from one location to another within the store without being in violation of the distance rule per se. Karam, et al. v. Alcoholic Beverage Control, et al., 102 N.J. Super. 291 (App. Div. 1968).

The second and third grounds of Council's denial was the allegation that the new location would be unsuitable in that congestions of people, particularly teenagers, close to a liquor use would be detrimental. The issuing authority may make its own finding which, if a clear exercise of its discretion will not be altered by the Director in the absence of caprice or abuse of discretion. Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

Counsel cites Fanwood v. Rocco, 33 N.J. 404 (1960), the doctrine of which is applicable in the instant case. That doctrine in essence is that the Director should affirm a finding by the issuing authority in refusing a transfer if it, in good faith and in the reasonable exercise of its discretion, decides that it does not want a licensed premises in a particular area. The distinction between the Rocco case and this one is the evidence offered. In Fanwood there was testimony of the municipal officials who constitute the issuing authority, clergymen and residents, together with others, at a public hearing on the issue. The questions were explored locally and, despite the objections being general, the action was affirmed. The proposed location selected was one where no prior license existed and the municipal determination was that one was not wanted there.

Here we have the curious situation where the Council granted permission for a transfer of the license originally to a proposed restaurant building, which site is a mere five hundred thirty-five feet away from the applicant's department store. Thereafter there was a change of mind by the Council and the renewal of the license was denied. This action was appealed and the municipality was reversed. R.H. Macy, Inc. v. Wayne, supra. The objections offered at that time by the Council were that the site of the new building would reduce parking area and that the building would project into a roadway.

It is significant that in the prior matter insufficient facts were heard before the Council at the meeting in which denial resulted so that the transcript was barren. A rehearing was ordered and again no witnesses were called and the only evidence before the Division was an affidavit filed by appellant. Other than the filed pleadings, argument of counsel and the affidavit, there was nothing offered before the Division.

The instant matter similarly suffers from a paucity of evidence. There was no transcript of hearing before the Council, if indeed there was any hearing. The Council offered nothing more than a copy of a short resolution relating to its action. The transcript of the proceedings before the Division, as indicated herein, revealed the testimony of one witness, the offer of sketches, photographs and copies of ordinance together with an exhausting colloquy of both counsel who offered heavy opinion in place of testimony. The totality of the record herein indicates that the position of the Council is groundless.

In any event, the application seeks the limited use of the license in conjunction with a restaurant in a department store. No public bar is intended and in truth could be prohibited as a license condition. Cf. Lubliner v. Bd. of Alcoholic Bev. Con. Paterson, 33 N.J. 428 (1960). No parking problem would be involved nor would the building interfere with a roadway. All of the objections initially advanced by the Council in the prior case are now overcome by the present application. A basic question results: Did the Council take into consideration these and all of the other facts before rendering its decision?

"While the board's reasons might well have been elaborated and incorporated along with factual findings in the formal resolution granting the transfer, we fail to see how the appellants were in anywise prejudiced by the omission." Lubliner v. Bd. of Alcoholic Bev. Con. Paterson, *supra*. In the instant matter the appellant is considerably prejudiced by the omission of any factual findings, either stated in the applicable resolution or produced at any stage of the proceedings by the Council.

"... The settled practice is that he [the Director] will affirm the municipality's grant or denial of the license transfer so long as the local board's exercise of judgment and discretion was reasonable...." Essex Co. Retail, etc. v. Newark, etc., Bev. Control, 77 N.J. Super. 70, at 76 (App. Div. 1962).

Where municipal action was unreasonable or improperly grounded, the Director will grant such relief or take such action as is appropriate. Where it appears the denial was arbitrary, unreasonable or illegally grounded, the act will be reversed. Bd. of Com'rs. of Bayonne v. B & L Tavern, Inc., 42 N.J. 131; De La Cruz v. Passaic, Bulletin 1908, Item 2.

In these times, with wives attempting to induce reluctant husbands to accompany them on shopping expeditions, it would appear that one small measure of cajolery might be the opportunity to lunch at a conventional restaurant rather than the ladies' tearoom type so frequently a part of department stores. And, what a refuge for the footsore husband the lounge could be. With no public bar (and this is precludable

as above indicated), with its attendant negative image, it is difficult to see how the character of such a restaurant with the introduction of the license privilege would contribute to congestion. Whether the Council considered congestion could come from the restaurant into the aisles nearby, or if the congestion in the aisles would negative accessibility to the restaurant, is difficult to understand.

The licensee acquires through his investment therein an interest which is entitled to some measure of protection. Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462 (App. Div. 1955). The appellant has made a considerable investment and has consumed several years of (abortive) planning in its development which now nears fruition. The denial by the municipality was summary. There is no indication in the record that any opportunity was afforded appellant to outline, describe and discuss the proposals for the change in location with the Council as well as to supply it with such facts and information as would have assisted it in reaching its decision. Arbitrary action results without fair, solid and substantial cause; that is, without cause based upon law. U.S. v. Lotempio, 58 Fed. 2nd, 358.

Therefore, there being no reasonable basis offered for the action of the Council and, in converse, it manifests an unalterable implication of arbitrary action, it is recommended that the action of the Council in denying transfer of appellant's license be reversed, subject to the special conditions that it be used solely in conjunction with a restaurant and that no public bar or sales for off-premises consumption be authorized.

#### Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorney for respondent pursuant to Rule 14 of State Regulation No. 15. Written answer to the said exceptions, with supportive argument, was filed by attorney for appellant.

I have carefully considered the exceptions filed with respect to the Hearer's report and find that they have either been answered in the Hearer's report or are lacking in merit.

Having carefully considered the entire record, including the transcript of testimony, the exhibits, the Hearer's report, the exceptions filed with respect thereto and the answer to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the action of respondent Municipal Council of the Township of Wayne be and the same is hereby reversed, and respondent is directed to renew the license for the current licensing period and to transfer the said license in accordance with the application of the appellant.

RICHARD C. McDONOUGH  
DIRECTOR

2. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1970 TO MARCH 31, 1971 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19 (INCLUDING 47 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20)

C L A S S I F I C A T I O N   O F   L I C E N S E S

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Licenses Surr. Revoked Retired	Number Licenses In Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	485	\$ 210,160.00	74	\$ 28,075.00	30	\$ 2,640.00						589	\$ 240,875.00
Bergen	810	388,340.64	301	98,475.64	168	16,005.00	43	\$ 1,981.50	5	\$ 1,398.75		1327	506,201.53
Burlington	201	98,580.00	43	17,321.00	61	7,832.05	1	50.00				306	123,783.05
Camden	438	245,740.62	86	41,688.00	81	8,119.92			1	450.00		606	295,998.54
Cape May	141	82,300.00	13	4,920.00	19	3,550.00						173	90,770.00
Cumberland	81	47,400.00	15	5,200.00	35	4,725.20						131	57,325.20
Essex	1167	751,627.21	330	223,770.00	91	12,550.00	23	1,150.00				1611	989,097.21
Gloucester	110	42,990.00	16	4,540.00	28	2,685.00						154	50,215.00
Hudson	1352	627,065.00	295	122,600.00	71	8,217.65	57	2,475.00			26	1749	760,357.65
Hunterdon	80	37,017.40	17	13,035.00	19	2,380.00						116	52,432.40
Mercer	394	288,629.00	51	29,586.00	65	9,750.00						510	327,965.00
Middlesex	632	324,580.00	89	31,445.00	146	11,838.00	3	150.00				870	368,013.00
Monmouth	546	297,197.93	128	47,428.00	69	7,992.34	10	492.00	18	11,769.62		771	364,879.89
Morris	361	164,334.00	105	47,625.00	74	7,692.77	13	650.00	5	1,608.75	1	557	221,910.52
Ocean	195	120,490.14	52	25,194.80	53	6,039.86						300	151,724.80
Passaic	765	329,407.00	166	53,290.00	51	5,972.87	5	250.00				987	388,919.87
Salem	50	20,010.00	8	1,640.00	20	1,650.00						78	23,300.00
Somerset	190	97,580.00	41	14,415.00	41	5,015.00						272	117,010.00
Sussex	166	47,975.00	21	4,495.00	15	865.00	1	50.00	1	225.00		204	53,610.00
Union	544	347,356.49	145	77,549.00	97	10,786.16	25	1,250.00			2	809	436,941.65
Warren	145	45,382.00	22	6,014.75	33	3,486.50			1	225.00		201	55,103.25
Totals	8853	\$4,614,162.43	2018	\$ 898,307.19	1267	\$ 139,793.32	181	\$ 8,498.50	31	\$ 15,677.12	29*	12321	\$ 5,676,438.56

BULLETIN 1975

PAGE 6

Since 7/1/70\* During period 1/1/71 - 3/31/71  
 27 C Retired New Licenses - 2-C - 4-CB  
 1 C Cancelled Late Renewal 1-C Brev. Oper. under appeal  
 1 C Revoked Denial 1-C licenses vacated - 6-C

Richard C. McDonough  
 Director

3. SEIZURE - FORFEITURE PROCEEDING - UNLICENSED SALE OF ALCOHOLIC BEVERAGES - MOTOR VEHICLE RETURNED TO INNOCENT LIEN HOLDER - ALCOHOLIC BEVERAGES AND PERSONAL PROPERTY ORDERED FORFEITED.

In the Matter of the Seizure	:	
on June 24, 1970 of a quantity of	:	Case No. 12,343
alcoholic beverages, a cooler, and	:	
an Oldsmobile sedan in the parking	:	On Hearing
lot of General Motors, Pleasant	:	
Street, in the City of Linden,	:	CONCLUSIONS
County of Union and State of New Jersey.	:	and
.....	:	ORDER

Weiner, Weiner & Glennon, Esqs., by Otto C. Staubach, Esq.,  
 appearing for claimant, Anthony Mandycz, Jr.  
 Linden Assemblers Federal Credit Union, by Joseph DiMichele,  
 Treasurer.  
 Harry D. Gross, Esq., appearing for the Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of R.S. 33:1-66 and State Regulation No. 28 to determine whether four containers of alcoholic beverages, one cooler and a 1970 Oldsmobile sedan, more particularly described in an inventory attached hereto, made part hereof, and marked Schedule "A", seized on June 24, 1970 at the General Motors parking lot, Pleasant Street, Linden constitute unlawful property and should be forfeited.

At the said hearing, the Linden Assemblers Federal Credit Union, represented by counsel, appeared and sought recognition of its lien claim on the said motor vehicle. No one opposed forfeiture of the alcoholic beverages or the cooler.

John J. Troiano, detective lieutenant of the Linden Police Department, testified as follows: Pursuant to a specific assignment to investigate a report of a male unlawfully selling alcoholic beverages from his motor vehicle and taking numbers bets at the General Motors parking lot, he arrived at the said parking lot on June 24, 1970 at approximately 10:45 A.M. He observed a male, later identified as Anthony Mandycz selling cans of beer which he took from a cooler in the trunk of the said Oldsmobile sedan. He noted that there were about six or seven males drinking from the cans purchased from Mandycz. He remained there about 1½ hours and observed at least 10 other persons approach the vehicle, some of whom purchased beer, and others gave Mandycz money and placed bets with him.

At 11:50 A.M. the witness identified himself to Mandycz, placed him under arrest, and a search revealed lottery slips on Mandycz, cans of beer in a cooler in the open trunk of the motor vehicle and numerous empty cans. Mandycz was thereafter charged with the sale and possession of alcoholic beverages without a license in violation of R.S. 33:1-50 (a and b), and was released in bail for arraignment in the Linden Municipal Court.

The testimony of Lieutenant Troiano was corroborated by Detective Edwin Gergich, who accompanied by Detective Caffrey, observed the sale of these alcoholic beverages by Mandycz at the time and place set forth hereinabove. The motor vehicle and the alcoholic beverages were adopted by agents of this Division; the cooler and the empty cans were retained by the Linden Police Department.

On July 13, 1970 an analysis of a sample of the contents of one of the seized cans of beer by the Division chemist disclosed that it is an alcoholic beverage fit for beverage purposes, with an alcoholic content, by volume, of 4.57%.

The records of this Division disclose that there was no license issued authorizing Mandycz or any other person to sell alcoholic beverages, nor was there a permit or license issued authorizing the sale of alcoholic beverages at these premises. There was introduced into evidence the complete inventory of the seizure, the chemist's report, the Director's certificate of non-issuance, and the affidavits of mailing and publication of notice.

The seized alcoholic beverages are illicit because they were intended for unlawful sale. R.S. 33:1-1(i). Such illicit beer, the cooler and the motor vehicle in which the said beer was transported and found constitute unlawful property and are subject to forfeiture. R.S. 33:1-1(y); R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 11,516, Bulletin 1645, Item 4.

Since the evidence clearly supports the charge that the seized alcoholic beverages are illicit because they were intended for illegal sale and transported unlawfully, it is recommended that these beverages and the cooler be forfeited. R.S. 33:1-1(x and y); R.S. 33:1-2; R.S. 33:1-66. Seizure Case No. 10,918, Bulletin 1504, Item 3.

Anthony Mandycz, Jr., testifying on behalf of the claimant herein, stated that he purchased the said motor vehicle from the Key Oldsmobile Company, Linden, N.J. and the said motor vehicle was financed under a security agreement entered into with the Linden Assemblers Federal Credit Union, having its principal office at 520 West Edgar Road, Linden. This agreement secured payment of the sum of \$3,442.65 lent to Mandycz for the purchase of the said motor vehicle and was repayable in the sum of \$110.34 per month. Mandycz, who was an employee of the General Motors Corporation made five monthly payments up to the date of the seizure.

Joseph DiMichele, the manager of Linden Assemblers Federal Credit Union corroborated the testimony with respect to the loan made to Mandycz for the purchase of the said motor vehicle, and produced into evidence a copy of the said security agreement. He stated that this claimant had made a complete background investigation of Mandycz. Mandycz was an employee of General Motors Corporation for the past 17 years, had received a prior loan from this claimant and had a good credit record. The motor vehicle was to be used for transportation to and from work and for his personal convenience. The claimant denied any knowledge of the unlawful liquor activity engaged in by Mandycz or that the motor vehicle would be used in any such unlawful liquor activity.

Finally, he stated that there is now due a balance of \$2,958.68 and that the claimant would be willing to accept the motor vehicle in lieu of the sum due to it, in full satisfaction thereof.

I am satisfied, on the basis of the evidence presented, that this claimant did not know or have any reason to believe that Mandycz was engaged in illegal liquor activity or that the motor vehicle would be used in connection therewith. Accordingly, I recommend that the lien claim of the Linden Assemblers Federal Credit Union be recognized in the present outstanding balance in the sum of \$2,958.68.

It appears unlikely that the amount realized at public sale would exceed the amount of the lien claim and the costs of seizure and storage. Since this claimant is willing to accept the return of the motor vehicle in full satisfaction of its lien claim, I, accordingly, recommend that the said motor vehicle be returned to the Linden Assemblers Federal Credit Union upon payment by it of the reasonable costs of seizure and storage.

#### Conclusions and Order

No exceptions to the Hearer's Report were taken within the time limited by Rule 4 of State Regulation No. 28.

After carefully considering the facts and circumstances herein, I concur with the recommended conclusions of the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is on this 5th day of April 1971,

DETERMINED and ORDERED that if on or before the 23rd day of April, 1971 the Linden Assemblers Credit Union pays the costs of seizure and storage of the Oldsmobile sedan, more fully described in Schedule "A", attached hereto, the said motor vehicle will be returned to it; and it is further

DETERMINED and ORDERED that the cooler and the alcoholic beverages referred to in the aforesaid Schedule "A" constitute unlawful property and the same be and are hereby forfeited in accordance with the provisions of R.S. 33:1-66 and shall be retained for the use of hospitals and State, county and municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

RICHARD C. McDONOUGH  
DIRECTOR

#### SCHEDULE "A"

- 4 - containers of alcoholic beverages
- 1 - cooler
- 1 - 1970 Oldsmobile sedan, Serial No. 3543GE147113Z,  
N.J. Registration IAT 558

4. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF REGULATION NO. 38 - PRIOR DISSIMILAR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 50 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

John Trosky )  
t/a John Trosky Tavern )  
324 Summit Avenue )  
Jersey City, N. J. )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-427, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )

-----  
James H. Dowden, Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Sunday, November 15, 1970, he sold twelve cans of beer for off-premises consumption, in violation of Rule 1 of State Regulation No. 38.

Licensee has a previous record of suspension of license issued to him for these premises, by the Director for seventy-five days, effective December 3, 1970, for permitting the acceptance of numbers bets on the licensed premises. Re Trosky, Bulletin 1950, Item 4. In addition, licenses issued to him for premises 57 Vroom Street, Jersey City were suspended three times, once by the municipal issuing authority for five days, effective October 12, 1952, for alcoholic beverage activity on the licensed premises during hours prohibited by local regulation and twice by the Director for sales of alcoholic beverages in original containers for off-premises consumption during hours prohibited by State regulation, viz., for fifteen days, effective March 3, 1958, and for thirty days, effective March 2, 1959, Re Trosky, Bulletins 1217, Item 8 and 1269, Item 3.

The previous records of suspensions of license for similar violations in 1952, 1958 and 1959 disregarded in measuring the penalty since occurring more than ten years ago, the license will be suspended for fifteen days (Re Joy-Ken Corp., Bulletin 1940, Item 10), to which will be added five days by reason of the record of suspension in 1970 for a dissimilar violation occurring within the past five years (Re Harrington & Burns, Inc., Bulletin 1882, Item 5), to which will be added thirty days by reason of the aggravating circumstances of the four prior license suspensions (Re Scangarello, Bulletin 1751, Item 13 and Re Jeanne's Enterprises, Inc., Bulletin 1766, Item 9), or a total of fifty days, with remission of five days for the plea entered, leaving a net suspension of forty-five days.

Since this is the licensee's fifth suspension, he is put on notice that any further violation may be deemed additionally aggravating to a point warranting imposition of a period of suspension substantially greater than the minimum penalty indicated by Division precedents for such violation and

possibly to outright revocation of the license.

Accordingly, it is, on this 6th day of April 1971,

ORDERED that Plenary Retail Consumption License C-427, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to John Trosky, t/a John Trosky Tavern, for premises 324 Summit Avenue, Jersey City, be and the same is hereby suspended for forty-five (45) days, commencing at 2:00 a.m. Tuesday, April 20, 1971, and terminating at 2:00 a.m. Friday, June 4, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

5. STATE LICENSES - OBJECTIONS TO TRANSFER OF STATE DISTRIBUTION LICENSE - TRANSFER APPROVED.

In the Matter of Objections to the Transfer of State Beverage Distributor's License SBD-75 from

Gillhaus Beverage Company, Inc.  
Meta Lane  
Lodi

to

White Rock Beverage Co. of New Jersey )  
1800 Highway #35 )  
Oakhurst, N. J. )

CONCLUSIONS  
and  
ORDER

-----  
Abramoff, Apy & O'Brien, Esqs., by Chester Apy, Esq., Attorneys for Applicant  
Joseph Zimmerman, for United Council of C-Licensees of Monmouth County  
Henry W. Sayrs, Esq., Attorney for Monmouth and Ocean Beer Distributors Ass'n

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

On February 5, 1971, the White Rock Beverage Co. of New Jersey, t/a Diversified Beverage Distributors, filed an application for a transfer of SBD-75 license, held by Gillhaus Beverage Company, Inc., to itself and from premises Meta Lane, Lodi, to 1800 Highway #35, Oakhurst.

A written objection to the said transfer was filed, and a hearing was duly set thereon. The objector, Ocean and Monmouth County Beer Distributors Ass'n, through its attorney set forth reasons for its objections, which may be summarized as follows:

- (a) That there are sufficient retail outlets in Monmouth County, and
- (b) That a "new license" in this area would serve no practical purpose and have no

benefit to "retail outlets" or "for the population of Monmouth or Ocean County."

At the hearing herein Harold S. Jones, president and general manager of the applicant, testified that the transfer of the license was sought in connection with its present operation, wherein it distributes soft drink beverages throughout the State of New Jersey. The applicant has been in the beverage distributing business for the past nineteen years, and services approximately five thousand outlets. Twenty percent of its outlets are located in Monmouth County. He estimates that the move to the proposed new location was made merely for the purpose of convenience, and it is anticipated that thirty percent of its sales would be in Monmouth and Ocean Counties.

The building in which the applicant will operate consists of a one-story cinder block, approximately one-hundred-forty feet by one-hundred twenty-five feet, and is not situated within two hundred feet of any church or school.

He noted that the license is subject to the following special condition, pursuant to R.S. 33:1-39, that no sales thereunder shall be made at retail; and the applicant understands and agrees that that condition will be inscribed on the face of the license certificate.

Joseph Zimmerman, representing the United Council of Retail Consumption Licensees of Monmouth County stated that his association has no objection to the said transfer in view of the special condition heretofore noted.

No testimony was offered on behalf of any objectors although the applicant's representative was cross-examined by the attorney for the objector.

The objector's attorney raised the same argument as set forth in his letter; however, the absence of testimony dilutes the effectiveness of such objection.

After considering the testimony herein, I am persuaded that the objections to the application of this applicant for transfer of this license lacks merit. The main objection noted to the transfer is that it would increase competition among the retail outlets in Monmouth and Ocean Counties. However, in view of the special condition heretofore noted, such objection lacks validity. The applicant is permitted to sell only warm beer in quantities of not less than 144 fluid ounces. State Beverage Distributor licensees may deliver throughout the State, and as noted, will not sell at retail in Monmouth and Ocean Counties. See Watchung Spring Water Co., Inc., Bulletin 1581, Item 6.

I, accordingly, recommend that the pending application be granted subject to the express condition inscribed on said license that no sales be made at retail on the licensed premises. Re Anders Beverage Co., Inc., Bulletin 1548, Item 5.

#### Conclusions and Order

No exceptions to the Hearer's report were filed by any of the objectors herein.

Having carefully considered the entire record,

including the transcript of the testimony and the Hearer's report, I agree with the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the application for the said transfer be and the same is hereby granted, subject to the express condition inscribed on said license that no sales shall be made at retail on the licensed premises, and provided further that there has been full compliance with all necessary prerequisites pertaining thereto.

RICHARD C. McDONOUGH  
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Virginia Piez  
t/a Riverview Inn  
Route 57 Southside  
Mansfield Township (Warren County)  
PO Box 209, Port Murray, N. J.

)  
)  
) CONCLUSIONS  
) and  
) ORDER  
)

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Mansfield.

-----  
Licensee, Pro se  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on December 1, 1970 she possessed alcoholic beverages in two bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Emjam, Inc., Bulletin 1935, Item 4.

Accordingly, it is, on this 5th day of April 1971,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Mansfield to Virginia Piez, t/a Riverview Inn, for premises on Route 57 Southside, Township of Mansfield, be and the same is hereby suspended for ten (10) days, commencing at 3 a.m. Monday, April 19, 1971, and terminating at 3 a.m. Thursday, April 29, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against  
 Dorand Tavern, Inc.  
 t/a The Tavern  
 109 North Sixth Street  
 Camden, N. J.

)  
)  
)  
)  
)

CONCLUSIONS  
 and  
 ORDER

Holder of Plenary Retail Consumption License C-111, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden.

)  
)

-----  
 Joseph Wm. Cowgill, Esq., Attorney for Licensee  
 Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to the following charge:

"On Sunday, November 1, 1970, between 12:05 P.M. and 12:50 P.M. you, directly or indirectly, allowed, permitted and suffered the consumption of alcoholic beverages on your licensed premises, failed to have your entire licensed premises closed, and permitted persons other than yourself and your bona fide employees to enter and remain on your licensed premises; in violation of Section 5 of an Ordinance adopted by the Board of Commissioners of the City of Camden on December 27, 1934, as amended and supplemented by Ordinance adopted by the City Council of the City of Camden on January 25, 1968, being designated therein as Section 5D."

Absent prior record, the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Joe's Cafe, Inc., Bulletin 1721, Item 4. However, the licensee has made application for the imposition of a fine in lieu of the suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$630 in lieu of the suspension.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the payment of a \$630 fine by the licensee is hereby accepted in lieu of a suspension of license of ten days.

RICHARD C. McDONOUGH  
 DIRECTOR

8. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against

Anthony Faccone  
520 Adam Street  
Hoboken, N. J.

)  
)  
) CONCLUSIONS  
) and  
) ORDER

Holder of Plenary Retail Consumption License C-42, issued by the Municipal Board of Alcoholic Beverage Control of the City of Hoboken.

-----  
Licensee, Pro se.  
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads guilty to a charge alleging that on November 24, 1970, he sold two quart bottles of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license would normally be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Belco Liquor Store (A Corporation), Bulletin 1897, Item 4. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$230.00 in lieu of the suspension.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the payment of a \$230.00 fine by the licensee is hereby accepted in lieu of a suspension of license of five days.

RICHARD C. McDONOUGH  
DIRECTOR

9. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against )

Krogh's Restaurant, Inc. )  
23 White Deer Plaza, Lake Mohawk )  
Sparta Township )  
PO Sparta, N. J. )

CONCLUSIONS  
and  
ORDER

Holder of Plenary Retail Consumption License C-16; issued by the Township Council of the Township of Sparta. )

-----  
Trapasso, Dolan & Hollander, Esqs., by Albert P. Trapasso, Esq.,  
Attorneys for Licensee  
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

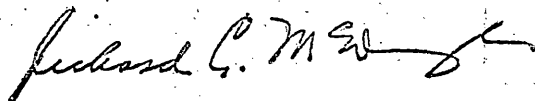
Licensee pleads non vult to a charge alleging that on November 21, 1970, it sold two bottles of wine to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re H. W. J. Tavern Corporation, Bulletin 1939, Item 10. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provision of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$620.00 in lieu of the suspension.

Accordingly, it is, on this 7th day of April 1971,

ORDERED that the payment of a \$620.00 fine by the licensee is hereby accepted in lieu of a suspension of license for ten days.



Richard C. McDonough  
Director