Deputy Director Stockburger

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

July 5, 1967

BULLETIN 1737

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1. STATE REGULATIONS - REVISED PAMPHLET REGULATIONS PROMULGATED EFFECTIVE JULY 1, 1967 - HEREIN OF SIGNIFICANT CHANGES IN REGULATIONS.

TO ALL LICENSEES, MUNICIPAL ISSUING AUTHORITIES AND CHIEFS OF POLICE:

Enclosed is a pamphlet containing a copy of the Division's revised Rules and Regulations which I have this date promulgated.

The revision is effective July 1, 1967. Current Division Rules and Regulations continue in full force and effect until and including June 30, 1967, and disciplinary proceedings for any violation thereof during such period shall not be barred or abated by reason of the taking effect of the revision.

Please carefully preserve the enclosed pamphlet since the Division's reserve supply is very limited. The pamphlet, accordingly, should be turned over to your future transferees or successors.

In general, the revision leaves most of the Rules and Regulations unchanged in substance. However, there are several important changes as well as many minor ones.

All retail licensees should note that Rule 16 of State Regulation No. 20 has been revised to add a requirement that all such licensees must keep on the licensed premises, available for inspection by state and local enforcement personnel, a list on a form prescribed by the Division, on which the licensee must enter the names and addresses of, and other required information with respect to, all persons currently employed on the licensed premises. One of the prescribed Division forms is enclosed herewith with each copy of this notice forwarded to retail licensees, for use by them commencing July 1, 1967. Licensees needing additional forms may reproduce copies of the one forwarded to them or may write to this Division requesting more forms.

All manufacturers and wholesalers should note the revisions to Rules 1 and 2 of State Regulation No. 34 dealing with new anti-discriminatory price filing requirements applicable to distilled alcoholic beverages to be sold to New Jersey wholesalers. It is hoped that the revised rules, by insuring that New Jersey wholesalers pay no higher prices than any other state or any wholesaler anywhere else within the United States, will result in lower prices to New Jersey wholesalers and retailers and, in turn, lower consumer prices, without any corresponding adverse social reactions. In view of the fact that price listings at the wholesale level have already been filed for the third-quarter of this year, commencing July 1, 1967, these anti-discriminatory provisions will not be applied to said third-quarter annual filings, but will be applied to the fourth quarter-annual filings which become effective October 1, 1967. Rules 8 and 9 of State Regulation No. 34 dealing with price reductions ("post-offs") remain in effect. Further instructions will soon be sent to all affected licensees.

Although all licensees will be held responsible for compliance with all of the revised Rules and Regulations applicable to them, and therefore should carefully read and become familiar with the pertinent parts of the pamphlet, I am setting forth herein the following changes which warrant being highlighted:

State Regulation No. 1, Rule 3; State Regulation No. 2, Rule 1; State Regulation No. 6, Rule 2. Specifications of buildings to be constructed need no longer accompany applications for a state or municipal license for a building not yet constructed, and building plan requirements are spelled out by these revised rules.

State Regulation No. 2, Rule 7; State Regulation No. 6, Rule 9. The date by which a municipal hearing must be fixed upon the receipt of written objection to any application for license has been extended from seven to fourteen days by these revised rules.

FOR SPECIAL NOTE BY ALL CORPORATE RETAIL LICENSEES:

State Regulation No. 2, Rules 11-13; State Regulation No. 4, Rule 13. These new rules in State Regulation No. 2 and the revised rule in State Regulation No. 4 require that a Notice of Change in Corporate Structure must be published in a newspaper by corporate retail licensees, disclosing any change in stockholdings resulting in a stockholder owning more than ten per cent of the licensee's stock. Such notice must be published within ten days of the change in stockholdings and proof thereof filed with the issuing authority within ten days of publication.

State Regulation No. 4, Rule 1. This revised rule commits to formal rule the existing administrative ruling that applicants for club licenses whose membership includes one or more members of the municipal issuing authority need no longer apply to the Director for such license or the transfer thereof.

State Regulation No. 7, Rule 1. This revised rule adds the express requirement that a "Club Member" of a club licensee must be a voting member of the club, in accordance with existing administrative interpretation.

State Regulation No. 13, Rule 1. This revised rule reflects the statutory change (P.L. 1960, Ch. 117) that one who has been twice convicted of criminal provisions of the Alcoholic Beverage Law is no longer disqualified from being employed by or connected in a business capacity with any licensee.

State Regulation No. 14, Rule 11. This revised rule requires the employer of the holder of a Solicitor's Permit, rather than the permittee, to file with the Director written notice of the termination of the permittee's employment within ten days thereof.

State Regulation No. 14, Rule 14. This new rule provides that holders of Solicitor's Permits, by the acceptance of their permit, consent to the inspection and search, without search warrant, by state and local enforcement personnel, of any vehicle owned or being driven by the permittee.

State Regulation No. 15A, Rules 1, 2, 3 and 7. These rules have been revised to conform with recent statutory changes (P.L. 1966, Ch. 59) which have broadened the anti-discriminatory coverage of this Regulation to include the sale of all nationally advertised brands of alcoholic beverages other than malt alcoholic beverages to certain licensed wholesalers.

FOR SPECIAL NOTE BY ALL RETAIL LICENSEES:

State Regulation No. 17, Rule 3. This revised rule requires retail licensees delivering or transporting alcoholic beverages in vehicles to include in requisite delivery slips, invoices, manifests, waybills or similar documents in the possession of the vehicle's driver the date of delivery and the price of each item of alcoholic beverages delivered or transported, and the original or true copy of such document must be retained by the retail licensee for one year from the date of delivery, for inspection purposes.

State Regulation No. 17, Rule 8. This revised rule permits a transferee of a license to use for seven days after the effective date of a person-to-person license transfer a vehicle for which transit insignia has been issued to his transferor to transport alcoholic beverages.

State Regulation No. 17, Rule 16. This new rule provides that all licensees, by the acceptance of their transit insignia, consent to the inspection and search, without search warrant, by state and local enforcement personnel, of any vehicle for which the insignia was issued.

State Regulation No. 20, Rule 4. This revised rule adds an express prohibition against any licensee allowing, permitting or suffering on the licensed premises any unlawful possession of or activity pertaining to narcotics. Heretofore, such possession and activity were deemed to be proscribed under the general terms "immoral activity" and "nuisance".

State Regulation No. 20, Rule 7. This revised rule widens the ban against pool-selling, book-making and gambling on licensed premises by prohibiting any licensee from possessing or allowing, permitting or suffering on such premises any writing pertaining in any way to such activity.

State Regulation No. 20, Rule 12. This rule, which prohibited any licensee from delivering to any non-licensee alcoholic beverages intended for distribution to business customers or prosepctive customers, has been abrogated.

FOR SPECIAL NOTE BY ALL RETAIL LICENSEES:

State Regulation No. 20, Rule 16. This revised rule adds a requirement that all retail licensees keep on the licensed premises, available for inspection by state and local enforcement personnel, a list on a form prescribed by the Division, on which the licensee must enter the names and addresses of, and other required information with respect to, all persons currently employed on the licensed premises.

State Regulation No. 20, Rules 34 and 35. These two new rules provide for the detention by state and local enforcement personnel of evidence found on licensed premises or in the possession of licensees or their employees, and prohibit all licensees from failing to cooperate with such enforcement personnel during the course of any investigation or inspection of the licensed business or of the licensed premises or any search thereof.

State Regulation No. 20, Rule 36. This new rule requires all licensees to maintain true books of account available for inspection by state and local enforcement personnel.

State Regulation No. 30, Rules 2 and 9. Revised Rule 2 changes the date by which schedules of minimum consumer resale prices of malt alcoholic beverages sold to more than one retailer must be filed with the Division from the 20th day of February, May, August and November of each year to the 17th day of said months. New Rule 9 incorporates the administrative practice that has provided for inspection and amendment of such price schedules.

State Regulation No. 30, Rule 5. This revised rule broadens the present situations in which alcoholic beverages may be sold below minimum consumer resale filed prices by providing for such below filed price sales upon written authorization by the Director for good cause shown.

State Regulation No. 31, Rule 3. This revised rule raises from $10.00 to $20.00 the fee for the issuance of special alcohol permits by the Director.

State Regulation No. 34, Rules 1 and 2. These revised rules are designed to insure that the prices of all distilled alcoholic beverages sold to New Jersey wholesalers will be no higher than the lowest prices at which such alcoholic beverages are sold to any state or any wholesaler anywhere else within the United States during the month of sale. Determination of such prices shall take into consideration any gift, rebate, allowance of money or any thing of value (whether by sale, loan, gift or otherwise) or other discount or inducement, including free goods, deals, combination sales and similar devices. Enforcment of this anti-discriminatory price policy will be by the Division's refusal to accept for filing discriminatory price listings or by the institution of disciplinary action against the license of any offending manufacturer or wholesaler who sells or purchases at discriminatory prices. No "affirmation" affidavits, as required by several sister states, need be filed with the price listings. Rule 1 has been revised to eliminate the exemption from price filing of sales of particular brands of distilled alcoholic beverages to wholesalers who are the exclusive distributors to New Jersey retailers of such brands. Rule 2 as revised also provides that price listings once filed with the Division by manufacturers or wholesalers for alcoholic beverages to be sold to wholesalers or retailers shall continue in effect for each succeeding filing period for which no new listing is thereafter timely filed.

State Regulation No. 34, Rule 9. This rule has been revised to provide that amended price reductions ("post-offs") of alcoholic beverages sold to retailers must be filed with the Division on or before the 18th, rather than the 23rd, day of the month preceding the month in which the reduction is to become effective.

State Regulation No. 38, Rule 3. This rule, which required that licensees selling alcoholic beverages at retail for off-premises consumption keep displayed at their premises a sign stating the legal hours during which such alcoholic beverages may be sold, has been abrogated.

JOSEPH P. LORDI
DIRECTOR

Dated: June 28, 1967

2. APPELLATE DECISIONS - CUNNINGHAM AND DREW v. VERNON AND GREAT GORGE.

Frederick L. Cunningham and Frank F. Drew, Appellants, v. Township Committee of the Township of Vernon, and Great Gorge, Respondents.	On Appeal CONCLUSIONS and ORDER

McGovern and Roseman, Esqs., by William J. McGovern, Esq., Attorneys for Appellants
Robert C. Shelton, Jr., Esq., Attorney for Respondent Township
Honig and Kovach, Esqs., by Emanuel A. Honig, Esq., Attorneys for Respondent Great Gorge

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On September 23, 1966 the Township Committee of the Township of Vernon (hereinafter Committee) granted the application of respondent Great Gorge (an operator of a ski lodge) for the transfer of a plenary retail consumption license from Harold's Bar, Inc. to Great Gorge and from premises Route 94, village of Vernon, to Route 94 north of the village of McAfee, both within the said Township of Vernon.

The granting resolution setting forth the reasons upon which the Committee grounded its action reads as follows:

"Whereas the Township Committee of the Township of Vernon has considered the application of Great Gorge for the transfer of the Plenary Retail Consumption License #C-1 from Harold Schaeffer, Inc., from person to person and from place to place as more fully set forth in the application therefor; and

"Whereas the Township Committee has determined that it has jurisdiction to consider such transfer, and has heard the testimony of the applicant and the testimony of the objectors thereto; and

"Whereas consideration of the testimony on such hearing and the exhibits filed thereat and the investigation by the Township Committee and inspection of the premises by members of the Township Committee convinces the Township Committee that the granting of the application is in the best interests of the Township of Vernon and that the objections raised thereto are without merit;

"NOW THEREFORE BE IT RESOLVED, that the aforesaid application be and the same is hereby granted to transfer the Plenary Retail Consumption License #C-1 as requested in such application, at such time as may be requested by Great Gorge, upon the filing of a proper beverage tax report to the date of transfer, and

"PROVIDED, that the licensed premises requested by the application shall not include the area presently used by the applicant for the sale of skiing clothes and supplies, located on the main floor of the building at the Southwest end thereof.

By Order of the Township Committee of the Township of Vernon."

Appellants challenge the action of the Committee in this appeal and assert in their petition of appeal that the grant of respondent's application for said transfer was erroneous for reasons which may be summarized as follows: (1) the application for transfer and the published notice of intention are defective and fail to comply with the appropriate statute and rules of this Division; (2) certain members of the Committee "have relationships with the applicants respondent and the other respondent which constitute a conflict of interest and ought not to have participated in the proceedings;" (3) certain members of the Committee prejudged and predetermined this matter "in advance of hearing the facts in the cause;" (4) "special interests were served by the granting of this application rather than the welfare of the entire community;" (5) the action was contrary to the best interests of public convenience, safety and welfare; (6) the area to which the said transfer was made is adequately serviced; (7) the action of the Committee "was arbitrary, unreasonable and capricious and contrary to the laws and regulations of the State of New Jersey and of this Division governing the same and is not reasonably supported by evidence and constitutes and abuse of discretion."

The Committee and Great Gorge filed separate answers admitting the jurisdictional facts set forth in the petition and denying the substantive allegations therein. The answers further state that the actions were justified by the evidence presented; that the Committee acted reasonably, within the authority of the rules and regulations of the Division. They further answer that the Committee's action was based upon the interest and welfare of the entire community and not the special interest of any individuals; that no member of the Committee was disqualified by reason of any alleged conflict of interest or prejudgment; and that the action of the Committee was "in all respects" proper and valid.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for all parties to present their testimony under oath and cross examine witnesses.

The transcript of the proceedings before the Committee was submitted on this appeal pursuant to Rule 8 of State Regulation No. 15 and was supplemented by additional testimony on behalf of the parties to this appeal.

By way of introduction to an evaluation and analysis of the issues presented by the pleadings, an examination of the transcript reflects the following: Vernon Township constitutes a

large geographical area which has been divided into "wards" or villages, some of which have to this date been sparsely settled. The village of McAfee, in which Great Gorge is located, has experienced a considerable population growth, with corresponding new housing developments established on a substantial scale from the valley of the village of Vernon to the village of McAfee.

Prior to June 20, 1966 there was in effect in this community an ordinance relating to the regulation of alcoholic beverage licenses which divided the area into "wards", and provided that no licenses could be transferred from one "ward" to another. On June 20, 1966 the said ordinance was amended, which effected the deletion of the said restriction. Subsequent to this action Great Gorge made this application for the person-to-person and place-to-place transfer and, after public hearing held upon the said application, at which objections were heard, the Committee thereupon on September 23, 1966, granted the said application for the person-to-person and place-to-place transfer of a plenary retail consumption license from Harold's Bar, Inc. to the premises of Great Gorge and from the village of Vernon to the said premises located north of the village of McAfee.

I shall examine the allegations in the petition of appeal which I consider relevant in the light of the proofs presented herein.

I

Appellants argue that the application and the published notice of intention were defective; that the published notice failed to notify or apprize persons of "the information to which they are entitled as provided by Statute, rules and regulations of this State and this Division." My examination of both the notice of application, published in The New Jersey Herald, and the application itself satisifies me that they are regular in form and comply with the rules and regulations of this Division and the appropriate statute. The application lists the names of all the stockholders and officers of the corporation, establishes that the officials listed constitute all the stockholders of the corporation, and that all resided in New Jersey. The application also contains the percentages of stock held by each stockholder. The published notice of intention similarly contains the names of the officers and stockholders who, as reflected in the application itself, own more than ten per cent. of the stock of Great Gorge. All the other required information is contained in such notice. I therefore find that the application and the published notice of intention were in all respects procedurally correct and fully complied with the appropriate rules and statutory requirements.

II

Appellants assert that the enabling ordinance adopted on June 20, 1966, was "illegally adopted" (although this point was not advocated in the petition of appeal) and should be rescinded; and that the transfer of the license based upon such ordinance was invalid because there was prejudgment and predetermination on the part of two members of the Committee, as well as a conflict of interest of the said members.

With respect to the former, the appellants allege that Committeeman Martin admitted to Frank Drew (a co-appellant) on June 9, 1966 that he intended to vote for the said amendment to the ordinance so "that Great Gorge was to get the license because without it they were dead." Martin is further alleged to have stated that he was a stockholder in the Bank of Sussex County and that "he was going to protect his investment." On cross examination, however, he admitted that in fact this alleged conversation took place in July 1966 after the said ordinance was adopted. This alleged conversation was specifically denied by Committeeman Martin who insisted that his vote to amend the ordinance was based upon his considered judgment that the substantial growth of the community necessitated a change in the arbitrary character of the original ordinance so that licenses might be distributed more equitably in the area where the need required the same.

Appellants also testified that at a meeting of the Vernon Businessmen's Association held on May 25, 1966, the president of the group asked for an opinion of the businessmen attending the meeting as to their views on the desirability of amending the ordinance to eliminate the geographic restrictions; that Martin and Baldwin joined in an unanimous expression of opinion by a "show of hands" that the ordinance ought to be changed. However, both Committeemen unequivocally denied this testimony and asserted that they had no special interest in Great Gorge, made no predetermination as to the application of Great Gorge for such transfer, and conscientiously felt that the subject ordinance was in the best interests of the community.

The contention that this ordinance is invalid and should be so declared by the Director is contrary to the established principles respecting the authority of the Director in this respect. The validity or "legality" of the said ordinance can only be determined by a civil court of competent jurisdiction, since the ordinance is valid on its face. Cf. Klein and Tucker v. Fair Lawn and Schweder, Bulletin 1175, Item 3; Matthews et al. v. Orange et al., Bulletin 936, Item 9.

In Blanck v. Magnolia, 73 N.J. Super. 306, at p. 311, the court, in a similar factual context, considered this argument and held that the Director does not have the power to make such ruling. Said the court:

> "... The Alcoholic Beverage Control Law does vest the Director with broad powers to supervise and regulate the manufacture, distribution and sale of alcoholic beverages. Municipal bodies may by ordinance limit the number of licenses and the hours of sale, but appeal may be had to the Director, who may set aside, vacate repeal or modify the limitation complained of. R.S. 33:1-41. This provision means exactly what it says. The Director 'may *** repeal the limitation complained of ***.' This does not empower the Director to repeal the ordinance, however. If a person wished to challenge a municipal liquor ordinance on the ground that some step in the statutory procedure for adopting the ordinance had been omitted, it seems clear that he would not be entitled to bring such issue before the Director but would have to seek a judicial ruling by plenary suit, the reason being that the validity of the limitation would not be the issue. So, too, in the instant case. Appellants are not really at-

tacking the limitation as such. They are saying that the ordinance was adopted contrary to law, so that the limitation fixed by the ordinance must fall. However, this is not the situation provided for by R.S. 33:1-41."

The court thus concluded that the claim to the invalidty of an amendatory ordinance because of conflict of interest or self-interest or predetermination was not justiciable in this administrative proceeding. What the Director could, however, consider was whether the issuance of the license to Great Gorge was the product of a conflict of interest or prejudgment. If it is determined that such was the case, then the Director would have the power to reverse the said grant of the license based upon such ordinance.

We now consider the further allegation of appellants that Committeemen Martin and Baldwin had relationships with Great Gorge and Harold's Bar, Inc. (the transferor) which constituted a conflict of interest and thus they "ought not have participated in the proceedings." The record reflects the testimony of Martin to the effect that he conducted a small advertising and distributing business as an individual proprietor since April 1, 1966, and that Great Gorge was one of his customers. In addition, he is a salesman for the Ballard Pencil Company (a small novelty business owned by his wife), and he is paid on a commission basis. For that business he made one sale of a gross of ball pens to Great Gorge. In his own business he sold novelties to Great Gorge in the sum of $300 between April 1 and September 1966 and did a total gross business from all sales to other customers during that period in the sum of $5,000. He has no special interest, financial or otherwise, in Great Gorge and stated that his vote on the ordinance and on the grant of the transfer was based solely upon his determination that it would be in the best interests of the community.

Baldwin also testified that he has no financial or personal interest in Great Gorge, either directly or indirectly. He is in the construction business and operates snow plows. On two occasions he was called to perform emergency snow plowing, for which he received the total sum of $220. He added that he actually performed fifty per cent. of the work himself and was not overpaid. The work was performed during an emergency; he was called "in the middle of the night to come down to help them out which they were in a spot. They couldn't get anybody to plow at the time. They called me on the last resort if they could get somebody to plow."

There was also testimony to the effect that Baldwin was a customer in the tavern of the licensee Harold's Bar, Inc.; once plowed his driveway and at one time sold a lot to Harold Schaeffer (the president of the transferor).

My evaluation of the allegations of self-interest convinces me that they are without merit. It is well recognized that municipal officials are fiduciaries and trustees of the public interest and that they must demonstrate, not only in fact but also in deed, an exclusive loyalty to the community they serve and a judgment in municipal matters which is unfettered by anything which might redound to their interest as individuals. Driscoll v. Burlington-Bristol Bridge Co., 10 N.J. Super. 545, 567 (Ch.Div. 1950), modified 8 N.J. 433, 474-75 (1952); Pressey v. Hillsborough Tp., 37 N.J. Super. 486, 491-92 (App.Div. 1955), certification denied 20 N.J. 303 (1956). As the court stated in LaRue v. East Brunswick, 68 N.J. Super. 435, at p. 447:

"... And it is true that a finding of self-interest sufficient to set aside municipal action need not be based upon actual proof of dishonesty but may be warranted whenever 'the public official, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes, to the prejudice of those for whom the law authorizes him to act.' S. & L. Associates, Inc. v. Washington Twp., 61 N.J. Super. 312, 329 (App.Div. 1960), certification granted 33 N.J. 331 (1960). On the other hand, whether a particular interest justifies disqualification is necessarily a factual question, for not every interest, no matter how remote and infinitesimal, may be said to possess the likely capacity to tempt the public official to depart from his sworn duty."

The facts in the case sub judice do not appear to present a situation where the temptation to act in prejudiced fashion is so strong that, even in the abscense of proof of actual prejudice, the legislative action will be set aside as a matter of principle. There is no evidence here of any personal financial connection, direct or indirect, or any family relationship. Thus this case can be distinguished from the following cases: Zell v. Borough of Roseland, 42 N.J. Super. 75 (App.Div. 1956) (zoning amendment held void under N.J.S.A. 40:55-1.4 where a prime purpose thereof was to enable a church to sell property in rezoned area and a member of the planning board voting for the change was also a member of the church); Aldom v. Borough of Roseland, 42 N.J. Super. 495 (App.Div. 1956) (zoning ordinance held voidable due to participation in its passage by councilman whose employer stood to benefit therefrom); Griggs v. Princeton Borough, 33 N.J. 207 (1960) (borough council's designation of area owned in large part by Princeton University [as principal stock and bondholder of municipal improvement corporation] as "blighted area" held invalid where two of the voting councilmen were professors at the University); McNamara v. Saddle River Borough, 64 N.J. Super. 426 (App. Div. 1960) (zoning amendment designed to regulate restrictively or perhaps even prohibitively particular property for use as a day school held invalid where dependent on vote of councilman who owned property within 200 feet of zoned site and who had been engaged in prior litigational efforts to prevent establishment of the school), and Ames v. Montclair, 97 N.J. Eq. 60 (Ch. 1925) (sale of board of education land to son of one of board members held unenforceable in equity). However, see Van Itallie v. Franklin Lakes, 28 N.J. 258 (1958), which held that a councilman was not disqualified from voting on a zoning ordinance because his brother was employed as an accountant for a corporation interested in its adoption where there was no evidence that the brother's status would be enhanced by the adoption thereof; also, to like effect, S. & L. Associates v. Washington Township, 61 N.J. Super. 312 (App.Div. 1960), aff'd in part and rev'd in part, 35 N.J. 224 (1961), where court found no conflict of interest of a participating Committeeman who was an officer and stockholder of a company which supplied water to an area sought to be rezoned industrial.

Here the interests of the officials was nebulous and inconsequential. It is well recognized that, in a small community such as this municipality, at one time or another businessmen are required to sell goods or personal services for every individual or business enterprise therein. Hence it must be shown that the interest is substantial and did tempt the official to be unduly influenced in his actions. As the Supreme Court emphasized in Van Itallie v. Franklin Lakes, supra:

> "Local governments would be seriously handicapped if every possible interest, no matter how remote and speculative, would serve as a disqualification of an official. If this were so, it would discourage capable men and women from holding public office. Of course, courts should scrutinize the circumstances with great care and should condemn anything which indicates the likelihood of corruption or favoritism. But in doing so they must also be mindful that to abrogate a municipal action at the suggestion that some remote and nebulous interest is present, would be to unjustifiably deprive a municipality in many important instances of the services of its duly elected or appointed officials. The determinations of municipal officials should not be approached with a general feeling of suspicion, for as Justice Holmes has said, 'Universal distrust creates universal incompetency.'"

Appellants, in further support of this allegation, charge that Martin "admitted" that he was interested in granting the license because he desired to protect the value of his stock in a bank which held the mortgage. This alleged conversation was denied. However, there is nothing in the testimony to support the allegation that Martin did in fact own stock in the bank, how much stock he actually owned, the principal amount of the mortgage, the date of its execution, and whether the same was still in effect, the amount of the mortgage as it related to the value of the property. Thus, for example, if Martin owned a few shares of bank stock, it would be ludicrous to suggest that his action was bottomed upon his desire "to protect his interest" especially in view of his explicit denial and his affirmative testimony to the effect that his sole consideration in acting upon the application for transfer was the best interest of the community and the public at large. Additionally, and the ultimate determinative of the theme in the situation herein presented is the fact that the bank is not the applicant or a party to these proceedings. If the bank were the applicant, this issue might be validly advocated. But it is not -- and the "interest" is too remote and too indefinite to have vitality.

In Wilson v. Long Branch, 27 N.J. 360 (Sup.Ct. 1958), plaintiffs allege that the chairman of the planning board was the president and director and a stockholder of a bank owning some mortgages on property in an area which the board determined to be a blighted area. It also appeared that another member was also a director and stockholder of the same bank. The court held in that case that "In our judgment, the so-called interest of these persons is so remote and contingent as not to warrant disqualification", citing, among other cases, Zell v. Borough of Roseland, supra, and Aldom v. Borough of Roseland, supra, as not being to the contrary. The decision as to whether a particular interest is sufficient to disqualify is necessarily a factual one and depends upon the circumstances of a particular case. Aldom v. Borough of Roseland, supra. No definitive test can be devised. The question will always be whether the circumstances could reasonably be interpreted to show such direct interest as would cause him to depart from his sworn duty. Cf. Hicks v. Long Branch Commission, 69 N.J.L. 300 (E. & A. 1903).

I conclude that, under the facts and circumstances in this case, the business interests were too inconsequential and nebulous to be considered as tending improperly to influence the committeemen's official judgment and that the interest, if any, of Martin as a stockholder was, similarly, too indefinite and remote to disqualify him. Hence this contention is unmeritorious.

III

Appellants further allege that Committeemen Martin and Baldwin prejudged and predetermined the issue in arriving at their determination to amend the ordinance and to grant the transfer as aforesaid. Pursuing this argument, they cite the alleged action of these committeemen, as noted hereinabove, at a meeting of the Branchville Businessmen's Association where they allegedly indicated their support of a vote by the members of that association in support of the proposed action. This, of course, was specifically denied by these committeemen. Baldwin testified that he did not participate in the vote at the said meeting or vote for the adoption of the proposed amendment to the existing ordinance, but did in fact support the said amended ordinance because "in my own mind I didn't think that an ordinance of this type holding just to a location the way Vernon Township was rapidly growing and the changes of the population was going to demand a different location for these licenses, and I felt that it was time to open it up and let them go where they were needed."

He further declared that he was not committed to Great Gorge or made any prior commitment, and felt that this applicant should be given opportunity to present its application after the ordinance was amended, and its application should be determined solely upon its merits.

The evidence that this matter was predetermined or prejudged is indefinite and unsatisfactory. Irregular actions which involve predetermination or bias or partiality on the part of public officials may not be presumed but may be established only by direct proof or by proof of circumstances from which they may reasonably or cogently be presumed. Hall Liquor Co. v. Union, Bulletin 1032, Item 2; Redfield v. Long Branch et al., Bulletin 1027, Item 1. The totality of the record does not reflect any convincing evidence of improper motivation or prejudgment on the part of the Committee members in their action herein. Cf. Hand and Peters v. Middle et al., Bulletin 1350, Item 1.

Finally, appellants have not been prejudiced since these contentions are legal in nature and the action of the Committee was subjected to full review at this plenary de novo hearing. Cf. Essex County etc. Stores Assn. v. Newark, 64 N.J. Super. 314.

IV

We now consider the basic merits of the Committee's determination. Appellants charge that the Committee acted unreasonably in granting the said transfer because the area was adequately served and such action was contrary to the "interests of public convenience, safety and welfare."

The burden of establishing that the action of a local issuing authority was erroneous and should be reversed rests with the objectors. Rule 6 of State Regulation No. 15. No one has a right to the issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586; Biscamp v. Teaneck, 5 N.J. Super. 172 (App.Div. 1949).

The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the local issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen et al., Bulletin 997, Item 2. Each municipal authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse. Passarella v. Board of Commissioners of Atlantic City et als., 1 N.J. Super. 313. And such action, based upon such discretion, will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484.

As Justice Jacobs pointed out in Borough of Fanwood v. Rocco et al., 33 N.J. 404, at p. 414:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for ...license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him.... Under the settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable...."

And further, in evaluating the action of the respondent herein, it might be well to state the view which was expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle:

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

I am impressed with the logic and sense of reality which characterized the Committee's action both in amending a parochial ordinance and in the abundant assigned reasons for the granting of the transfer, as aforesaid. It seems to me unarguable that the Committee took a progressive and farsighted step in amending an ordinance to permit a more equitable distribution of licenses in a municipality which has experienced a disproportionate population growth in certain sections. The Committee apparently felt that those areas which were expanding commercially in population required a redistribution of existing licenses in the community and that it was unreasonable to continue the "ward" restriction which for some unexplicable reason had been established before 1966.

The Committee also felt that there was a need and a convenience to be served by the transfer of this license to this particular section of the municipality. It determined that this applicant met the requirements for such transfer.

Committeeman Baldwin testified that, after investigation of this application and inspection of the premises, he reached the conclusion that this area to which the license was transferred required such transfer. He explained that, in the past five or six years, there has been a tremendous growth in that area; that in fact this township is the fastest growing township in Sussex County, and that the tax assessments resulting from new housing developments and commercial enterprises have increased accordingly. He also felt that Great Gorge offered facilities which were unique in the community because it had the largest restaurant and could accommodate substantial communal functions. He was thus persuaded that the best interests of the community would be served by such transfer.

Committeeman Martin expressed similar views. He stated that in his opinion this transfer would serve the public convenience and would be in its best interests. Said he: "They hire labor from our community at a time when there is no other work available. They're conducting a good type of business for our community, and I feel that anything that is of benefit to them is good for the community." And further he explained that the Great Gorge attracts thousands of persons to its ski lodge, and that on seasonal week-ends they attract as many as five thousand persons per day. He added that this facility would serve the convenience of local organizations and that, therefore, because of the absence of an alcoholic beverage license, "there are certain organizations in the community who must go outside in order to be accommodated."

It is interesting to note that Frank Drew (one of the appellants herein), who operates a tavern in this township, testified that he had no objections to the transfer of the license to Great Gorge; that his sole objection was to the action in amending the ordinance to permit the transfer from one section to another.

Frederick Cunningham (the other co-appellant), who is also a tavern owner, testified that he thought that the area was sufficiently serviced and that there was no need for the transfer to Great Gorge. However, on cross examination he admitted that his principal objection was his apprehension that such transfer would hurt his own tavern business.

While it is true that the vote of two-to-one in favor of the grant of the application for transfer carried the day, it is my conviction, and I find as a fact, that the majority of the members of the Committee acted circumspectly and in the best interests of the community in voting to grant the said application. It is crystal clear that they took into consideration not only the population growth of the area but the physical construction of the Great Gorge facility, its convenience and service to the community, and the good character of the applicants.

The appellants express apprehension that Great Gorge might be tempted to serve minors and to skiers who would be subject to potential injury by reason of consumption of alcoholic beverages. Such concern should be put at rest, for it must be assumed that Great Gorge will operate its business in a decent and law-abiding manner. The record indicates that the bar is located in an upper portion of the building, which makes it feasible to keep minors and undesirable persons away from the said area. If the applicant operates its business in a law-abiding manner, appellants have nothing to fear. If, on the other hand, the licensed business is permitted to be operated in violation

of the Alcoholic Beverage Law, the rules of this Division of municipal ordinance pertaining thereto, the licensee will, of course, subject its license to possible suspension or revocation. Cf. Monmouth County Retail Liquor Stores Assn. et al. v. Middletown, Bulletin 1572, Item 1.

I am also mindful of the fact that petitions have been introduced into the record both on behalf of the appellants and the respondents. It is significant to note, however, that, in terms of numbers, the petitions in support of the action of the Committee (over 300 residents) are about six times the number of those in opposition (57 residents). Petitions are always influential and persuasive. However, the mere counting of noses cannot serve as a substitute for the considered determination of the Committee in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest and the often irresponsible way in which petitions are signed as friendly accommodation, without any considered thought of contents or of argument on the other side. Therefore, the weight to be given a petition must, in large measure, depend upon what the petition states, who signs it and how it accords with the policy and common sense of the officials responsible for the administration of law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

It should be stated in conclusion that, in matters of this kind involving transfers of licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide the public interest. Lubliner v. Paterson, 33 N.J. 428 (1960). As indicated earlier hereinabove, the Director, in these matters, is governed by the principle that where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson-Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502. Cf. Fanwood v. Rocco, 59 N.J. Super 306. The Committee has, in my opinion, understood its full responsibility and has acted circumspectly and with a reasonable exercise of its discretion in the said action.

I have considered the other matters raised in the petition of appeal, and do not find them of sufficient merit.

After reviewing the evidence and the argument of counsel in summation, I conclude that the appellants have failed to sustain the burden of establishing that the action of the Committee was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record, including transcript of the testimony, the exhibits, memoranda of counsel in summation, and the Hearer's report, I concur in the conclusions and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of April 1967,

ORDERED that the action of respondent Committee be and the same is hereby affirmed, and that the appeal herein be and the same is hereby dismissed.

JOSEPH P. LORDI
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)
)
WILLIAM ZAKTANSKY)
t/a Triangle Cafe) CONCLUSIONS AND ORDER
181 New Brunswick Avenue)
Perth Amboy, New Jersey)
)
Holder of Plenary Retail Consumption License C-32 issued by the Board of Commissioners of the City of Perth Amboy.)

Wilentz, Goldman & Spitzer, Esqs., by Warren W. Wilentz, Esq., Attorneys for Licensee.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on February 3, 1967, he 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.

Licensee has a previous record of suspension of license by the Director for five days effective March 22, 1965, for similar violation. Re Zaktansky, Bulletin 1615, Item 5.

The prior record of suspension of license for similar violation within the past five years considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Homoky, Bulletin 1682, Item 5.

Accordingly, it is, on this 28th day of April, 1967,

ORDERED that Plenary Retail Consumption License C-32, issued by the Board of Commissioners of the City of Perth Amboy to William Zaktansky, t/a Triangle Cafe, for premises 181 New Brunswick Avenue, Perth Amboy, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, May 2, 1967 and terminating at 2:00 a.m. Monday, May 22, 1967.

JOSEPH P. LORDI
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
JOHN PAGE AND DOROTHY M. PAGE t/a Jack Page's 535 Roosevelt Avenue Carteret, New Jersey	)	CONCLUSIONS AND ORDER
Holders of Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Carteret.	)	

Garretson, Levine, Goceljack & Hollander, Esqs., by Robert P. Levine, Esq., Attorneys for Licensees.
Leon Chorkavy, Jr., Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on December 20, 1966 they possessed alcoholic beverages in two obttles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensees have a previous record of suspension of license by the municipal issuing authority for five days effective April 8, 1961, for sale in violation of State Regulation No. 38, and by the Director for forty-five days effective May 8, 1962, for sale during prohibited hours and sale in violation of State Regulation No. 38 and hindering investigation. Re Page, Bulletin 1454, Item 4.

The prior record of suspension of license for dissimilar violation occurring in 1961 more than five years ago disregarded but the prior record of suspension for dissimilar violation in 1962 within the past five years considered, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Newman, Bulletin 1707, Item 6.

Accordingly, it is, on this 1st day of May 1967,

ORDERED that Plenary Retail Consumption License C-26, issued by the Borough Council of the Borough of Carteret to John Page and Dorothy M. Page, t/a Jack Page's, for premises 535 Roosevelt Avenue, Carteret, be and the same is hereby suspended for fifteen (15) days, commencing at 2 a.m. Monday, May 8, 1967, and terminating at 2 a.m. Tuesday, May 23, 1967.

JOSEPH P. LORDI
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
Josephine J. Guinee t/a Tom's Tavern e/s of Asbury Ave. Howell Township PO RFD #2, Farmingdale, N. J.,	)	CONCLUSIONS and ORDER
Holder of Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Howell.	)	

Henry F. Hoey, Jr., Esq., Attorney for Licensee
Philip Margulies, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on October 19, 1966 she possessed an alcoholic beverage in a bottle bearing a label which did not truly describe its contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Sierra, Bulletin 1727, Item 9.

Accordingly, it is, on this 1st day of May, 1967,

ORDERED that Plenary Retail Consumption License C-13, issued by the Township Committee of the Township of Howell to Josephine J. Guinee, t/a Tom's Tavern, for premises e/s of Asbury Avenue, Howell Township, be and the same is hereby suspended for five (5) days, commencing at 2 a.m. Monday, May 8, 1967 and terminating at 2 a.m. Saturday, May 13, 1967.

JOSEPH P. LORDI,
DIRECTOR

6. DISQUALIFICATION REMOVAL PROCEEDINGS - KNOWINGLY AND WILLFULLY ATTEMPTING TO DEFEAT AND EVADE INCOME TAXES - ORDER REMOVING DISQUALIFICATION.

In the Matter of an Application to Remove Disqualification because of a Conviction, Pursuant to R.S. 33: 1-31.2

Case No. 2116

CONCLUSIONS AND ORDER

BY THE DIRECTOR:

Petitioner's criminal record discloses that on June 25, 1959, he was convicted in a federal court for knowingly and willfully attempting to defeat and evade income taxes and, as a result thereof, was given a suspended sentence, placed on probation for five years and fined $7,500.

Since the crime of which petitioner was convicted involves the element of moral turpitude (Re DeMoura v. Newark, 90 N.J. Super. 225 (App. Div. 1966)), he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein petitioner (59 years old) testified that he is married and living with his wife; that for the past twelve years he has lived at his present address; that from 1957 to 1966 he operated a turkey farm; that in October and November 1966 he had been employed by a licensee as a clerk and that until recently, when advised by his attorney in the course of a conference relative to purchasing a licensed business, he had no knowledge that he was ineligible to be associated with the alcoholic beverage industry in this State.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State, and that ever since his conviction he has not been convicted of any crime or arrested.

The Police Department of the municipality wherein the petitioner resides reports there are no complaints or investigations presently pending against the petitioner.

Petitioner produced three character witnesses (a real estate broker, a retired municipal employee and an account supervisor), who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The only hesitation I have to grant the relief sought herein is based on the fact that petitioner, although disqualified, worked for a licensee in this State. I am, however, favorably influenced by three factors: (a) the testimony of his character witnesses, (b) the fact that his criminal record shows only one conviction which took place over seven years ago and (c) his sworn testimony that he was unaware of his ineligibility to be employed by a licensee in this State. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all of the aforesaid facts and circumstances, I am satisified that petitioner has conducted himself in a law-abiding manner for five years last past, and that his association with the

alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 19th day of May, 1967,

ORDERED that petitioner's statutory disqualification because of the conviction described herein be and the same is hereby removed, in accordance with the provisions of R.S. 33:1-31.2.

JOSEPH P. LORDI,
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - POSSESSION OF PINBALL MACHINES - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against Hudson Lanes, Ltd. 1 Garfield Avenue Jersey City, New Jersey Holder of Plenary Retail Consumption License C-339, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	CONCLUSIONS AND ORDER

William J. Ahern, Jr., Esq., Attorney for Licensee.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on March 23, 1967, it permitted three pinball machines on its licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for ten days, with remission of five days for the plea entered, leaving a net suspension of five days. Re Seventieth Street Recreation Center, Inc., Bulletin 1702, Item 4.

Accordingly, it is, on this 22nd day of May, 1967,

ORDERED that Plenary Retail Consumption License C-339, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Hudson Lanes, Ltd. for premises 1 Garfield Avenue, Jersey City, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, May 29, 1967, and terminating at 2:00 a.m. Saturday, June 3, 1967.

Joseph P. Lordi,
Director