

Repeal and New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Section was "Permittee's activity".

13:2-16.13 Search of permittee's vehicle

By the acceptance of a solicitor's permit, the permittee consents to inspection and search of any vehicle owned or being driven by him, without search warrant, by the Director, his or her deputies, inspectors and investigators and by any officer as defined by N.J.S.A. 33:1-1(p).

Amended by R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).
Stylistic revisions.

13:2-16.14 Responsibilities of employer

(a) No holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license shall allow, permit or suffer, in his behalf, any individual to offer for sale or solicit any order in the State of New Jersey for the purchase or sale of any alcoholic beverage, whether such sale is to be made within or without the State, unless such person has a solicitor's permit.

(b) No wholesaler shall pay compensation, whether by commission or otherwise, to a solicitor unless the solicitor substantially performed the duties referenced in N.J.A.C. 13:2-16.3(e) throughout the period and for each account for which the compensation is paid.

(c) No wholesaler shall hire a person whose immediate family member has a direct or indirect financial interest or participates in the operation of a retail license.

(d) No wholesaler shall assign a solicitor to any retail account or pay commission or compensation to a solicitor for sales to any retail account in which an immediate family member of the solicitor has any direct or indirect financial interest or participates in the operation thereof.

(e) No wholesaler shall assign a solicitor to any retail account in violation of N.J.A.C. 13:2-16.11(c) or (d).

(f) For every solicitor whose immediate family member has any direct or indirect interest in, or participates in the operation of a retail license, the employing wholesaler shall submit, upon each annual renewal application, a statement disclosing all retail accounts assigned to the solicitor and a certification that the solicitor has not been assigned to any accounts in which an immediate family member of that solicitor, or an immediate family member of any solicitor employed by that wholesaler, has any direct or indirect financial interest or participates in the operation thereof.

(g) For purposes of this section, the term "immediate family member" shall be the same as the definition set forth in N.J.A.C. 13:2-16.3(d).

New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Amended by R.2010 d.160, effective August 2, 2010 (operative October 1, 2010).
See: 41 N.J.R. 2436(a), 42 N.J.R. 1733(a).
Inserted designation (a); and added (b) through (g).

13:2-16.15 Solicitor's contracts

All contracts of employment between Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) licenses and their solicitors shall be in writing and shall set forth the salary, commission or other compensation of any kind agreed to be paid to such solicitor. Contracts shall be maintained by the employer for a period of three years from the date of execution and shall be available for inspection by the Director, his or her deputies, inspectors, investigators and agents and other officers as defined by N.J.S.A. 33:1-1(p).

New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

13:2-16.16 Filing of statement of compensation with Director

On or before May 31 of each year, each holder of a Class A (N.J.S.A. 33:1-10) or Class B (N.J.S.A. 33:1-11) license employing any solicitor during the preceding calendar year shall file with the Director a true statement listing all compensation, itemized as to salary, commission, reimbursed expenses, prizes, awards, bonuses, or otherwise, paid to each such solicitor by such manufacturer or wholesaler during that calendar year.

New Rule, R.1990 d.412, effective August 20, 1990.
See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

13:2-16.17 Suspension or revocation of solicitor's permit

If a solicitor holds more than one solicitor's permit and one of the solicitor's permits is suspended or revoked, all of the solicitor's permits shall be suspended or revoked unless the solicitor demonstrates good cause why the solicitor's other permits should not be suspended or revoked.

New Rule, R.2005 d.212, effective July 5, 2005.
See: 36 N.J.R. 4211(a), 37 N.J.R. 2544(a).

SUBCHAPTER 17. APPEALS

13:2-17.1 Notice and petition of appeal; contents; fee

All appeals from the actions taken by a municipal issuing authority concerning the issuance, denial, renewal, transfer, suspension or revocation of a retail license shall be commenced by the filing, in duplicate, of a notice and petition of appeal to the Director of the Division of Alcoholic Beverage Control. The petition shall set forth the identity of the parties involved in the appeal, the subject matter of the appeal, the date and the action of the issuing authority from which the appeal is taken, the relief sought, the grounds therefor and a

fee of \$100.00 payable to the Director, Division of Alcoholic Beverage Control.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Added "from the actions taken by a municipal issuing authority concerning . . . a retail license."

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Increased fee.

13:2-17.2 Service of notice and petition of appeal

The appellant shall first serve, personally or by ordinary mail, a copy of the notice and petition of appeal upon the respondent issuing authority and, where the action appealed from is the grant, transfer or extension of a license, or the refusal to revoke or suspend a license, a copy shall be so served upon the licensee, who shall also be joined as a respondent. The notice and petition of appeal, together with an acknowledgement or affidavit of service, must be filed

with the Director within the time set forth in N.J.A.C. 13:2-17.3.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

13:2-17.3 Time for appeal

Appeals by any taxpayer or other aggrieved person from the issuance of a license or from the grant of an application for the extension or transfer of a license must be taken within 30 days from the date of issuance, extension or transfer of the license. All other appeals by a licensee or applicant for a license must be taken within 30 days after the personal service or mailing by registered mail of a written notice by the municipal issuing authority of the action taken against the licensee or the applicant.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Specified service or mailing of a "written" notice by issuing authority.

Case Notes

Appeal of liquor license renewal dismissed as untimely. *Cottrell v. Zagami, LLC*, OAL DKT. NO. ABCAM 08017-06, 2007 N.J. AGEN LEXIS 549, Final Decision (May 22, 2007).

13:2-17.4 Answer

Within 10 days after service of the notice and petition of appeal, each respondent shall file, in duplicate, an answer with the Director and serve a copy thereof on each of the parties to the appeal. The answer filed by the respondent issuing authority shall include a statement of the grounds for its action, together with a copy of the subject resolution.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revision.

13:2-17.5 Jurisdiction

Upon filing of the notice and petition of appeal and answer, the Director shall determine whether the case is contested. If the case is determined to be contested, the Director shall file it with the Office of Administrative Law pursuant to N.J.A.C. 1:1-8 or retain it under the provisions of N.J.S.A. 52:14F-8.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Stylistic revisions.

Amended by R.1995 d.450, effective August 21, 1995.

See: 27 N.J.R. 2051(a), 27 N.J.R. 3177(a).

Stylistic changes.

Case Notes

Appeal from issuance of plenary retail license to replace seasonal consumption license was moot. *Belleaire v. Spring Lake*, 95 N.J.A.R.2d (ABC) 114.

13:2-17.6 De novo hearing; burden of proof

All appeals shall be heard de novo and the burden of establishing that the action of the respondent issuing authority was erroneous, and should be reversed, shall rest with appellant.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Deleted N.J.A.C. 13:2-17.8 exception.

Case Notes

While the appellant in a licensing dispute carried the burden of proof throughout the hearing, the ALJ properly ordered that the issuing authority provide the initial burden of production to explain the basis for its denial on the record. Notwithstanding appellant's burden of proof that respondent's action was arbitrary, capricious, or unreasonable, respondent was properly asked to assume the burden of going forward with clear and competent evidence to support its decision to deny the place-to-place transfer of the license. *Rooster Bar v. Governing Body of Cliffside Park*, OAL Dkt. No. ABC 11895-08, 2009 N.J. AGEN LEXIS 1203, Final Decision (October 28, 2009).

Issuing authority's decision to deny a place-to-place transfer of a liquor license was arbitrary, capricious, and unreasonable where there was no ordinance, regulation, or written policy requiring uncovered windows in any establishment to allow police an unobstructed view of the interior; therefore, the police officers' inability to peek through a window in order to observe activity on the second floor of the bar did

not constitute a reasonable basis for denial of the transfer application. Additionally, the police chief's concern about arresting and removing someone from the second floor of the proposed licensed premises was purely speculative (adopting 2009 N.J. AGEN LEXIS 761). *Rooster Bar v. Governing Body of Cliffside Park*, OAL Dkt. No. ABC 11895-08, 2009 N.J. AGEN LEXIS 1203, Final Decision (October 28, 2009).

Denial of place-to-place transfer was arbitrary, unreasonable, and an abuse of discretion because the decision was based on general objections associated with maintaining the character of the downtown area by attempting to preserve the historic nature of the hotel building, and such objections were insufficient to compel a licensee to remain at its hotel despite its own economic concerns; there was no indication in the record that operating the license at a different location would have been problematic or had a negative impact on health, welfare, and safety of residents (adopting 2009 N.J. AGEN LEXIS 229). *Union Hotel Restaurant v. Governing Body of Flemington*, OAL Dkt. No. ABC 6929-08, 2009 N.J. AGEN LEXIS 881, Final Decision (August 27, 2009).

There was no merit in licensees' argument that they were denied due process by the township's failure to provide a hearing at the local level because the law governing appeals to the Division of Alcoholic Beverage Control dictated that all appeals be heard de novo and, therefore, the right to a de novo hearing in the Division on testimony taken there cured any infirmity allegedly arising by reason of a denial of a hearing before the local board (adopting 2008 N.J. AGEN LEXIS 1024). *Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley*, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Construction of a "sound wall" intended to reduce the decibel level of sound emanating from a licensee's outside deck was of no consequence where the special condition limiting the time that music could be played on the deck did not speak of prohibiting excessively loud music, but rather prohibited any music outside after 10:00 p.m. on week nights, and after 12:00 midnight on Fridays, Saturdays, and holidays. Therefore, the licensee's appeal of the special condition, and request for expansion of hours in which music may be played, was properly dismissed (adopting 2008 N.J. AGEN LEXIS 1024). *Martell's Waters Edge, L.L.C. v. Governing Body of Berkeley*, OAL Dkt. No. ABC 6795-07, 2009 N.J. AGEN LEXIS 953, Final Decision (June 17, 2009).

Place-to-place transfer application expanding a license to an alleyway between two buildings was granted subject to the special condition that no drinking of alcohol would be permitted in the alleyway; the condition was directed toward maintaining the integrity of the neighborhood and addressed residents' reasonable concerns regarding increased noise, overcrowding and litter (adopting 2008 N.J. AGEN LEXIS 474). In re *Marlin Restaurant & Bar, Inc.*, OAL Dkt. No. ABC 6215-07, 2008 N.J. AGEN LEXIS 1432, Final Decision (February 5, 2009).

Where the sale of alcoholic beverages was not merely "incidental" to the provision of food, a business should not have been considered a "restaurant" for State Alcoholic Beverage Control purposes; while the township had the authority to enact an ordinance defining "restaurant" for distance between premises purposes, it was incongruous for the township to attempt to apply a broad definition that was entirely unrelated to alcoholic beverage concerns (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). *Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King*, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

In granting a place-to-place transfer of a plenary retail distribution license, the reviewing authority could consider an amended ordinance that was in effect after the township granted the transfer (but prior to conclusion of the appeal) because the amended ordinance, which permitted locating different classifications of licenses within 2,000 of one another, was consistent with the township's historical treatment of such cases and was not a mere "sham" amendment; there was an absence of proof that the ordinance amendment lacked public interest underpinnings (adopting in part and rejecting in part 2008 N.J. AGEN LEXIS 757). *Rumson Wine and Spirit Shop, Inc. v. Kenneth Friedman/Middletown Bottle King*, OAL Dkt. No. ABC 4795-05, 2008 N.J. AGEN LEXIS 1431, Final Decision (August 13, 2008).

Where a plenary retail consumption license holder did not abandon or vacate the licensed premises, but in fact the landlord testified that he intentionally kept the lease intact in hopes that the lease holder would resolve his tax problems or that a third party would buy the license, acquire the lease, and resume operations, the ALJ's decision denying transfer of the license was reversed. *United Funding, LLC v. Municipal Bd. of Alcohol Beverage Control, City of Paterson*, OAL Dkt. No. ABC 10954-04, 2005 N.J. AGEN LEXIS 1484, Final Decision (June 21, 2006).

Appeal was properly dismissed where reasonable support existed for municipal board's granting of application for place-to-place transfer of plenary retail consumption license. *Caracitas v. Municipal Board of Alcoholic Beverage Control*, 96 N.J.A.R.2d (ABC) 98.

Denial of request for place-to-place transfer of liquor license to site in vicinity of two churches was not unreasonable. *Application of Maxine's Tavern*, 95 N.J.A.R.2d (ABC) 124.

Liquor license for bar/restaurant, given relatively minor incidents, should have been renewed instead of denied. *Starbo Corp. v. City of Asbury*, 95 N.J.A.R.2d (ABC) 107.

Denial of liquor license transfer application without evidence of detrimental affect was clear abuse of discretion. *Midlantic v. Mayor and Borough Council*, 95 N.J.A.R.2d (ABC) 7.

Violation found for unlawful sale of cocaine upon the premises; respondents offered transcribed record in lieu of producing witnesses at the hearing de novo (Division's final decision). *T.L.S. Inc. v. City of Bayonne*, 9 N.J.A.R. 403 (1985).

Denial of person-to-person transfer of a plenary retail consumption license based upon licensee's conviction on three disorderly persons offenses upheld. *Sturchio v. Town of Harrison*, 9 N.J.A.R. 78 (1986).

Burden of showing erroneous action of licensing authority so as to reverse license suspension not met by licensee. *Canal Street Pub. Inc. v. Municipal Bd. of Alcoholic Beverage Control, City of Paterson*, 6 N.J.A.R. 221 (1982).

An appeal from a local license issuing authority is heard de novo; the de novo hearing is designed to cure any procedural defects which occur in connection with the issuing authority's action. *Valdivia's Bar, Inc. v. Elizabeth City Council*, 6 N.J.A.R. 161 (1981).

13:2-17.7 Subpoenas

Subpoenas and subpoenas duces tecum, signed by the Director or Administrative Law Judge, for the attendance of witnesses and the production of books, records and other documents at the hearing on the appeal, may be obtained by the parties upon request.

Recodified from 13:2-17.9 by R.1990 d.412, effective August 20, 1990. See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Prior text at 13:2-17.7, "Public hearing", repealed.

13:2-17.8 Stays

(a) The filing of an appeal from a suspension or revocation of a license by a municipal issuing authority shall act as an automatic stay of such suspension or revocation, unless the Director shall otherwise order. All other appeals shall not stay the effect of the action appealed from unless otherwise ordered by the Director or Administrative Law Judge.

(b) In cases in which a suspension or revocation has been stayed pending the outcome of an appeal to the Director, the

licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(c) In cases in which a suspension has not been stayed or in which a revocation has been stayed and an indefinite suspension imposed pending the outcome of an appeal to the Director, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

(d) In cases in which a revocation has not been stayed pending the outcome of an appeal to the Director, the licensee need not file a renewal application and appropriate fees for each subsequent license term while the appeal is pending. If the revocation is not sustained on appeal, then the licensee shall be required to file renewal applications and pay the appropriate fees for each license term during which the appeal was pending, within 60 days of the date of the Director's decision or the license shall be deemed to have expired.

(e) In all other cases, except those addressed in N.J.A.C. 13:2-17.9, the licensee must file a renewal application and the appropriate fees for each subsequent license term while the appeal is pending or the license shall be deemed to have expired.

Amended by R.1990 d.412, effective August 20, 1990.

See: 22 N.J.R. 1811(a), 22 N.J.R. 2508(c).

Recodified from 13:2-17.11. Filing of appeal by municipal authority is an "automatic" stay. Prior text at 13:2-17.8, "Stipulations, offer of transcript", repealed.

Amended by R.2003 d.436, effective November 3, 2003.

See: 35 N.J.R. 2810(a), 35 N.J.R. 5122(a).

Designated existing text as (a); added (b) through (e).

Case Notes

Offer of transcription of proceedings before local issuing authority in lieu of producing witnesses on appeal de novo noted. *Marlboro Manor, Inc. v. Alcoholic Beverage Control Bd., Tp. of Montclair*, 7 N.J.A.R. 29 (1981), reversed 187 N.J.Super. 359, 454 A.2d 905 (App.Div.1982).

13:2-17.9 Extension of license term

(a) Upon the filing of an appeal from the denial of an application for renewal of a license, or the failure to act upon such renewal application within the time set forth in N.J.A.C. 13:2-2.10(b), the Director may, at the time of the filing of the appeal, in the exercise of sound discretion, issue an order upon respondent issuing authority to show cause why the term of the license should not be extended pending the determination of the appeal, together with ad interim relief extending the license pending the return of the order to show cause. If it appears that a substantial question of fact or law has been raised, and that irreparable injury to the appellant would result if the license is not extended, the Director may extend the license pending the outcome of the appeal, subject to such special conditions as the Director may deem appropriate.