

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2267

October 25, 1977

TABLE OF CONTENTS

ITEM

1. NOTICE TO LICENSEES - SPONSORSHIP OF YOUTH ACTIVITIES BY LICENSEES PERMITTED - WORDS "BAR", "LIQUORS", "LOUNGE" OR "TAVERN" NOT PERMITTED ON GARMENTS OF YOUTHFUL PARTICIPANTS.
2. NOTICE TO ALL LICENSEES AND PERMITTEES - PAYMENTS FOR FILING FEES TO THE DIVISION FOR LICENSES AND PERMITS MUST BE MADE BY EITHER CERTIFIED CHECK, CASH OR MONEY ORDER.
3. SUPPLEMENTAL NOTICE TO ALL LICENSEES AND PERMITTEES - PAYMENTS FOR FILING FEES TO THE DIVISION FOR LICENSES AND PERMITS MUST BE MADE BY EITHER CERTIFIED CHECK, CASH OR MONEY ORDER.
4. DISCIPLINARY PROCEEDINGS (Newark) - ACTION TO REVOKE LICENSE IMPROVIDENTLY ISSUED - DISMISSED UPON AMENDMENT OF LOCAL ORDINANCE.
5. REMOVAL OF DISQUALIFICATION - ENUMERATED CASES RELATIVE TO APPLICATIONS FOR REMOVAL OF DISQUALIFICATIONS (N.J.S.A. 33:1-31.2).
6. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (CARD GAMES) - INSUFFICIENT EVIDENCE - LICENSEE FOUND NOT GUILTY.
7. STATE LICENSES - NEW APPLICATIONS FILED.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2267

October 25, 1977

1. NOTICE TO LICENSEES - SPONSORSHIP OF YOUTH ACTIVITIES BY LICENSEES PERMITTED - WORDS "BAR", "LIQUORS", "LOUNGE" OR "TAVERN" NOT PERMITTED ON GARMENTS OF YOUTHFUL PARTICIPANTS.

TO ALL LICENSEES:

The Division of Alcoholic Beverage Control has consistently disapproved of minors being used or exploited in any type of advertisements by liquor licensees, including the sponsorship of any baseball or any other athletic team by liquor licensees. (Reference Bulletin 824, Item 3)

However, today's organizational athletic climate involves a substantial participation by youngsters in Little Leagues, Junior Football Leagues, etc. under the sponsorship of local businesses.

Many alcoholic beverage licensees have indicated a desire to take an active part in these worthwhile endeavors, to the extent of sponsoring teams in the same manner as do other members of the business community. This public-spirited desire to encourage the proper development of our youth should not be denied.

Therefore, liquor licensees will now be permitted to sponsor athletic teams composed of minors, expressly subject to the special condition that the lettering on their uniforms will, in no way, suggest a relationship with alcoholic beverages.

Words such as "bar", "liquors", "lounge", or "tavern" will not be permitted. Similarly, the brand name of any alcoholic beverage is impermissible. Thus, for example: "John's Restaurant" is permitted - but not "John's Bar & Grill".

This directive shall become effective immediately.

JOSEPH H. LERNER
DIRECTOR

Dated: August 22, 1977

2. NOTICE TO ALL LICENSEES AND PERMITTEES - PAYMENTS FOR FILING FEES TO THE DIVISION FOR LICENSES AND PERMITS MUST BE MADE BY EITHER CERTIFIED CHECK, CASH OR MONEY ORDER.

NOTICE TO ALL LICENSEES AND PERMITTEES:

During the past year, many personal and business checks which were received by the Division in payment for filing fees were returned by the bank, marked "insufficient funds", "closed account", and for similar reasons.

Thus, this has required a considerable amount of time and effort on behalf of Division employees to recover the sum in default.

Accordingly, I shall require that, henceforth, all payments for filing fees for licenses and permits must be made by either certified check, cash or money order. The only exception will be, attorneys checks.

Please be guided accordingly.

JOSEPH H. LERNER
DIRECTOR

Dated: August 22, 1977

3. SUPPLEMENTAL NOTICE TO ALL LICENSEES AND PERMITTEES - PAYMENTS FOR FILING FEES TO THE DIVISION FOR LICENSES AND PERMITS MUST BE MADE BY EITHER CERTIFIED CHECK. CASH OR MONEY ORDER.

On August 22, 1977, a notice was sent to all licensees and permittees stating that henceforth, "all payments for filing fees for licenses and permits must be made by either certified check, cash or money order. The only exception will be, attorneys' checks."

I now add the following additional exceptions:

1. All licensees who hold licenses issued by the Director of this Division, may, make payment for filing fees by ordinary or business checks, as heretofore;
2. The Fiscal Officer of this Division may, in his discretion, also accept personal or business checks in payment of Division fees from any other person or association.

JOSEPH H. LERNER
DIRECTOR

Dated: August 26, 1977

4. DISCIPLINARY PROCEEDINGS - ACTION TO REVOKE LICENSE IMPROVIDENTLY ISSUED - DISMISSED UPON AMENDMENT OF LOCAL ORDINANCE.

In the Matter of Disciplinary Proceedings against :

Leste Holding Corporation :
511-513 Frelinghuysen Avenue :
Newark, New Jersey :

Holder of Plenary Retail Consump- :
tion License C-219, issued by the :
Municipal Board of Alcoholic :
Beverage Control of the City of :
Newark. :

CONCLUSIONS
AND
ORDER

.....
Philip D. Neuer, Esq.,..... Attorney for Licensee
David S. Piltzer, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee defends against an action initiated by this Division to show cause why its plenary retail consumption license for premises 511-513 Frelinghuysen Avenue, Newark, should not be revoked and declared null and void and the hereinafter mentioned transfer of license be set aside, pursuant to N.J.S.A. 33:1-31 and State Regulation No. 16. The Division asserts that the license was improvidently transferred to licensee by the Municipal Board of Alcoholic Beverage Control of the City of Newark, (Board) in violation of Municipal Code 4:2-7 precluding locating a license within 1,000 feet from an existing license.

From documents entered into evidence, together with testimony of ABC Agents D and S, it was established that the subject license was transferred to the licensee by a Court-appointed Receiver. Upon application to, and approval by the Board, the licensee transferred the license to its pre-existing restaurant premises. However, the Board's approval of the place-to-place transfer was violative of the local ordinance cited above, in that the transfer situs was nearer to an existing licensed premises than the 1,000 foot minimum set forth in the said Ordinance.

Approximately one month after the transfer of the license, an Agent of this Division advised the licensee that the license should not have been transferred to that location, in that, the Ordinance relating to the distance minimum was violated. The principal stockholder of the corporate licensee, in a letter to the Board admitted its proximity to an adjacent license of about 800 feet.

At the hearing in this Division, Councilman Henry Martinez of the East Ward of the City of Newark, wherein the licensed premises are located, testified that:

" I thought about this particular problem, where a man is being punished by the actions or inactions or whatever by the ABC Board, and to take a person who has made a commitment to our particular area, to the East Ward, who took a delapidated building where a person was murdered, who took a business and built it up into something that was fine and decent for working people, for the residents of the neighborhood, who did legally for this particular license and was granted it by the city, the local issuing authority, who put over \$30,000.00 into a building for renovation, to tell him now, 'We're going to take away your license, your livelihood'[sic] and perhaps give us in the East Ward another vacant building, perhaps another eye sore, I think the man deserves a medal for going to that neighborhood and building up the business that he has, rather than being punished."

Martinez further testified that the subject licensed premises is located in a "second industrial zone, heavily traveled with automobiles, tractor-trailers, trucks, a large commercial area, many employees from out of town and within town that are employed within the general neighborhood."

At the conclusion of his testimony, the Councilman alluded to legislation then being considered for adoption by the City of Newark, which, if adopted, would provide a legal basis for the existence of the subject license.

Following that hearing, an official copy of an Ordinance of the City of Newark, adopted on November 3, 1976 entitled "An Ordinance Concerning Alcoholic Beverage Control and Amending and Supplementing Title 4 of the Revised Ordinances of the City of Newark" was received and made part of the record of the subject matter.

This ordinance added a new subsection (3) and provides that:

- (3) Notwithstanding the above mentioned 1,000 foot limitation, the local issuing authority, at their discretion, may allow the transfer of such licenses free of the 1,000 foot limitation if the following requirements are met:
 - (a) The proposed transfer is to a location within the First or Second Industrial Zone...; and
 - (b) There exists no more than one licensed premises within 1,000 feet of the proposed location; and
 - (c) The proposed location is not less than 700 feet from the existing licensed premises...; and
 - (d) A location within 1,000 feet of the existing licensed premises... had been a licensed premises within the three years immediately preceding the application for the proposed location...; and

- (e) The applicant for the proposed location will accept as a restriction on the license that said location will include a prepared food operation in conjunction with the alcoholic beverage sales at the proposed location, which food operation shall to the satisfaction of the local issuing authority be substantial and not merely a token operation to satisfy this requirement; and
- (f) The local issuing authority finds that the area surrounding the proposed location contains substantial number of employees, that the existing licensed premises are not sufficient to adequately service these employees, and that the applicant for the proposed location will be able to provide service for the employees.

In order to determine whether the licensee satisfied the conditions set forth in the aforesaid ordinance, and to supplement the record in that respect, this Hearer forwarded memoranda to ABC Agent D who had testified herein and to the secretary of the Municipal Board. Copies of the memoranda were forwarded to the attorney for the licensee in order to apprise him thereof and to afford him an opportunity to contest the findings of the Agent and the Board, if he so chose.

Agent D's written report revealed that he remeasured the licensed premises nearest to subject licensed premises. It confirmed that the closest licensed premises (as testified to by him at the hearing) was the licensed premises of Stephen and Margaret Kovacs located at 32 Haynes Avenue, which was 833 feet and 6 inches distant from the subject premises. Additionally, Agent D reported that there were no other licensed premises located within a distance of one thousand feet of the subject premises.

The record was further supplemented by the receipt of a resolution unanimously adopted by the Board of Alcoholic Beverage Control of the City of Newark endorsed and effective March 14, 1977, which, in sum, made findings of a definite need for the existence of such a licensed premises with restaurant facilities, due to the number of factories employing hundreds of people at the subject area, and that such facility is necessary to satisfy their needs. The resolution was documented by a list of factories and commercial enterprises located in the area.

In view of the action taken by the Municipal Council of the City of Newark in adopting the quoted ordinance of November 3, 1976, which, in effect, ratified the determination of the Board, the proofs adduced at the hearing, and the supplemental proofs thereafter submitted; I find that the licensee has met all of the conditions specified in the said quoted ordinance.

Therefore, it is recommended that the subject action instituted by the Division, requiring the licensee to show cause why the license should not be revoked, be dismissed.

It is further recommended that the Board be instructed to make a part of the subject license, the conditions set forth in the amendatory ordinance.

CONCLUSIONS AND ORDER

No Exceptions to the Hearer's Report were filed pursuant to Rule 6 of State Regulation No. 16.

It must be emphasized, that, at the time proceedings were instituted by this Division, the place-to-place transfer approval by the Board of Alcoholic Beverage Control of the City of Newark was patently erroneous. The Board must act in conformance with applicable municipal ordinances, which it failed to do at the inception. N.J.S.A. 33:1-31(h); Petrangeli v. Barrett, 33 N.J. Super. 378, 386 (App. Div. 1954); Tube Bar, Inc. v. Commuters Bar, Inc., 18 N.J. Super. 351, 354 (App. Div. 1952).

During the pendency of these proceedings, the municipal ordinance was amended to reduce distance requirements and provide exceptions; the effect of same was to nullify the previous disabilities to the transfer. It is well-settled that when local legislation affecting a cause is altered during litigation, the disposition of the case is determined by the law existing at the time of the hearing. See Hynes v. Mayor and Council Borough of Oradell, 66 N.J. 376, 379 (1975); In re Petition of South Lakewood Water Co., 61 N.J. 230, 248 (1972).

The Hearer correctly applied the revised ordinance in his evaluation of the proofs and ultimate recommendations. I must caution however, against the manner of procedure applied by the municipal Board sub judice, since its initial action, albeit appropriately motivated, was a direct violation of its ordinances. Proper procedure would have mandated, if not outright denial, a deferral by the Board of the application for the requested transfer, until the revisions to the municipal code were effectuated.

Having fully considered the entire record herein, including the transcript of the testimony, the exhibits, and the Hearer's Report, I concur in the findings and the recommendations of the Hearer, as supplemented, and adopt them as my conclusions herein.

Accordingly, it is, on this 28th day of April 1977,

ORDERED that the Order to Show Cause why the license issued by the Board of Alcoholic Beverage Control of the City of Newark, to Leste Holding Corporation for premises 511-513 Frelinghuysen Avenue, Newark, should not be revoked be and the same is hereby dismissed; and it is further

ORDERED that the said Board be and is hereby directed to impose, as special conditions on the said license, those special conditions set forth in the relevant amendatory ordinance.

Joseph H. Lerner
Director

5. REMOVAL OF DISQUALIFICATION - ENUMERATED CASES RELATIVE TO APPLICATIONS FOR
REMOVAL OF DISQUALIFICATIONS (N.J.S.A. 33:1-31.2).

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
4046	Poss. stolen motor vehicle	1 yr. prob., \$200. fine.	8/8/77
4044	Bookmaking	9 months County Jail.	7/29/77
4043	Poss. unregistered still	3 months County Jail, \$100.00 fine.	8/8/77
4040	Poss. stolen goods (Fed)	3 yrs. Federal Penitentiary	8/5/77
4039	Income Tax Evasion	\$2,000.00 fine.	8/9/77
4038	Assault with weapon	1 yr. & 2 yr. prob.	8/5/77
4037	Stealing	\$50.00 fine.	8/5/77
4035	Assault to commit felony	8 yrs. (Fla.)	8/8/77
4034	Bookmaking & Lottery	2 yrs., prob. 2 yrs., Fined \$200.00.	8/8/77
4032	Prostitution & Larceny	30 days prob., \$200.00 fine (N.Y.C.)	8/9/77
4031	Impairing morals of a minor	1 yr. prob., \$200.00 fine	6/22/77
4030	Keeping gambling resort	\$1,000.00 fine	7/7/77
4029	Narcotic distribu- tion	5 yrs. prob., \$2,000.00 fine.	7/22/77
4028	Breaking & entering	6 mos. prob.	5/9/77
4026	Desertion - U.S.A.	6 mos.	6/22/77
4025	Assault & Battery	3 yrs. prob.	5/23/77
4023	Accepting bribe (Fed.)	2 yr. prob.	5/27/77
4021	Atrocious assault & assault with weapon(2 offenses)	3 mos. & 2 yrs. prob.	8/11/77

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
4020	Poss. lottery paraphernalia	2 yrs. prob. & \$1000.00 fine	4/27/77
4016	Larceny of check	Indeterminate sentence, 2 yrs. prob.	5/4/77
4013	Poss. of stolen goods (Fed.)	5 yrs. Fed. Prison.	6/27/77
4012	Conspiracy & book-making	2 yrs. & \$1,000.00 fine.	6/22/77
4009	Robbery	5 yrs. Bordentown Reform.	5/31/77
4006	Bookmaking	1½ yrs. Prison, \$50.00 fine	6/22/77
4005	Gambling & book-making	2-3 yrs. susp., 2 yrs. prob. \$1000.00 fine.	5/5/77
4004	Poss. narcotic paraphernalia	2 yrs. prob. & \$500.00 fine.	6/22/77
4003	Sale & poss. of narcotics	7yrs. susp., 5 yr. prob. & \$50.00 fine.	6/22/77
4002	Engaging in lottery	\$1,000.00 fine	4/18/77
3098	Larceny	\$25.00 fine.	3/21/77
3097	Sale of marijuana	\$250.00 fine, prob. 2 yrs.	4/28/77
3092	Bookmaking	3-5 yrs.	5/4/77
3091	Bookmaking (N.Y.)	30 days susp.	5/5/77
3090	False swearing	\$1,000.00 fine, 1 yr. prob.	3/22/77
3089	Carrying concealed weapon	\$200.00 fine, 2 yrs. prob.	5/4/77
3088	Poss. of gambling paraphernalia	1 mo. jail, \$250.00 fine	5/27/77
3087	Working at lottery	7 mos. susp., \$1,000.00 fine	1/28/77
3082	Larceny of motor vehicle	\$250.00 fine, 3 yrs. prob.	5/4/77

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
3080	Assault with intent to kill	3-5 yrs. susp., 3 yrs. prob.	5/3/77
3079	Bookmaking	1-2 yrs.	5/25/77
3078	Poss. of narcotics	\$250.00 fine, 3 yrs. prob.	6/9/77
3077	Receiving stolen property	2 yrs. prob.	1/28/77
3075	Intent to steal motor vehicle(Fla.)	3 yrs. prob.	5/4/77
3071	Bookmaking	\$1,500.00 fine & 2 yrs. prob.	2/17/77
3069	Bookmaking	2 yrs. prob., \$350.00 fine	5/11/77
3067	Fraudulently obtaining narcotic (Va.)	3 yrs. prob.	5/11/77
3066	Conspiracy to make book	\$1,000.00 fine, 2 yrs. prob.	5/3/77
3065	Poss. marijuana	5 days County Jail, \$125.00 fine.	2/17/77
3063	Bookmaking	2-2½ yrs.	5/3/77
3061	Poss. stolen property	18 mos. Fed. Prison, Conn.	5/4/77
3059	Attempted burglary (Pa.)	5 yrs. prob.	12/30/76
3058	Bookmaking	\$1,000.00 fine, 3 yrs. prob.	2/10/77
3057	Poss. of narcotic (N.Y.C.)	18 mos. Rehab. Center	5/4/77
3056	Assault & battery on police officer	18 mos. susp., 1 yr. prob.	5/4/77
3054	Embezzlement	2-3 yrs.	5/4/77
3052	Bookmaking	1-1½ yrs.	5/3/77
3051	Larceny	1½-3 yrs. susp., \$250.00 fine, 2 yrs. prob.	2/15/77

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
3048	Manslaughter & atrocious assault and battery	7-10 yrs.	6/14/77
3046	Breaking without entry	2-3 yrs.	10/25/76
3045	Poss. of marijuana	\$1,000.00 fine & 3 yr. prob.	2/7/77
3043	Poss. of stolen prop.	\$2,000.00 fine & prob. to payment of ine.	5/3/77
3041	Breaking, entry & grand larceny (Fla.)	3 yrs.	2/17/77
3039	Assault & battery on police officer	60 days County Jail.	10/14/76
3036	Burglary	2 yrs. prob.	6/9/76
3033	Receiving stolen goods (Md.)	3 yrs. prob.	6/28/76
3032	Carrying firearm in motor vehicle	\$100.00 fine & 1 yr. prob.	6/21/76
3031	Murder	Life (paroled 1967)	10/5/76
3027	Armed Robbery(Md.)	20 yrs.	10/14/76
3026	Poss. of stolen prop.	2 yr. prob., \$200.00 fine.	6/28/76
3025	Poss. counterfeit money (N.Y.)	2 yr. prob.	7/2/76
3020	Keeping gambling resort	\$350.00 fine.	7/2/76
3016	Poss. gambling paraphernalia	2 yr. prob. & \$1,000.00 fine.	6/25/76
3012	Breaking & entry	5 yrs. Bordentown Reform.	10/5/76
3010	Working for lottery	3 yrs. prob. & \$1,500.00 fine.	6/25/76
3009	Armed robbery	16-30 yrs.	6/28/76

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
3008	Larceny of motor vehicle(N.C.)	10 yrs.	7/2/76
3007	Bookmaking	4 mos. Essex Co. Pen.	6/28/76
3006	Burglary, larceny receiving (Pa.)	2 yrs. prob.	3/11/76
3004	Transport & sell motor vehicle conspiracy(Fed.)	2 yrs. Fed. Prison.	6/28/76
3003	Breaking, entering & larceny	5 yrs. Bordentown Reform.	6/25/76
3001	Bookmaking & lottery activity	1-1½ yrs. State Prison, fined \$2000.00	6/28/76
2999	Poss. stolen prop. (Pa.)	5 yr. prob. & \$1,000.00 fine	10/18/76
2996	Poss. stolen prop.	3 yrs. prob.	6/25/76
2994	Bookmaking	3 yrs. prob. & \$1,000.00 fine.	6/28/76
2991	Bookmaking	\$500.00 fine.	2/9/76
2989	Illegal lottery & bookmaking	\$100.00 fine.	2/23/76
2988	Bribery	2 yrs. prob. & \$100.00 fine	2/23/76
2982	Petit larceny	\$100.00 fine.	5/21/77
2980	Poss. unregistered still	\$400.00 fine.	6/23/76
2979	Income Tax evasion (Fed.)	1 mo. & \$500.00 fine	6/29/76
2974	Bookmaking & lottery activity	60 days Co. Jail & \$1,000. fine	7/2/76
2972	Breaking, entering & receiving	2 yr. prob.	6/4/76

<u>Case No.</u>	<u>Crime of:</u>	<u>Sentenced to:</u>	<u>Disqualification Removal as of Order of:</u>
2969	Receiving stolen property	1 yr. prob.	6/25/76
2968	Robbery (Pa.)	15-20 yrs.	2/23/76
2955	Obtaining money under false pretenses	5 days. Union Co. Jail.	6/28/76
2954	Poss. of unregistered still(Fed.)(N.Y.)	1 yr. Fed. Prison, Conn.	2/6/76
2936	Poss. lottery paraphernalia	Fined \$250.00	1/20/76
2933	Poss. dangerous weapon	1 yr. Hudson Co. Pen.	1/20/76

6. DISCIPLINARY PROCEEDINGS - GAMBLING (CARD GAMES) - INSUFFICIENT EVIDENCE - LICENSEE FOUND NOT GUILTY.

In the Matter of Disciplinary :
Proceedings against :

Wilfredo Rivera :
t/a Willie's Tavern :
138 Wayne Street :
Jersey City, N.J. :

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consump-:
tion License C-98, issued by the :
Municipal Board of Alcoholic :
Beverage Control of the City of :
Jersey City. :

.. Bernard S. Glick, Esq., Attorney for Licensee
Mart Vaarsi, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleads "not guilty" to the following charge:

"On Sunday, January 23, 1977, you allowed permitted and suffered gambling in and upon your licensed premises, viz., participant betting for stakes of money on games of chance, commonly known as 'knock rummy'; in violation of Rule 7 of State Regulation No. 20."

Testifying on behalf of the Division, ABC Agent C gave the following account: On January 23, 1977 about 12:30 a.m. he entered the licensed premises and seated himself at the bar. He ordered an alcoholic beverage and made observations of four of the patrons who were seated at the corner of the "U" shaped bar playing a game of cards.

He then stood about two feet away from the players, and observed that they were playing a game of cards known as "knock rummy", a game with which he was quite familiar. His observations continued for about half an hour, when he was joined at the premises by ABC Agent P with whom he had a short conversation in the lavatory.

Agent P departed the premises to summon police while Agent C continued his observations of the card games.

At the conclusion of each hand the winning player received money from his associates; the payments varied from \$3.00 for "rummy", \$2.00 for "knock rummy" and \$1.00 for an "ace". He clearly observed money, in the form of bills being passed from losers to the winner.

The bartender-manager, Migdoel Rivera, was in a position to observe the games, in the opinion of Agent P. The barmaid then present could likewise see the card playing.

Upon arrival of the police, the card-players were arrested, cards and money were confiscated and the players, manager and agents departed to the local police precinct. There, the money taken from the players was returned to them, because neither the arresting police officers, nor ABC Agents, were authorized by their respective superior to sign gambling complaints. This left as evidence, two decks of playing cards.

Three of the four card-players testified: Pedro Mateo, Luis Calderone and Wilberto Rivera, the uncle of the licensee. Each vigorously denied that there was gambling associated with their card game. At the conclusion of each game, there was an interruption when new drinks were served, but the drinks purchased were not connected to the card games. The money on the bar, taken by the agents, represented the change from the cost of drinks and was the money due to Mateo, who had placed a ten dollar bill in payment of drinks.

The manager, Migdoel Rivera, testified that it was customary for the bar patrons who knew each other well, to play cards. However, he denied that there was gambling; whatever money he saw near the card-players was money used to purchase drinks.

Wilfredo Rivera, the licensee, testified that he was once warned about the risk of permitting patrons to gamble while card-playing and has noticed all of his steady patrons against such practice.

I find that the basic issue involved is not that gambling did or did not take place, since the testimony of Agent establishes the fact the players were, by their actions and conversations, rewarding the winners with money; but rather that, if gambling did take place, whether the licensee or his employees knew or should have known that it did.

In adjudicating matters of this type, we are guided by the basic principle that disciplinary proceedings against liquor licensees are civil in nature and not criminal, and thus, require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Div. of Alcoholic Beverage

Control, 20 N.J. 373 (1956). Since the matter sub judice presents essentially a factual situation, the credibility of witnesses must be weighed. Testimony, to be believed, must not only proceed from the mouths of credible witnesses, but must be credible in itself, and must be such as common experience and observation of mankind can approve as probable under the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

It must be noted that ABC Agent P, who accompanied Agent C was not called upon to testify. In explanation of such absence of presumed corroborative testimony, Agent P was ill and no longer associated with this Division.

Rule 7 of State Regulation No. 20 prohibits a licensee from "allowing, permitting or suffering" the proscribed activity therein described. It is not required that the licensee have knowledge of the prohibited act; if the licensee "should have known" of its commission, guilt may be assessed. Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947).

The proofs of gambling produced by the Division, as to observations and notice to the licensee's employees, were neither sharp nor clear and amount only to interpretative testimony of the agent. The passing of money from hand-to-hand among the players was a direct result of the gambling activity, as the Agent concluded; but, there was no testimony whatever establishing that such passage of money was either observed or understood by the employees of the licensee. The testimony of ABC Agent C was that the manager was behind the bar and able to see them playing cards. He doesn't know what the manager observed. Nor did he testify as to any direct conversations with the employees to attempt to corroborate knowledge of ongoing prohibited activities by them. Absent also, was any testimony whether the exchange of money was covert or overt.

A finding of guilt cannot be based upon suspicion or conjecture. The burden of establishing the charges by a preponderance of the evidence is upon those who assert them. Freud v. Davis, 64 N.J. Super. 242 (App. Div. 1960).

As there is a clear lack of the necessary preponderance of the evidence to support the charge, I recommend that the licensee be found "not guilty", and the charges herein, be dismissed.

CONCLUSIONS AND ORDER

No Exceptions to the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

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

Accordingly, it is, on this 25th day of May 1977,

ORDERED that the charge herein be and the same is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

7. STATE LICENSES - NEW APPLICATIONS FILED.

Chiri Incorporated
403 East Jersey Street
Elizabeth, N. J.

Application filed September 30, 1977 for limited wholesale license.

Consumers Beverage Centers
King Georges Road
Woodbridge Twp., PO Fords, N. J.

Amended application filed October 4, 1977 for person-to-person and place-to-place transfer of State Beverage Distributor's License SBD-20 from LAB Soda and Beer Distributors, Inc., 403 Amboy Avenue, Perth Amboy, N. J. Original application for transfer filed June 14, 1977 by Garden State Beverage Centers, 481 Smith Street, Perth Amboy, N. J.

Grolsch Importers, Inc.
11 Rye Ridge Plaza
Port Chester, New York

Application filed October 11, 1977 for limited wholesale license.

Robert Dickman
t/a S & S Distributors
173 Route 46
Rockaway Borough, N. J.

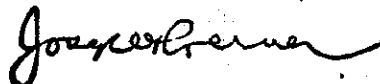
Application filed October 14, 1977 for state beverage distributor's license.

Taj Importers, Ltd.
848 West State Professional Building
Trenton, N. J.

Application filed October 17, 1977 for broker's license.

Federal Distillers, Inc.
15 Monsignor O'Brien Highway
Cambridge, Massachusetts

Application filed October 17, 1977 for place-to-place transfer of Plenary Wholesale License W-20 to include a warehouse at 167 Clifton Boulevard, Clifton, N. J.



Joseph H. Lerner
Director