STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1136 OCTOBER 24, 1956.

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STATE OF NEW JERSEY
Department of Law and Public Safety
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1100 Raymond Blvd. Newark 5, N. J.

BULLETIN 1136 OCTOBER 24, 1956.

1. APPELLATE DECISIONS - DANZIS WINE & LIQUOR CO. v. NEWARK.

DANZIS WINE & LIQUOR CO.,
Appellant,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Saul C. Schutzman, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.
Sidney Simandl, Esq.; Brass & Brass, Esqs., by Leonard Brass, Esq.; and Michael N. Steinberg, Esq., Attorneys for Objectors.

BY THE DIRECTOR:

This is an appeal from the denial of an application for a transfer of a plenary retail distribution license for the 1955-56 licensing year held by L. B. Company, Inc. for premises 28 Park Place, Newark, to Danzis Wine & Liquor Co. for premises 248 Peshine Avenue, corner of West Bigelow Street, Newark. The two locations are in different areas of Newark.

At the hearing herein the parties hereto submitted in evidence transcript of the proceedings before the local issuing authority, pursuant to Rule 8 of State Regulations No. 15, and presented additional evidence.

The petition of appeal alleges, in substance, that the action of the respondent is unreasonable, arbitrary, capricious, erroneous, against the weight of evidence, and an arbitrary exercise of discretion, in that at the hearing below the respondent paid cursory attention during the presentation of evidence; its members exhibited impatience and did not properly evaluate the number of persons, by petition or otherwise, who favored the transfer, contrasted to those who objected; and summarily denied the application despite the evidence submitted to establish that public need and necessity justified such transfer.

It is to be noted at this point that on September 13, 1955, the respondent denied an application to transfer to appellant's premises at 248 Peshine Avenue a plenary retail distribution license held by Louis Rosenberg, for premises located on Broad Street, on the ground, as shown by its resolution, that applicant had failed to establish that there was any public need or convenience to be served by the transfer to the proposed new location.

The respondent, in its answer, alleges that the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board.

The decision of the respondent, as announced by the Chairman of the Board, was that, having considered and evaluated all of the testimony and evidence brought by the applicant and the objectors, it is the opinion of the Board, in the exercise of its sound discretion, that the applicant has not sustained

the burden of proof, by a preponderance of the evidence, that public need and necessity and convenience would be served by the granting of the application and, therefore, the application was denied.

The only issue to be determined on this appeal is whether the respondent exercised a reasonable discretion in concluding that the evidence submitted did not establish that public need, necessity and convenience would be served by the proposed transfer. The other grounds urged for reversal are not pertinent since on appeal there is a trial de novo. However, it is to be noted that the record does not disclose that the appellant's criticism of the conduct of the hearing below is justified.

At the hearing below, Benjamin Danzis testified that he discussed with various property owners and other persons in the vicinity their attitude toward the transfer of a liquor license to his drugstore; that he had a petition favoring such transfer available in his store, which these persons signed; that from his observation about 200 of these persons were present at the hearing; that in making his previous application he had discussed their views on the subject with his customers because he was told he had to prove public need and convenience but he did not have their names and addresses available at the hearing and, hence, such application was denied and that was the reason he had prepared the petition and brought many of the signers thereto to the hearing on the second application.

At the suggestion of the respondent, three witnesses who favored the transfer and three witnesses who objected thereto were heard as representing the sentiment of the other persons present with views similar to theirs. These witnesses voiced their respective opinions concerning the advisability of locating a package store at appellant's premises from the standpoint of how they would be affected thereby.

The respondent apparently also had before it signed petitions and letters for and against granting the transfer from many hundreds of persons, with apparently at least twice as many favoring as those objecting.

The streets immediately adjacent to the proposed licensed premises, in order, are: On the east, Hunterdon Street and Bergen Street; on the west, Jelliff Avenue and Badger Avenue; on the south, West Runyon Street; and on the north, Clinton Avenue. The nearest other licensed premises is a tavern located on the corner of Jelliff Avenue and West Bigelow Street, being the corner on the same block with that of appellant's premises. There is also a tavern located on the corner of Peshine Avenue and West Runyon Street, about 700 feet distant from appellant's premises; a package store located on the corner of Bergen Street and West Runyon Street, about 1500 feet distant from appellant's premises; there are two taverns located at 670 and at 677 Bergen Street, near Clinton Avenue, about 1300 feet distant from appellant's premises; and on Clinton Avenue, between Bergen Street and Badger Avenue, a main shopping center, there are four taverns and one package store (Clinton Avenue being about 800 feet distant from appellant's premises).

At the hearing on appeal an owner of one of the taverns located on Clinton Avenue and an employee of the package store also located there voiced their objections to the transfer on the ground that in their opinion there are sufficient licenses in the neighborhood and that it would seriously affect the volume of business at their respective establishments.

At the close of the hearing on appeal the respective counsel expressed their desire to present written briefs in accordance with Rule 14 of State Regulations No. 15. No briefs have been submitted by any of such counsel within the time limited therefor by the aforesaid Rule.

It has been repeatedly stated that the transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. The transfer of a license in a municipality from one section to another section containing other licenses may result in unsatisfactory conditions sufficient to warrant denial of the transfer. This was stated in L. B. Company, Inc. v. Newark, Bulletin 1111, Item 8. What I said there, namely, that the respondent may properly take into consideration the number of plenary retail consumption licenses existing in the vicinity and that the weight to be accorded to petitions for or against a transfer of a license is entirely within the discretion of the issuing authority, applies with equal force to the instant case.

Here, as in the cited case, the local issuing authority concluded for the second time in the space of a few months that appellant had not established that the public need and convenience would be served by the transfer of a package store license to his premises. Here, as there, no appeal was taken by appellant from the first denial. While the sentiment of residents in the area as to the public need and necessity for a package store at appellant's location appears to be divided, nevertheless, the numerous existing licenses in the area and the sentiments of those persons opposed to the transfer appear to furnish a substantial basis for the conclusion of the respondent that no such public need or convenience exists. It is not my function, on appeal, to substitute my opinion for that of the issuing authority, but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm, irrespective of my personal views. Guarino v. Newark et al., Bulletin 1069, Item 2. In an appeal to the Director, the burden of proof to establish that the action of respondent Board was erroneous rests with appellant. Rule 6 of State Regulations No. 15.

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

I have considered the entire record and conclude therefrom that appellant has failed to sustain the burden of proof to establish that the action of the Board was arbitrary or constituted an abuse of its discretionary power. I shall, therefore, affirm the action of the respondent Board.

The license sought to be transferred expired at midnight, June 30, 1956. Appellant, L. B. Company, Inc., the holder of such license, has not obtained a renewal of its license for the present licensing year. Thus, the decision herein is merely advisory.

WILLIAM HOWE DAVIS
Director.

Dated: September 20, 1956.

2. APPELLATE DECISIONS - BRYLA v. NEWARK.

LEO BRYLA,

Appellant,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Anthony C. Blasi, Esq., Attorney for Appellant.
Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent on May 22, 1956, whereby it suspended appellant's license for fifteen days effective at 7:00 a.m. June 11, 1956. The suspension was imposed after respondent had found appellant guilty on a charge of selling alcoholic beverages to a seventeen-year-old minor and permitting said minor to consume said beverages on his licensed premises. Appellant's premises are located at 129 Sixteenth Avenue, Newark.

Upon the filing of the appeal an order was entered on June 8, 1956, staying respondent's order of suspension until the entry of a further order herein. R. S. 33:1-31.

At the hearing herein respondent's case was presented upon the transcript of the proceedings below in accordance with the provisions of Rule 8 of State Regulations No. 15. Additional evidence was presented on behalf of appellant by appellant and his bartender (William Reilly).

The petition of appeal alleges in effect that the findings of the respondent were contrary to the weight of the evidence and arbitrary.

There is no doubt that on the evening of September 27, 1955, appellant sold at least one glass of beer to Joseph --- (17 years of age) and that he permitted the minor to consume the drink in his premises. Appellant so admitted at the hearing below and at the hearing herein. Hence, the sole question to be decided is whether appellant has established a defense under R. S. 33:1-77 which provides as follows:

> "Anyone who sells any alcoholic beverage to a minor shall be guilty of a misdemeanor; provided, however, that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: [a] that the minor falsely represented in writing that he or she was twenty-one [21] years of age or over, and [b] that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one [21] years of age or over, and [c] that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one [21] years of age or over."

The defense outlined in the aforesaid statute has been ruled to be effective in disciplinary proceedings as well as in criminal proceedings. Cf. Caruso v. Jersey City, Bulletin 694, Item 1.

Appellant testified that, when Joseph entered his premises and ordered a beer on the evening of September 27, 1955, he asked him for proof of his age; that Joseph showed him a National Guard ID card and that, when appellant was not satisfied with this proof, Joseph left the premises and returned with a birth certificate which indicated that he was twenty-one years of age. Up to this point there is no discrepancy in the testimony because Joseph admitted at the hearing below that on said evening he had shown a National Guard ID card to appellant and later a birth certificate which Joseph admitted he had falsified to indicate that he was twenty-one years of age. However, there is a sharp dispute in the testimony concerning the date upon which Joseph signed a written representation that he was twenty-one years of age. Appellant and William Reilly (his bartender, who was not then on duty but who, with his wife, was present in appellant's premises) testified that this written representation was signed by Joseph in the rear room of the licensed premises on the evening of September 27, 1955. On the other hand, the minor, after testifying at the hearing below that he signed it on September 27, changed his testimony and said that he signed it on a subsequent visit to appellant's premises.

It is the appellant's contention that he did not sell any alcoholic beverages to the minor until after the written representation was signed, but he does admit that the minor thereafter visited his premises on October 5, 1955. I conclude that the minor did not sign the written representation until the latter date. This conclusion is based in part upon the testimony of appellant, who says that, after the written representation was signed, the minor bought one beer for himself and a beer for another party; that, after the minor had consumed his beer and left the premises, the other patron told appellant that he knew the minor's family and was not sure that he was twenty-one but would find out and let appellant know. Appellant said that he heard nothing thereafter from the other patron. This evidence indicates to me that, at the time of the sale, appellant had no proof of age except the National Guard ID card and the falsified birth certificate, neither of which is sufficient to satisfy the provisions of R. S. 33:1-77(a), and that, after the other patron had raised further doubts in his mind as to the minor's age, he had the minor sign the written representation on his second visit, namely, on October 5, 1955. This is borne out by the written representation which was introduced into evidence and which bears the notation "10-5-55", admittedly placed thereon by appellant on October 5, 1955. Appellant has presented no satisfactory evidence as to why he should have made this notation on October 5 if in fact the written representation had been signed, as he alleges, on September 27. Aside from the question as to whether the appearance of the seventeen-year-old minor was such that an ordinary prudent person would believe him to be twenty-one years of age, I am satisfied that, prior to the sale and service of the alcoholic beverage, the minor did not falsely represent in writing that he was twenty-one years of age or over. It is clear that the written representation must be signed before the sale is made. Cf. Re Fornaro, Bulletin 339, Item 10. Under the facts of this case appellant has not established a defense under R. S. 33:1-77. For the reasons aforesaid, I shall affirm the action of respondent in finding appellant guilty as charged.

It has long been established that the question of quantum of penalty rests within the sound discretion of the local issuing authority and will not be disturbed on appeal unless it is clearly excessive and manifestly unreasonable. Engelhorn v. Belmar, Bulletin 1083, Item 1. Although there are mitigating circumstances in this case, the fact remains that the minor was only seventeen years of age. I shall affirm the action of respondent in suspending the license for fifteen days.

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

Accordingly, it is, on this 24th day of September, 1956,

ORDERED that the action of respondent be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that the fifteen-day suspension imposed by respondent, and which was stayed during the pendency of these proceedings, is restored against License C-254, now held by appellant for premises 129 Sixteenth Avenue, Newark, to commence at 2:00 a.m. October 1, 1956, and terminate at 2:00 a.m. October 16, 1956.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - LIVINGSTON LAND CORP. v. LIVINGSTON AND PITSCHER AND OWENS.

LIVINGSTON LAND CORPORATION, Appellant, -vs- TOWNSHIP COMMITTEE OF THE TOWNSHIP OF LIVINGSTON, and MARIE PITSCHER & LOUISE M. OWENS, t/a NORTHFIELD MANOR, Respondents.	ON APPEAL CONCLUSIONS AND ORDER

Toolan, Haney & Romond, Esqs., by John E. Toolan, Esq., Attorneys for Appellant.
Grosso & Beck, Esqs., by Robert E. Beck, Esq., Attorneys for Respondent Township Committee.
Herman E. Hillenbach, Esq., Attorney for individual Respondents.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it denied appellant's application to transfer to appellant and to its premises at 615 South Livingston Avenue, Livingston, a plenary retail consumption license issued for the 1955-56 licensing year to the individual respondents herein for premises at 618 South Livingston Avenue, Livingston.

The individual respondents are neither necessary nor proper parties to this appeal. The Pines of Watchung v. Watchung et al., Bulletin 1061, Item 2.

The petition of appeal herein alleges that respondent Township Committee denied the application without stating the

reasons therefor, and prays that the action of the Township Committee be reversed. The answer admits said allegation but sets up the following as separate defenses:

"1. Respondent, The Township of Livingston, acted in its sound discretion in denying transfer of the license referred to in the Petition of Appeal.

"2. The grounds upon which Respondent denied the transfer are as follows:

(a) Premises of the Appellant at #615 South Livingston Avenue consist of a building housing bowling alleys, which alleys are frequented and used by a great many teen-age children of the Township. Respondent fears that the proximity of a bar and serving of liquor in the presence of so many of the youth of the Township would be detrimental to their character and morale, might tend to encourage their early use and illegal purchase of alcohol, might lead to law-breaking, and would be contrary to the public welfare of the Township.

(b) Respondent, although mindful of the fact that Appellant is presently providing a healthy recreational atmosphere for all citizens of the Township, fears that the granting of a Plenary Retail Consumption License might shift the emphasis from furnishing recreation to the furnishing of alcoholic stimulants, and particularly fears that this would be the case should control of Appellant's corporation pass to other hands.

(c) The Governing Body of Respondent seeks to represent the majority of the people of the Township, and from the opinions stated at the public hearing on May 7, 1956, the citizens of the Township were overwhelmingly opposed to the transfer of the license to the bowling alley building, primarily by reason of its feared adverse effect on the teen-age youth of the Township."

It has been repeatedly pointed out that, in all fairness, a local issuing authority should state the reasons for its decisions, but such failure is not fatal. Sauer v. Readington, Bulletin 1069, Item 3.

At the hearing held herein Bernard Kruth, president of appellant corporation, and Ernest Teed, who is employed by Livingston Lanes, Inc., as manager of its bowling alleys, testified on behalf of appellant. Mr. Kruth testified that appellant is the owner of the property at 615 South Livingston Avenue on which is erected a large cement and brick building containing twenty bowling alleys, a luncheonette and a stockroom. He further testified that Livingston Lanes, Inc. (a corporation having substantially the same stockholders as appellant corporation) leases the entire building and operates the bowling alleys. As to the manner of operation of the bowling alleys, both Mr. Kruth and Mr. Teed testified that from Monday to Friday during the winter season the alleys operate from 9:00 a.m. until approximately 1:30 or 2:00 a.m. on the following morning; that on said days persons under twenty-one are permitted to bowl between 3:00 p.m. and 5:30 p.m. when they are requested to leave the premises; that between 6:30 p.m. and 11:30 p.m. the alleys are used by bowling leagues "with various groups for adults over twenty-one years of age, representing all types of businesses" and that thereafter until closing time the alleys

are open for use by persons not affiliated with any bowling league; that during the evening periods persons under twenty-one years of age are admitted only if accompanied by their parents or a responsible adult. Mr. Kruth testified that on Saturdays the alleys are open for use by the general public from 9:00 a.m. to closing time, and that on Saturdays "the total number of games played by youngsters under twenty-one is approximately twenty per cent. of our total business." Both witnesses testified that on Sundays the alleys are used by bowling leagues during the morning and evening, but that between Noon and 8:30 p.m. the alleys are open for use by the general public. As to the sale of alcoholic beverages, Mr. Kruth testified that appellant intends to set up a bar in the stockroom; that the bar will be open on Saturdays and Sundays between 1:00 p.m. and closing time, and on the other weekdays between 5:00 p.m. and closing time, and that sales of alcoholic beverages will be made only at the bar except that, while league bowling is in progress, drinks will be served by appellant's employees to bowlers who are using the alleys.

On behalf of respondent Township Committee, Mayor William H. Clark, Committeeman Herbert J. Mitschele and Committeeman David W. Dowd testified that a public hearing was held by the Township Committee on May 7, 1956, at which many objectors appeared, and that the application herein was denied on May 21, 1956, by a unanimous vote of the Township Committee. Without setting forth their testimony at length, it appears that the members of the Township Committee denied the application for substantially the same reasons set forth in subsections (a), (b) and (c) of Paragraph 2 of the separate defenses. On behalf of respondent Township Committee, Howard Peary (a substantial stockholder in appellant corporation) testified that he was opposed to the sale of liquor in appellant's premises because it would seriously hamper, if not destroy, the recreational facility as it exists today, and Reverend Louis E. Higgins, Pastor of the Congregational Church in Livingston, testified that he was opposed to the transfer substantially because "putting in a bar will change the complexion of the bowling alleys."

In Masarik and Stankowicz v. Milltown, Bulletin 283, Item 10, Commissioner Burnett said:

> "*** In Turner v. Ramsey, Bulletin 37, Item 7, denial of a license was upheld where it appeared, among other reasons, that the denial was based upon the contention that 'minors are employed as pin boys and frequent the premises to play pool and billiards.' In that case I said:
>
> > 'the denial of a license because the premises are used by minors is within the power of the local board and is justified.'
>
> "Bowling alleys may well attract youths under twenty-one and, if issuing authorities honestly believe that the sale of liquor should not be permitted on premises operated as bowling alleys and uniformly apply such policy, their action will be upheld irrespective of my personal belief that there is nothing intrinsically wrong in granting a license in respect to bowling alleys subject to revocation if sales are made to minors. If the Council had granted this license, I should have had no compunction in affirming its issuance. But that is quite different from concluding that the Council has acted unreasonably merely because they differ with me in a matter of policy. ***"

A transfer of a liquor license to other persons or premises, or both, is not an inherent or automatic right. The issuing authority may grant or deny the transfer, in the exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6; Craig v. Orange, Bulletin 251, Item 4; Semento v. West Milford, Bulletin 253, Item 2; Thompson v. Mount Olive, Bulletin 986, Item 1. On appeal the burden is on appellant to show that respondent abused its discretion. Rule 6 of State Regulations No. 15. Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Christian v. Passaic, Bulletin 928, Item 2.

Moreover, in the present appeal an additional reason appears for denying the application. A licensee must be in possession and control of its licensed premises. In the present case it appears that appellant has leased its building to Livingston Lanes, Inc., which is a separate legal entity despite the fact that both corporations have substantially the same stockholders.

Under the circumstances of this case, I find that appellant has not sustained the burden of proof in showing that the action of respondent Township Committee was erroneous and, hence, I shall affirm said action.

No exceptions were taken to the Hearer's Report within the time limited by Rule 14 of State Regulations No. 15.

Accordingly, it is, on this 1st day of October, 1956,

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

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - ELBERON GROCERS AND LIQUOR STORE, INC. v. OCEAN TOWNSHIP (MONMOUTH COUNTY).

ELBERON GROCERS AND LIQUOR STORE, INC., trading as ELBERON GROCERS & LIQUOR STORE,

Appellant,

-vs-

TOWNSHIP COMMITTEE OF THE TOWNSHIP OF OCEAN (Monmouth County),

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Sidney Alpern, Esq., Attorney for Appellant.
Stout & O'Hagan, Esqs., by Sidney Hertz, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the denial of an application for a conditional transfer of appellant's Plenary Retail Distribution License D-4, issued for the 1955-56 licensing year for premises 250 Norwood Avenue to premises on the east side of Kings Highway (State Highway #35), 100 feet north of Talmadge Avenue, both located in Ocean Township. The application was accompanied by plans and specifications of a building to be erected on the last mentioned premises.

The respondent adopted a Resolution setting forth that after reading a letter of objection from the operators of Memory Lane Bar, located on Highway #35, and hearing the objections of three other persons who asserted that there were enough liquor establishments on Highway #35, and the representation of appellant's attorney that the reason it desired the transfer of its license is that its lease will expire within a year, the application for transfer was denied. The Resolution further recites that Mayor Garrity remarked that it was the opinion of the Board that the application be denied as it is expected that commercial activity in the Norwood Avenue Area will increase and the license should remain in the same area.

The appellant maintains that such denial was without legal or valid basis, was arbitrary, and that respondent failed to exercise a liberal construction of its authority.

The respondent, in its Answer, sets forth that there are fourteen plenary retail consumption licenses, five plenary retail distribution licenses, and one club license in the Township; that of these, eight plenary retail consumption licenses are located on State Highway #35; that there is no present need for additional licenses thereon because most of the aforesaid eight licenses are within a short distance of the proposed premises; that the respondent believes the best interests of the Township will be benefited if the license remains in the present area; and that the additional place for the sale of liquor on State Highway #35 will create additional traffic hazards.

In summary, appellant's complaint is that respondent was arbitrary and abused its discretion in refusing to transfer appellant's license from a congested "D" license area (there are three "D" licenses in close proximity to each other) to an area where the nearest "D" license is nearly two miles distant, especially since appellant's lease for its present premises is to expire in April 1957. On its part, respondent asserts that the licenses presently located in the proposed area are sufficient to meet the needs of the public and that there is no public need for an additional license; and that such additional license would increase the traffic hazards.

The proposed location, on a heavily traveled highway, is approximately three miles distant from the licensee's present premises. There is one consumption license located about 150 feet and another such license located about 2800 feet north of appellant's proposed location. At such point the area is undeveloped on the west side of the Highway and sparsely settled on the east side of the Highway. Less than a mile to the south on the Highway, there is another consumption license and about 2 1/2 miles south on the Highway, near a traffic circle, there is a well-developed area where five consumption licenses are located in close proximity to each other.

In 1952 respondent denied an application for transfer of a consumption license to a location on the west side of the Highway almost opposite to the appellant's proposed premises on the grounds, in substance, that there was no need there for an additional license and that traffic hazards would be increased. On appeal, the denial was affirmed on July 17, 1952 by the Director of the Division of Alcoholic Beverage Control. DeCapua v. Ocean Township, Bulletin 941, Item 1.

A consumption license has since been issued for a motel (hotel) located on or near the traffic circle (one of the five consumption licenses hereinabove referred to). Mayor Garrity testified that such license was granted on the basis that it was a hotel where patrons checked in and remained for an extended

period as distinguished from the constant ebb and flow of traffic normally to be expected where transient patrons stop to purchase packaged goods and hence, the motel license fills a special public need without any foreseeable traffic hazard.

It has been consistently held that the number of licenses which should be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters within the sound discretion of the issuing authority. Denial of a transfer to an isolated or desolate area appears to be a reasonable exercise of discretion (especially so where a similar application has been denied within a comparatively recent period and affirmed on appeal). Fiore v. Newark, Bulletin 1117, Item 6, and cases cited therein. While the primary concern of the local issuing authority is whether there is a public need or convenience for a license at the new location, it is not unreasonable for it to consider the comparative desirability of retaining the license at the old location, described as one of the important business areas in the municipality, with prospects of increased business activity there, in contrast to the undeveloped area to which the license is proposed to be transferred.

In determining whether a plenary retail distribution license should be transferred to a particular location, a local issuing authority may properly take into consideration the number of plenary retail consumption licenses existing in the vicinity. L. B. Company, Inc. v. Newark, Bulletin 1111, Item 8.

Even if the evidence presented established (which it does not) that the appellant's lease had expired and it could not obtain a renewal thereof, and there were no other quarters available in that area, and thus evidence hardship, the issuing authority would, nevertheless, have the discretionary authority to determine whether the proposed premises are in an appropriate location for such business. Cf. Higgins v. Elizabeth, Bulletin 1081, Item 5.

The above are specific factors which are to be considered in applying the oft-repeated principle that a transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny the transfer in its exercise of a reasonable discretion. If denied on reasonable grounds, such action will be affirmed. On the other hand, where it appears that the refusal of a transfer was arbitrary or unreasonable, the action of respondent in refusing the transfer will be reversed. Such was the decision of the Director in affirming the previous denial of transfer above referred to in DeCapua v. Ocean Township, supra, and is equally applicable to the instant appeal. These principles afford the owner of a license the measure of protection from arbitrary action referred to in Tp. Committee of Lakewood Tp. v. Brandt, 38 N. J. Super. 462 (App. Div. 1955).

In an appeal to the Director, the burden of proof to establish that the action of respondent issuing authority was erroneous rests with appellant. Rule 6 of State Regulations No. 15.

The Hearer in this matter filed a report wherein the above facts and pertinent principles were set forth and recommended affirmance of the action of the Township Committee. Thereafter pursuant to Rule 14 of State Regulations No. 15, the attorney for appellant filed exceptions and argument thereon.

I have carefully considered the entire record in this case including the transcript of testimony, the Hearer's Report and the exceptions and arguments of counsel. Considering all the circumstances herein, I conclude that appellant has failed to sustain the burden of proof necessary to establish that the action of the Township Committee was arbitrary or constituted an abuse of its discretionary power. Hence, I shall affirm the action of the Township Committee. Enno et als. v. Howell et als., Bulletin 1120, Item 6.

The license sought to be transferred expired at midnight, June 30, 1956. The appellant has obtained a renewal of its license for the present licensing year for premises 250 Norwood Avenue. Thus, the decision herein is merely advisory.

WILLIAM HOWE DAVIS
Director.

Dated: October 2, 1956.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (PERMITTING MAKING ARRANGEMENTS ON LICENSED PREMISES FOR ILLICIT SEXUAL INTERCOURSE - OBSCENE PICTURES) - LICENSE SUSPENDED FOR 180 DAYS.

In the Matter of Disciplinary Proceedings against HICKEY'S VILLA RIDGEFIELD, INC. 540 Studio Road Ridgefield, N. J., Holder of Plenary Retail Consumption License C-15 for the 1955-56 and 1956-57 licensing periods, issued by the Borough Council of the Borough of Ridgefield.	CONCLUSIONS AND ORDER

Harold S. Okin, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charges:

"1. On April 11 and 13, 1956, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., the making of arrangements for the renting of rooms, the offering to rent and the renting of rooms for the purpose of illicit sexual intercourse; in violation of Rule 5 of State Regulations No. 20.

"2. On April 6, 11 and 13, 1956 and on divers days prior thereto, you allowed, permitted and suffered in and upon your licensed premises and had in your possession matter containing obscene, indecent, filthy, lewd, lascivious and disgusting printing, writing, pictures, photographs and representations; in violation of Rule 17 of State Regulations No. 20."

The file herein discloses that at 10:00 p.m. on April 6, 1956 two ABC agents entered defendant's licensed premises and took seats at the bar; that about 11:45 p.m. they observed the bartender (subsequently identified as Gordon Hickey), at the request of a female patron, take a device from the back bar, place the female patron's glass which contained a highball in said device and then hold it aloft so that the printed matter

thereon with an indecent connotation could be read by all the patrons in the establishment.

On April 11, 1956, the two agents referred to above again visited the defendant's premises and engaged in conversation with a bartender called Dan (subsequently identified as Daniel Hickey) about the possibility of renting rooms for immoral purposes. Dan stated that a room would cost $5.00 and explained that it was not necessary for the girls to come through the barroom as the rooms on the second floor could be reached by way of the front entrance; that the agents should call him on the telephone and give him a half hour's notice; and that if he (Dan) was not in, the agents should tell his brother Gordon or his (Gordon's) wife that they were his friends. Dan then showed the agents the front entrance to the upstairs rooms; also showed them the two rooms on the first floor, one of which had double beds; and then led them into a hall wherein there was a desk with cards to register. However, Dan informed the agents that they would not be requested to register. Dan, in answer to a question by an agent whether girls "hung out there," said that the "guys come in with broads themselves." The agents left about 11:00 p.m.

On Friday, April 13, 1956, at about 9:00 p.m., the two agents who had visited defendant's licensed premises on the prior occasions, each having in his possession a $5.00 bill, the serial numbers of which had previously been recorded, entered the defendant's premises. Gordon was tending bar at the time and when the agents inquired about Dan, Gordon informed them that he was expected later. The agents asked Gordon if there would be two rooms available for them about 9:30 p.m. as they would have to call the girls because the husband of one of them had his car parked in front of her house. At 10:20 p.m. the agent who had left the premises called on the telephone and spoke to Gordon who called the other agent to the telephone. At about 10:30 p.m. Dan came from the kitchen and greeted the agent who had remained in the premises. The agent informed Dan that he and his companion would want two rooms for the purpose of engaging in sexual intercourse with two married women and that his companion had left to ascertain whether the women's husbands were still at home. Dan then said "Always leave it to the husbands to ruin a good time."

At 10:45 p.m. the agent who had left earlier in the evening returned to the premises and joined his fellow agent who had remained therein. He then inquired of Dan whether he had the rooms and, upon being informed that he did, the agent stated to him that the girls would be there about 11:30 p.m. At 11:25 p.m. each of the agents gave Dan a $5.00 bill from which the serial numbers had been recorded. Dan placed the bills on the cash register on the back bar, remarking, "When the girls come I'll show you upstairs" and then designated by number the respective rooms which the agents were to occupy. At 11:30 p.m. a third agent, who had remained outside the premises on this occasion, entered the barroom and took a seat at the bar next to one of the agents. One of the agents who had been seated at the bar called to Dan and said that they were going upstairs for the purpose of engaging in sexual intercourse with the girls and one of them ordered four assorted drinks of alcoholic beverages to be served in the rooms which had been rented from him. After describing the girls to Dan, both agents walked to the hallway, ascended the stairs, and entered their respective rooms. One room rented by the agents was a

large room containing, among various miscellaneous furniture, a double bed; whereas the other agent had two rooms, a small one containing a table, chairs, etc., and an adjoining room containing a double bed and other bedroom furniture. Dan served the drinks which the agent had ordered before going upstairs to the rooms.

At 11:50 p.m. the third ABC agent and a local police officer identified themselves to Dan and in answer to their inquiry concerning the two other agents were told by him that they were upstairs in their rooms. The agent found two five-dollar bills on the cash register, the serial numbers of which had previously been recorded. The agent, the local police officer and Dan proceeded upstairs, entered the room of one of the agents and interviewed him concerning his presence there. They then went to the room of the other agent and questioned him in like manner. Dan admitted that the agents rented the rooms for the purpose of bringing the girls there but did not remember the part of the conversation with the agents when they informed him about using the rooms for the purpose of engaging in illicit relations.

A search of the barroom produced divers cards with filthy drawings and writings thereon, numerous photographs of nude women, and a miniature athletic supporter with a suggestive inscription written thereon.

It is immaterial that no illicit sexual intercourse actually occurred in the rooms after they were rented to the agents. The offense charged (allowing, permitting and suffering lewdness and immoral activities in and upon the licensed premises) was complete when the rooms were rented with knowledge on the part of Daniel Hickey (secretary of defendant corporate-licensee) that they were (ostensibly) to be used for the purpose of illicit sexual intercourse. As said for the Court (by Judge Jayne) in In re Schneider, 12 N. J. Super. 449: "We are therefore confronted with the question whether the mere renting of bedrooms in the licensed premises by a licensee with the belief and intention that they will be occupied for the purposes of illicit sexual intercourse is an immoral activity within the signification of Rule 5. (Rule 5 of State Regulations No. 20.) We answer the question in the affirmative.... The object manifestly inherent in the rule ... is primarily to discourage and prevent not only lewdness, fornication, prostitution, but all forms of licentious practices and immoral indecency on the licensed premises. The primary intent of the regulation is to suppress the inception of any immoral activity, not to withhold disciplinary action until the actual consummation of the apprehended evil."

Considering all the circumstances herein, including the plea and the fact that defendant has no prior adjudicated record, I shall suspend defendant's license for 180 days. Re Bertown Realty Corp., Bulletin 934, Item 6.

Accordingly, it is, on this 25th day of September, 1956,

ORDERED that Plenary Retail Consumption License C-15, issued for the 1956-57 licensing period by the Borough Council of the Borough of Ridgefield to Hickey's Villa Ridgefield, Inc., 540 Studio Road, Ridgefield, be and the same is hereby suspended for a period of one hundred eighty (180) days, commencing at 3:00 a.m. October 1, 1956, and terminating at 3:00 a.m. March 30, 1957.

WILLIAM HOWE DAVIS
Director.

6. DISCIPLINARY PROCEEDINGS - CHARGE ALLEGING SALES TO MINORS, DISMISSED.

In the Matter of Disciplinary Proceedings against MADELEINE G. MOORE, EXECUTRIX OF THE ESTATE OF WILLIAM A. MOORE T/a MOORE'S INN West Main Street Freehold Township, PO Freehold RD 3, N. J., Holder of Plenary Retail Consumption License C-2 for the 1955-56 licensing period, issued by the Township Committee of the Township of Freehold; and transferred during the pendency of these proceedings and renewed for the 1956-57 licensing period to: MADELEINE G. MOORE and JANE CORLIS MOORE CARNEY T/a MOORE'S INN West Main Street West Freehold, Freehold Township PO Freehold RD 3, N. J.	CONCLUSIONS AND ORDER

Barkalow, McGowan & Krusen, Esqs., by Clifton T. Barkalow, Esq., Attorneys for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to a charge alleging that on February 10, 1956, she sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a minor, in violation of Rule 1 of State Regulations No. 20.

The Hearer herein recommended a finding of guilt based upon the testimony of John --- (age 18) that he purchased a case of beer on February 10, 1956 from James Carney (a bartender) and the testimony of John's three minor companions that he left them seated in a car on the licensed premises and returned with a case of beer within five minutes although they did not see him enter or leave the licensed premises.

Exceptions were filed to the Hearer's report and recommendation and a brief setting forth argument on the exceptions was submitted. I have reviewed the complete record which discloses various highlights which should be considered.

All of the minors positively fix the time within which John purchased the beer and brought it to the car as between 6:45 p.m. and not later than 7:10 p.m. John positively and repeatedly identified Carney as the person who sold him the beer. The defendant's witnesses are equally positive that James Carney was not in the tavern until some time after 7:30 p.m. on the day in question. When first apprehended by local police, John told the police officer that a person whose car they had given a "push" gave him the case of beer and, when the officer refused to accept this account, then stated that the beer had been obtained at defendant's licensed premises. Carney and Charles Moore, the only bartenders employed at the tavern, repeatedly denied that John there purchased the case of beer. Moore testified that a young man, whom he cannot identify,

attempted to purchase beer that evening but was refused. A patron who was entering the tavern as the young man left positively identified John as such person and states that John was leaving empty-handed. It is suggested that the physical situation at the tavern was such that a person could have obtained beer from the place of storage without the knowledge of the licensee's employees, although no evidence was presented that such an incident had, in fact, occurred. The licensee's husband, recently deceased, was in business at the same premises since 1934 without any adjudicated record of any violation of the liquor laws or regulations.

There is such a conflict in the testimony that it must be resolved in favor of the defendant, especially since there is little, if any, circumstantial evidence to corroborate John's testimony that he purchased the beer in defendant's tavern. Under the circumstances, I conclude that the Division has not sustained the burden of establishing the defendant's guilt by a fair preponderance of the evidence and by reason thereof, I am not in accord with the Hearer's recommendation and, instead, shall dismiss the charge. Re Borstelmann, Bulletin 1127, Item 3.

Accordingly, it is, on this 19th day of September, 1956,

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

WILLIAM HOWE DAVIS
Director.

7. STATE LICENSES - NEW APPLICATIONS FILED.

Antrim Transportation Co., Inc.
33-39 Franklin Turnpike
Mahwah, N. J.
Application filed October 22, 1956 for Public Warehouse License.

Edward C. Walkiewicz and Joseph R. Walkiewicz
T/a White Eagle Bottling Co.
177-181 South Street
Newark, N. J.
Application filed October 22, 1956 for person-to-person, place-to-place transfer of State Beverage Distributor's License SBD-5 from Anthony Rotella, t/a Rotella Distributing Company, 45 Downing Street, Newark, N. J.

Bennett Street Warehouse, Inc.
St. Hwy. #440, 440 Ft. South of Clendenny Avenue
Jersey City, N. J.
Application filed October 22, 1956 for place-to-place transfer to include additional space on Public Warehouse License No. X-22.

William Howe Davis
Director.