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

BULLETIN 1972

May 13, 1971

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1. APPELLATE DECISIONS - TAGLIABOSCHI v. METUCHEN ET. AL.

Cosmo Tagliaboschi,)
)
Appellant,)
)
v.) On Appeal

Borough Council of the Borough) CONCLUSIONS
of Metuchen, and Metuchen Lodge) and
#1914, BPO Elks,) ORDER
)
Respondent.)

Dalto & Gran, Esqs., by Howard Gran, Esq., Attorneys for
Appellant
Martin A. Spritzer, Esq., Attorney for Respondent Borough
Joseph R. Ferenczi, Esq., Attorney for Respondent Metuchen
Lodge #1914, BPO Elks

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Borough Council of the Borough of Metuchen (hereinafter Council) wherein (by resolution dated December 22, 1969) it granted a plenary retail consumption license to respondent Metuchen Lodge #1914, B.P.O.E. (hereinafter Elks) for premises 70 Middlesex Avenue, Metuchen.

The resolution granting the license reads as follows:

"WHEREAS, an application for a plenary retail consumption license has been made by Metuchen Lodge No. 1914, B.P.O.E., and such application complies with the provisions of R.S. Title 33, Intoxicating Liquors, c. 1, Alcoholic Beverage Law; and

WHEREAS, such application has been investigated by the Chief of Police, the Fire Inspector and the Board of Health, and approved by them; and

WHEREAS, a public hearing has been held and such applicant has represented that if such license is granted it will be used for the accommodation of special meetings, banquets, weddings, receptions, and similar functions, and has represented that the general public will not be served on a casual basis; and

WHEREAS, the granting of such license to such applicant will extend and alter its use of its premises;

AND WHEREAS, other applications have been considered and it is felt that the granting of this application is in the public interest as there is a present need for such type of entertainment accommodation;

THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Metuchen, that pursuant to the statute in such case made and provided, a plenary retail consumption license for the remainder of the period July 1, 1969, to June 30, 1970, be and the same is hereby granted to Metuchen Lodge No. 1914, B.P.O.E., subject to such organization's obtaining a use variance, and such license shall hereafter revert at no cost to the municipality if the aforementioned use ceases by such applicant at the present location."

Appellant challenged the Council's action alleging that the issuance of the license to the Elks was erroneous in that:

"(a) One or more members of the Mayor and Council of the Borough of Metuchen, the municipal issuing authority, were or are members of the Metuchen Lodge No. 1914, B.P.O.E., to whom said license was issued in violation of State Regulation No. 4, Rule 1 et seq., as set forth in Rules and Regulations of the Division of Alcoholic Beverage Control;

(b) Metuchen Lodge No. 1914, B.P.O.E. failed to establish a public need or necessity for the issuance of said license since it represented that in all respects its operation would be similar to the present use under the existing club license which it now holds;

(c) The inclusion of a member of the Metuchen Lodge No. 1914, B.P.O.E. on the respondent, governing body of the Borough of Metuchen was a violation of those standards of integrity, objectivity and impartiality established by our Courts for the conduct of those officials acting in a quasi-judicial capacity;

(d) Respondent, Mayor and Council of the Borough of Metuchen, did not permit appellant to fully present and produce proper proof and failed to permit questioning of applicants so that it did in effect violate its duty to conduct a public hearing;

(e) The Appellant's application is in all respects superior to Respondent, Metuchen Lodge No. 1914, B.P.O.E.'s proposal.

(f) The Respondent, Metuchen Lodge No. 1914, B.P.O.E.'s application is in violation of the Zoning Ordinance of the Borough of Metuchen."

In its answer, the respondent Council denied the allegations contained in appellant's petition of appeal set forth with particularity above and asserted that appellant's

application was denied for the following stated reasons:

"(a) The plans and specifications required in the application did not show the room size and material to be used and were otherwise vague and deficient.

(b) The applicant did not provide proper proof that he owned or controlled the areas needed for adequate parking.

(c) The applicant did not give proper proof that he owned the building and premises and had the power and authority to enlarge same in accordance with the plans.

(d) The granting of a license to the appellant at the location requested was undesirable and not in the public interest."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

By stipulation of the parties, the minutes of the Council meetings on November 17, December 1, December 15 and December 22, 1969, wherein the application for the license was discussed, and acted upon, were received in evidence, R-2A, B, C and D, respectively. Additionally, the license applications of the respondent Elks, the appellant, Cosmo Tagliaboschi and of Soo San, Inc. were received in evidence. The application of Soo San, Inc. will not be considered for the reason that it failed to press its claim.

It was further stipulated that the then Mayor of Metuchen, Walter J. Duff, and a newly elected member of the Council, Eugene Haley, who took office on January 1, 1970, are members of the Elks.

In chronological summary, the minutes of the meetings of the Council reflect that on November 17, 1969 it set December 1 as the date for holding a public hearing on a proposed ordinance increasing the limitation on the issuance of plenary retail consumption licenses by one. On December 1, the proposed ordinance was approved. At the meeting of December 15, the Council approved a motion that a public hearing be held on December 22 to consider the applications. At the hearing held on December 22, the Council granted the license to the Elks by a vote of four to two, the Mayor not voting. Additionally, although Mayor Duff was present, he was still unable to speak because of laryngitis.

The threshold inquiry is directed to the legal propriety of the action of the Council in its grant of the license herein.

R.S. 33:1-20 provided, prior to amendment effective May 29, 1970, as follows:

"No license shall be issued under this chapter by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested directly or

indirectly; but in any such case application for such license may be made by such member, corporation, organization or association directly to the commissioner [Director] who is hereby authorized to issue such license, subject to rules and regulations, upon the same terms and conditions and for the same fee as other licenses of the same class are issued or are issuable by the said governing board or body."

It now provides:

"No license other than a club license shall be issued under this chapter by any issuing authority to any member thereof or to any corporation, organization or association in which any member thereof is interested directly or indirectly; but in any such case application for such license may be made by such member, corporation, organization or association directly to the [commissioner] director who is hereby authorized to issue such license, subject to rules and regulations"

Thus, it is apparent, that the Legislature expressed that it was its continuing intention that a local issuing authority shall not have the power to issue a license (other than a club license) to any member thereof or to any corporation, organization or association in which any member thereof is interested either directly or indirectly.

Pursuant to the power to promulgate rules and regulations granted to the Director by the Legislature, Rule 1 of State Regulation No. 4 was promulgated. It provides, as follows:

"No municipal issuing authority may issue a license to, or transfer a license to or from, any of its members or issue a license other than a club license to, or transfer such license to or from any corporation, organization, or association in which any of its members is interested directly or indirectly... In such circumstances, application must be made to the Director of the Division of Alcoholic Beverage Control."

The action of the Council is clearly within the prescription of the quoted enactments. The fact that the Mayor may not have participated in the discussion and did not vote on the resolution is immaterial to the determination of the validity of the action of the Council.

Referring to R.S. 33:1-20, the Supreme Court in Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484, 494 (1962), stated:

"The obvious underlying purpose of this section is to eliminate not only actual favoritism by fellow members of the local body but also any aura of it which might diminish the public feeling that there is strict impartial supervision and control of the liquor industry."

The Director is enjoined by the Legislature "to do, perform,

take and adopt all other acts, procedures and methods designed to insure the fair, impartial, stringent and comprehensive" enforcement of the Alcoholic Beverage Law. R.S. 33:1-23. In order to grant appropriate relief herein, particularly in view of the fact that a member of the new Council is also a member of the respondent Elks, I shall, for the purpose of deciding the central issue of this appeal on its merits, mold the appeal as if it were a direct application by the appellant Tagliaboschi and respondent Elks Club to the Director in the nature of an original application under R.S. 33:1-20, rather than an appellate one calling for the review of the exercise of discretionary power by a municipal issuing authority. Cf. Blanck, supra, at p. 495. See also South Jersey Retail Liquor Stores Association, et als. v. Township of Haddon, and Dostar, Inc., Bulletin 1836, Item 1. In Tp. Committee of Freehold Tp. v. Gelber, 26 N.J. Super. 388, 392 (App. Div. 1953) the court observed that "the granting of a liquor license involves action judicial in nature. Dufford v. Nolan, 46 N.J.L. 87 (Sup. Ct. 1884). The standards of disqualifying interest here controlling can be no less exacting than in the case of purely judicial action."

It appears that the Elks (which already held a club license issued to it by the respondent Council) submitted an application for the issuance of a plenary retail consumption license by the Council and appellant, Tagliaboschi, submitted an application for the issuance of a similar type license to be used by him in connection with the operation of a restaurant known as Barnside Restaurant. Appellant also submitted a rendering of Barnside Restaurant and a sketch of property plan. An application for the issuance of a similar type license filed by Soo San, Inc. (the operator of a Chinese restaurant) will not be considered in this proceeding because it appears that this applicant failed to further pursue the matter.

The testimony of Erich F. Schuster (borough clerk) given at this hearing established that Mayor Duff was present at the Council meetings of November 17, December 1, December 15, and December 22, 1969 and at the caucus meetings held by the Council on the Wednesdays prior to the regular meetings. It further established that petitions signed by forty-two residents opposing the issuance of the license to the Elks, and by one hundred forty-five persons favoring the grant of the license, were presented to the Council at the hearing held on December 22. Six persons spoke in opposition to the issuance of license to the Elks and two persons spoke in favor of the grant thereof.

The appellant, Cosmo Tagliaboschi, testified that he submitted an application for the license in conjunction with the operation of a restaurant on Central Avenue and Liberty Street. He plans to enlarge his present restaurant facilities so that he would be able to accommodate three hundred patrons, provide facilities for banquets and luncheon and dinner meetings. He was made aware of the need for these facilities and "learned that there were a lot of letters that came in from various industrial corporations that were hoping that we could have a liquor license because they enjoy coming to our place of business."

He submitted a plot plan and a rendering of the proposed establishment to Councilman Lupfer (who together with Councilman Roseman were delegated to examine all applicants) prior to the hearing of December 22nd.

He has executed a lease with the owner of the premises which would enable him to enlarge his present restaurant facilities and provide parking for one hundred forty-five cars. The other two licenses with restaurant facilities located in the center of town cannot accommodate banquets or meetings.

On cross examination, the witness, asserted that his restaurant is located in an area zoned for business. The architect who prepared the plot plan estimated the number of spaces provided for parking.

Thomas N. Perri, who held various offices in the Elks, including that of Exalted Ruler, and who is presently functioning as the rental agent for the Elks testified that the clubhouse has facilities for holding non-club activities such as wedding receptions, banquets, meetings and all types of social functions. The issuance to it of a plenary retail license would greatly increase the usage of its facilities by various organizations or individuals because it would eliminate the necessity of such organizations or individuals securing one-day liquor permits and making arrangements for bringing in liquor. It is the intent of the Elks, in the event that the plenary license were to be granted, not to serve the public on a casual basis.

Subsequent to the date of the hearing held herein and more particularly on September 3, 1970 this Division was in receipt of a letter from the attorney for the respondent Council and a copy of a resolution adopted by the Council at its meeting of August 31, 1970. The sense of the resolution was that it had reversed its position in issuing a plenary retail consumption license to the Elks upon considering the evidence presented at a hearing held for that specific purpose by the Council on said date wherein it was established that non-caucasian people are excluded from membership therein. At the same time the Council reaffirmed its position in denying the license to Tagliaboschi. It is noteworthy that the Council failed to state its reason therefor. Copies of the letter and resolution were sent to the attorneys for each of the other parties herein. The Elks did not challenge the fining contained in the resolution.

In ruling against the grant of the license to the Elks, it is my opinion that State or municipal agencies which have the authority to grant, deny, suspend or revoke plenary retail consumption licenses which permit sales to the general public must actively utilize their authority to prevent any person, group, or corporation from discriminating because of race or color.

In considering appellant's application for the said plenary retail consumption license to him, I am of the opinion that it is in the public interest to grant the license as an adjunct to the operation of a restaurant business. It appears that the area is without facilities (which appellant could provide) for the holding of banquets and luncheon or dinner meetings. A grant of the license to the appellant would not only serve the convenience of local organizations who, because of the absence of a liquor license must go elsewhere to be accommodated, but it would also afford an equitable distribution of licenses in the community.

Therefore, I recommend that an order be entered (1) reversing the grant of the said license to the respondent Metuchen Lodge #1914 B.P.O. Elks, and (2) granting a plenary retail consumption license to appellant on condition that it be operated as an adjunct to the operation of a restaurant business, and further that it complies with the local regulatory requirements pertaining to construction and parking facilities.

Conclusions and Order

Exceptions to the Hearer's report and written argument in support thereof have been filed by the Elks and the Borough Council. Answering argument by Tagliaboschi has been filed to both of these exceptions. Additionally, oral argument was held before me.

Initially, it should be noted that this is a two-pronged appeal involving a review of both the Borough Council's grant of a license to the Elks and its denial of Tagliaboschi's application for the same license. The municipal grant was explicitly set forth in the resolution of December 22, 1969, but the denial was not - it is implied from the fact that the license granted to the Elks was the only plenary retail consumption license available under the municipal ordinance quota. In effect, the Borough Council chose between the two applicants, so that a grant to one constituted a denial to the other.

I have carefully considered the entire record herein and find that the Borough Council had no jurisdiction to act upon the application of the Elks due to the fact that one of its members, Mayor Duff, was a member of the Elks. R.S. 33:1-20. The application of the Elks should have been filed with this Division. Accordingly, the grant of the license to the Elks by the Borough Council must be set aside.

However, since the matter has been litigated extensively and a record de novo has been compiled before this Division, I will, as recommended by the Hearer and in accordance with the precedents cited by him, mold the appeal from the grant to the Elks as if it were a direct application by the Elks, rather than the review of action by the municipal issuing authority. This will obviate the necessity of relitigating this matter if the Elks should now file a new application with the Division. In this connection, it should be noted that the appeal of Tagliaboschi from the denial of his application is not to be similarly treated as an original application, since the municipal issuing authority did, in fact, have jurisdiction to act upon it. The denial of Tagliaboschi's application must be reviewed under the standard of whether the municipal action was a reasonable exercise of its discretionary power. Fanwood v. Rocco, 33 N.J. 404, 414 (1960). On appeal, it is not my function to substitute my judgment for that of the issuing authority or to reverse its ruling if reasonable support for it can be found in the record. Lyons Farms Tavern, Inc. v. Newark, et al., 55 N.J. 292, 307 (1970). It appears, nevertheless, that the Hearer molded the appeal from Tagliaboschi's denial and decided it as if it were an original application in the same fashion as the Elks' application. This was erroneous.

Now, to take up the merits of both facets of the appeal.

The Hearer grounded his recommended reversal of the Elks' grant upon his finding that the Elks practice racial discrimination. It is not clear whether such finding was limited to the alleged exclusion of non-caucasian people from Elks membership or whether it extended the finding that the Elks also so discriminate or intend to so discriminate with respect to the service of alcoholic beverages to members of the public.

In any event, I find that neither ground may be relied upon because the Elks was never given the opportunity to contest the facts upon which such finding was based. There is nothing in the record to show that this discrimination issue was raised before the December 22, 1969 resolution was adopted, nor was it raised at the Division hearing. It came to the Division by way of receipt from the Borough Attorney of a copy of a resolution adopted August 31, 1970 by the Borough Council in which the discrimination issue was raised for the first time and at a point where the Division hearing had been completed. The hearing was not reopened to consider the new matter.

Under the circumstances, I may not now consider the discrimination issue in deciding this case, and therefore I express no opinion as to the merits of this point, particularly in view of the existence of an entirely different dispositive issue which I shall now discuss.

On September 19, 1969, the Alcoholic Beverage Law (R.S. 33:1-12.14) was amended to provide that no new plenary or seasonal retail consumption license shall be issued in any municipality unless and until the combined total number of such licenses in the municipality is fewer than one for each 3,000 of its population as shown by the last then preceding Federal census. (Prior to such amendment, the population quota figure was 2,000). The amendatory law provided that "This act shall take effect immediately but remain inoperative until the promulgation of the 1970 decennial Federal Census." The promulgation of a national census takes effect upon the governor filing in the office of the secretary of state a copy of the bulletin issued by the director of the national census or other officer having charge thereof. R.S. 52:4-1. However, Ch. 14 of the Laws of 1971, approved January 28, 1971, provides that, with exceptions not here pertinent, the Federal census of 1970 shall become effective May 1, 1971, or on the date of the filing of the bulletin provided for in R.S. 52:4-1, whichever date is later.

The population of the Borough of Metuchen according to the 1960 Federal census is 14,041. Under the 2,000 population quota applicable to such census, a total of seven plenary and seasonal retail consumption licenses may be issued in the Borough. According to the 1970 Federal census, released by the Bureau of the Census in its report bulletin of December, 1970, the population of the Borough is 16,031. Under the 3,000 population quota applicable to the 1970 census, a total of five such consumption licenses are issuable.

Division records disclose that six plenary and no seasonal retail consumption licenses are in existence in Metuchen exclusive of the license involved herein. Exhibits in the record herein show that on December 1, 1969, the Borough Council adopted an ordinance increasing from six to

seven the maximum number of plenary retail consumption licenses issuable in Metuchen. (Apparently anticipating the effect of the promulgation of the 1970 census.) Thus, it may be seen that the 1970 census, when effective in New Jersey for the purposes herein, will preclude the issuance of the license sought by both applicants.

As stated, Ch. 14 of the Laws of 1971 delays until at least May 1, 1971, the effective date of the 1970 census. When signing this law, Governor Cahill stated in his public release:

"The delay is designed to give towns, counties, and the State time to determine the effect of population changes which alter local or county classifications. The purpose is to determine if legislation will be needed to continue to provide the best in service for local and county residents."

From the foregoing, it would appear that Ch. 14 was not directly aimed at delaying the effect of the 1970 census for the purpose of affording the Legislature the opportunity to effect statutory changes with respect to the state quota on plenary and seasonal retail consumption licenses or to permit municipalities to issue "midnight" licenses. Although the 1970 census technically cannot take effect until at least May 1, 1971, under current law, and therefore the 1969 amendment of R.S. 33:1-12.14 altering the 2,000 quota to 3,600 cannot take effect until then, nevertheless, both the population figures shown by such census and the population quota criterion expressed by the Legislature in such statutory amendment may be taken into consideration in determining, in the exercise of my discretion, whether it is in the public interest that another plenary retail consumption license should be issued in a particular municipality. See Fanwood v. Rocco, *supra*, at p. 446. And my considered opinion is that another such license should not now be issued to increase from one to two the number of licenses in excess of the new population quota to become effective shortly. To "beat the gun" in this fashion would be contrary to the legislative intent evidenced by the hereinabove cited statutes.

Consequently, I will deny the application of the Elks.

Similarly, it might be argued that these considerations in of themselves, are sufficient grounds for affirming the denial of Tagliaboschi's application. However, I further find that, aside from such considerations, said action of the local issuing authority was a reasonable exercise of its discretionary power and did not constitute an abuse thereof. Rule 1 of State Regulation No. 2 requires an applicant for license for a building not yet constructed to submit with his application plans of the proposed building showing the overall and room dimensions. The plans submitted by Tagliaboschi did not comply with this requirement in that they showed only an exterior one-sided rendering of the proposed building. Additionally, a question exists as to whether Tagliaboschi could provide adequate parking space for the proposed licensed building. In this connection, his proposals are vague and uncertain. And, finally, the Borough Council questioned the desirability of the proposed location of the license in the municipality and whether such could be in the public interest.

Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 441, (1960). I find their negative conclusion not unreasonable.

In sum, I conclude that Tagliaboschi has failed to sustain the burden of establishing that the action of the Borough Council in denying his application was erroneous. Rule 6 of State Regulation No. 15.

I will therefore reverse the Borough Council with respect to its grant of a license to the Elks and I will affirm its action with respect to its denial of Tagliaboschi's application for license.

Accordingly, it is, on this 23rd day of March 1971,

ORDERED that the action of the respondent Borough Council of the Borough of Metuchen in granting the application of the respondent Metuchen Lodge #1914, B.P.O. Elks for a new plenary retail consumption license be and the same is hereby reversed, and that the application of said respondent Elks, molded as if it were an application to the Division directly for such a license, pursuant to R.S. 33:1-20, be and the same is hereby denied; and it is

FURTHER ORDERED that the action of said Borough Council in denying the application of the appellant Cosmo Tagliaboschi for a plenary retail consumption license be and the same is hereby affirmed and the appeal pertinent thereto be and the same is hereby dismissed.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - JONES v. PASSAIC.

Rose Jones, t/a Pink Pussy Cat Lounge,)	
)	On Appeal
Appellant,)	
v.)	CONCLUSIONS
)	and
Municipal Board of Alcoholic Beverage Control of the City of Passaic,)	ORDER
Respondent.)	

Louis F. Treole, Esq., Attorney for Appellant.
August C. Michaelis, Esq., Attorney for Respondent, by
William P. Schey, Esq.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent (hereinafter Board) which on June 23, 1970, denied the application of appellant for renewal of her plenary retail consumption

license C-25 for 1970-71 for premises 444 Van Houten Avenue, Passaic. The resolution of the Board (which relates to appellant's tavern among others) reads as follows:

"Whereas, the Municipal Board of Alcoholic Beverage Control of the City of Passaic has upon due examination and consideration determined that the public convenience and necessity require that the following licenses not be renewed for the year July 1, 1970 to June 30, 1971:

... C-25 Rose Jones, t/a Pink Pussy Cat Lounge, 444 Van Houten Avenue..."

Appellant's petition of appeal alleges that the action of the Board was erroneous in that it was (1) an abuse of discretion, (2) unreasonable, arbitrary and capricious, (3) appellant received no notice of the denial of her application and no reason for denial.

The Board's answer asserts that "the respondent considered all the facts and circumstances pertaining to the refusal to renew the license and that the grounds not to renew were reasonable and proper and in the best interest of the public welfare."

Upon filing of the appeal herein the Director entered an order on June 24, 1970, extending the term of appellant's license pending determination of the appeal.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity afforded the attorneys for the respective parties to present testimony and cross examine witnesses.

On behalf of the Board, Pauline Cozielski voiced her objections to the renewal. She testified that she resides two doors away from the licensed premises. For the past two years and particularly during summer months the patrons leaving and entering the licensed premises have been extremely noisy and profane. Further, they race their car engines and generally cause the neighborhood to be noisy and disruptive. Sleeping on summer nights especially on week-ends, is almost impossible.

She continued that she has personally witnessed fist fights in the gas station which separates her premises from that of the appellant, involving patrons of the appellant, which fights are generally accompanied by screaming and abusive language. She has found it necessary to call the police on numerous occasions to quiet these disturbances. She readily admitted however, that she has made only one attempt to file a formal complaint with the local authorities and that complaint was not accepted.

On cross examination she testified that she has never been inside the licensed premises and that the majority of the activity which she described occurred on the gas station premises. However, she has personally seen patrons leave the tavern, enter automobiles parked in the gas station and drive off with much racing of engines and squealing of brakes. She concluded by characterizing the general area as "not residential"; by indicating the presence of two other taverns in the immediate area and that she had not appeared at any hearing conducted by the local issuing authority.

Tessie Wolosz substantially corroborated the testimony of Miss Cozielski regarding the noise and disruptive conduct of patrons. She lives nearby at 432 Van Houten Avenue and has lived there for twelve years. Additionally, Mrs. Wolosz testified regarding a petition which she personally circulated and upon which appeared the names of some eighteen alleged objectors. It is worthy of note that the first seven names appearing there are either Cozielski or Wolosz who also reside at 432 Van Houten Avenue. The petition is alleged to indicate the displeasure of the subscribers with the "... noises, loud music and car noises over the past few months...." The petition bears no date, however, the witness testified that she personally circulated the petition on Friday, October 2, 1970, three days prior to the instant hearing.

On cross examination Mrs. Wolosz acknowledged that the intersection of Van Houten Avenue and Blaine Street at which the licensed premises is located is a busy, main thoroughfare and that it is a business zone. She had never filed a formal complaint against this licensee but she has made numerous calls to the police regarding the noise in the area.

There was admitted into evidence a true copy of a complaint in the Passaic Municipal Court which sets forth that one Daisy Gomez was found guilty on May 5, 1970 of the following:

"While being employed as a dancer at Pink Pussy Cat, 444 Van Houten Avenue, Passaic, New Jersey you did perform a lewd and indecent dance by stripping before patrons inside said bar in violation of Ordinance 21.11(i)."

On behalf of the licensee Linda Mingle testified that she has been employed as manager of the licensed premises "since the first night the place opened" and that her hours are from 8:30 p.m. until 3:00 a.m. five or six nights a week. She has never seen Miss Cozielski or Mrs. Wolosz nor have they or anyone else ever complained to her about the conduct of the licensed premises.

She described the area as a business district and Van Houten Avenue as a busy main thoroughfare. She further testified that a large, noisy factory is located directly across the street.

With reference to the incident involving Daisey Gomez, Miss Mingle testified that Miss Gomez was hired through an agent and that night of the performance was the only night she worked for the licensee. As to the performance itself she testified "Well, at the beginning there was nothing wrong with her dancing. She wasn't doing anything wrong. She was just a regular dancer. And then--- Q. Then what happened? A. At one point I saw her do something which completely shocked me. It was not something that I had expected her to do. It's not something that she had said she was going to do. And I brought her off the stage and I told her to please dance normally and not do anything that was in bad taste. Otherwise we just couldn't have her dancing anymore." She concluded that Miss Gomez was fired "on the spot".

On cross examination, she testified that the Manhattan Rubber Company is in operation and noisy at night.

Furthermore she is unable to describe the degree of traffic on Van Houten Avenue between 9:00 a.m. and 3:00 p.m. because she is inside during those hours. She admitted that the police made frequent visits to the establishment but that "... there had been no trouble inside or outside."

She continued that the music is generally supplied from a juke box but that on occasion a live band would perform. She concluded that the premises is air-conditioned and the doors are closed during the summer evenings; some cars do park in the adjoining gas station and the licensed premises has no parking facilities.

Frank Poth testified that he frequents the establishment approximately six times per month and generally is in the company of his wife and another couple. Van Houten Avenue is a very busy street with racing and hot rodding on almost its entire length. He did not consider the premises noisy; it had generally a good reputation and the clientele is generally attired properly.

On cross examination he asserted that when he was inside the premises, he was able to hear the traffic outside and he had seen the police enter the premises on one or two occasions.

Ramon Pazos testified that he is a laboratory technician for a pharmaceutical concern. He is on the licensed premises six days a week often with his wife and that the premises is generally free of trouble although he has seen the police there on at least one occasion. He described Van Houten Avenue as a heavily traveled street; indicated the presence of a large rubber plant directly across the street and two other bars in the immediate area. He is generally present between midnight and 3:00 a.m. three or four times a week and has on occasion parked in the adjacent gas station.

Constantino Gallucci testified on behalf of the licensee and it was stipulated that his direct testimony relative to the conduct of the licensed premises would be generally corroborative of that of Pazos and Poth.

On cross examination he stated that he is present in this tavern almost nightly; he has on occasion parked in the gas station abutting the licensed premises; while inside he cannot hear any noises from the outside. He admitted that he has occasionally helped briefly at the bar, always without compensation.

The municipal issuing authority may in the first instance, use its discretion to determine whether an applicant is worthy of a license. Nevertheless such exercise of discretion must be based on valid and substantial grounds and may not be denied capriciously. If such denial is not based on reasonable grounds it will be reversed. Yaruszewich v. Passaic, Bulletin 1865, Item 1. Bayonne v. B & L Tavern and Division of Alcoholic Beverage Control (App. Div. 1963) not officially reported, reprinted in Bulletin 1509, Item 1, affirmed 42 N.J. 131, (1964).

The resolution denying the renewal of appellant's license for the current licensing period gave as its reason

that the "... public convenience and necessity require..." that the license not be renewed. "Is there any public necessity for a tavern? To be sure, the authority issuing a liquor license must take into consideration more than the matter of public convenience." Township Committee of Lakewood Township v. Brandt, 38 N.J. Super. 462, (App. Div. 1955) at 465. The testimony of Miss Cozielski and Mrs. Wolosz, clearly indicates that their first opportunity to voice an objection was here at this appeal de novo. Further the petition admitted into evidence was admittedly circulated on October 2, 1970 long after the Board rendered its decision not to renew.

It appears therefore that the Board had before it the finding of guilt of Miss Gomez of the performance of a lewd and indecent dance on the licensed premises. It is further assumed that the record of phone calls to the police was before the Board although no evidence of this is apparent in the record.

In addition, there was additional evidence brought out at this de novo hearing indicating the condition of noise and disturbances as described by the objectors. It was further shown however, that Van Houten Avenue is a heavily traveled main artery; there are two other taverns in the immediate vicinity; there is a large noisy industrial plant in the immediate area and the area is primarily a business district. The Hearer may properly rely on such additional evidence brought out at the Division. See Florence Methodist Church v. Township Committee, Florence Township, 38 N.J. 85 (App.Div.).

It should also be pointed out that there is no inherent right to the renewal of a license, Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946) and if denied on reasonable grounds the Board's denial of the renewal application will be affirmed. Rubin v. Paterson, Bulletin 1920, Item 1. On the other hand the courts have ruled that an owner of a license or privilege acquires through investment therein an interest which is entitled to some measure of protection. Lakewood v. Brandt, Supra.

Appellant has the responsibility to conduct her licensed premises pursuant to the law and regulations, especially with reference to the rights of persons residing in the area. Lam v. Newark, Bulletin 1891, Item 1. Assuredly some of the noise and disruption was created by appellant's patrons thereby interfering with the quiet enjoyment of residents in the vicinity. However, the neighborhood in general with its busy main thoroughfare, large manufacturing plant and additional taverns must by its very nature be noisy. While it is true that a licensee is responsible for conditions outside as well as inside the premises, Galasso v. Bloomfield, Bulletin 1387, Item 1, it is unreasonable to attribute all the disruption in the instant matter to one licensee to the exclusion of other licensees and other obviously contributing factors over which this licensee can exert no effective control.

On the date of the resolution of the Board which denied renewal, this licensee had no adjudicated record. It is recommended that appellant be given one last opportunity to demonstrate her worthiness to hold a liquor license. If future conditions warrant, the Board should not hesitate to institute disciplinary proceedings or to deny appellant's

application for renewal of her license for the succeeding licensing term. Lam v. Newark, Supra.

After carefully considering the entire record herein, I find that the appellant has sustained her burden under Rule 6 of State Regulation No. 15, of establishing that the action of the Board was erroneous. It is accordingly recommended that an order be entered in this matter reversing the action of the Board.

Conclusions and Order

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

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

Accordingly, it is, on this 24th day of March 1971,

ORDERED that the action of the respondent Municipal Board of Alcoholic Beverage Control of the City of Passaic be and the same is hereby reversed; and it is further

ORDERED that the respondent Board grant appellant's application for renewal of the plenary retail consumption license for the 1970-71 licensing period, nunc pro tunc, in accordance with the application filed therefor.

RICHARD C. McDONOUGH
DIRECTOR

3. DISQUALIFICATION REMOVAL PROCEEDINGS - MURDER - ORDER REMOVING DISQUALIFICATION.

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

CONCLUSIONS
and
ORDER

Case No. 2517

BY THE DIRECTOR:

Petitioner's criminal record discloses that he was convicted in the Monmouth County Court on July 9, 1932 of murder and was sentenced to life imprisonment; he was paroled on July 25, 1941.

Since the crime of which petitioner was convicted involved the element of moral turpitude (Re Case #1996, Bulletin 1675, Item 8), he was thereby rendered ineligible to be engaged in the alcoholic beverage industry in this State. R.S. 33:1-25, 26.

At the hearing held herein, petitioner (60 years old) testified that he is married, living with his wife, that for the past seven years, he has lived at his present address; and that he is presently a waiter on licensed premises.

Petitioner further testified that he is asking for the removal of his disqualification to be free to engage in the alcoholic beverage industry in this State and that ever since his conviction in 1932 he has not been convicted of any crime or arrested.

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

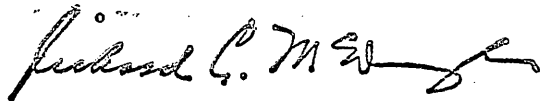
Petitioner produced three character witnesses (a school teacher, a chauffeur and an owner of a restaurant) who testified that they have known petitioner for more than five years last past and that, in their opinion, he is now an honest, law-abiding person with a good reputation.

The only reservation I have in granting relief sought herein is based on the fact that he was employed as a waiter in licensed premises in this State. I am, however, favorably influenced by four factors (a) testimony of his character witnesses, (b) his sworn testimony that he was unaware of his ineligibility to be associated with the alcoholic beverage industry in this State, (c) his criminal record shows only one conviction which took place over thirty years ago; and (d) his present attitude. Knowledge of the law, moreover, is not a prerequisite to removal of disqualification in these proceedings. Re Case No. 1738, Bulletin 1510, Item 7.

Considering all the aforesaid facts and circumstances, I am satisfied that petitioner has conducted himself in a law-abiding manner for five years last past, and conclude that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

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

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



Richard C. McDonough
Director