

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

November 30, 1971

BULLETIN 2013

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(c) It failed to give adequate consideration to the inadequacy of parking facilities provided for the Pine Street Liquors Ltd., and the fact that Pine Street Liquors Ltd. will be competing with the Church for the available parking spaces.

(d) The action of the Township Council of Mount Holly was otherwise arbitrary, capricious, unreasonable and ill-advised."

Both respondents, in their respective answers, denied the substantive allegations of the petition. Additionally, the answer of the respondent Council contained a "Statement of Grounds" citing that the reasons for its action in approving the application were as follows:

"1. The premises to which the license was transferred are located in a new shopping center facing Pine Street.

2. Under applicable Mount Holly Township ordinances, the construction of the shopping center and its location and the traffic to be generated by a group of stores at the location were considered by the appropriate municipal agencies and approved.

The traffic to be generated by utilization of Store #1 in the shopping center is no greater than the traffic that would be generated by other permissible uses that might be made of the stores in the shopping center.

3. An objection to the transfer of the license had been seasonably lodged in writing by a party other than the appellant in this suit.

4. Pursuant to the rules and regulations in such case made and provided, a public hearing proceeded by notice thereof before the Township Council on such objection. The objector, as well as applicant, was represented by counsel.

5. One of the objections so presented was that the transfer was for licensed premises within 200 feet of a church or school.

6. From the testimony presented, the Township Council determined that both the Children's Home and the church were more than 200 feet from the licensed premises.

In determining this objection, the Council also gave full consideration to any social problems that might be created by the proximity of the licensed premises to the Children's Home and the church and determined that there would be none.

7. The license was issued for the reasons that the applicant was qualified and the premises, in the judgment of Council, suitable and for the additional reason that public necessity and convenience would be served by the transfer of the license to the premises in question."

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.

Preliminarily, I observe upon examining Exhibits R2 - 1 and 2, that the shopping center which is the site of the proposed transfer is located on Pine Street approximately midway between South Avenue and Highway 38. The appellant church and the shopping center are located on the same side of Pine Street. It was conceded that the distance between the church and the proposed liquor outlet was not violative of the statutory distance requirement of two hundred feet. I find that the shopping center consists of four stores contained in one building, each store measuring approximately twenty-two feet in width by sixty feet in depth; that a beauty parlor and a dairy store occupy two of the stores and that the proposed liquor outlet would occupy the store furthest removed from the church or Store No. 1.

In behalf of appellant, Reverend James P. McClain, pastor of the appellant church since November 1970, testified that one building, a dwelling house, separates the church from the liquor store. He objected to the transfer because church services are held approximately three evenings each week. On Sunday evenings the choir practices from 7 to 9 p.m. On occasions "people stand around talking after church to 10, 10:30." On Monday evenings administrative meetings are held. Wednesday evenings is given to Bible study including programs for boys and girls. Friday evenings is teen-time at the church. The Burlington County Children's Home housing thirty-four boys coming from broken families is located across the street from the church.

The pastor was fearful that the transfer would intensify the parking problem. The patrons of the proposed liquor outlet and of the other businesses located in the shopping center would compete with the parishioners of the appellant church for the available parking space. In his opinion, no more than twelve cars could be parked in the parking lot which is formed by reason of the shopping center building being set back from the building line. In addition to the church parking lot the only other parking spaces available are four spaces in the street in front of the church and parking made available to the parishioners by the operator of the automobile parts business across the street from the church when the business shuts down at 5:30 p.m. The owner of the automobile parts business has also made parking available at his vacant service station.

It is his experience that churches lose parishioners when they lack parking facilities. He feared that if the liquor store were opened, its patrons would compete with the parishioners attending the church services or meetings for the available parking spaces. Additionally, it was the witness' opinion any confrontation between a patron of the liquor establishment who had inbibed too much liquor and a parishioner or the youth of the church or of the Children's Home might create a problem, a hazard, or be a source of embarrassment.

Finally, the witness objected to the transfer of the license because its proximity to the intersection of Pine Street and Highway 38 would increase the traffic congestion at this point.

A petition containing the signatures of eighty members of the church and a petition containing the signatures of one hundred and nine residents of the community was presented by the witness and received in evidence.

On cross examination, Reverend McClain testified that the average attendance for Sunday services at the church was approximately one hundred thirty-five to one hundred fifty. This number increases for Easter services. The members of the congregation park in the adjoining streets when the church and service station parking lots are filled. He felt that primary consideration for street parking should be given to those attending church services since the church was located there for the past fourteen years.

He did not appear before the planning or zoning board in order to object to the construction of the shopping center upon receiving notice thereof.

After testifying that he was opposed to the use or sale of liquor generally, the reverend testified as follows:

"Q So that whether there was ample parking space or not you would object and oppose a saloon located on this street?

A Under the circumstances, yes."

* * * * *

"Q Your fear is that some of the patrons may in violation of the law become intoxicated as a consequence of being in there and perhaps accost children or accost people on the street?

A There is that possibility."

Some months prior to the time that he had any information that there might be an application filed for the transfer of the subject liquor license, the church had purchased property for the erection of a new building in a nearby town. It was anticipated that it would be approximately two or two and a half years before the new church building would be occupied.

On redirect examination, Reverend McClain testified that he would object to any business which would compete with the church for parking space.

Donald J. Evans, who resides in Willingboro, testified that he and other communicants of the appellant church must, of necessity, drive to the church. He opposes the transfer of the license because it would intensify the traffic and parking problems and, further, because the communicants of the church may be confronted by persons who have imbibed alcoholic beverages.

After testifying that the door-to-door distance from the proposed liquor outlet to the church, if a person were to walk diagonally across the parking lot in front of the shopping center is two hundred sixty-seven feet, James Haggerty, a licensed surveyor who is employed as a civil engineer by the United States government, testified that the parking lot in front of the shopping center would accommodate approximately ten and a half cars.

In behalf of respondents, John Sheridan, a licensed civil engineer, testified there was room for cars to be parked diagonally at the rear of the shopping center building. The photographs admitted in evidence by the licensee disclose that the church is almost entirely concealed from the shopping center because of the residential building, the tree and the shrubbery between the church and the shopping center.

Samuel P. Alloway, a real estate broker in the Township and a principal in the corporate licensee, testified that both sides of Pine Street between the church and Highway 38 are commercial in nature.

Within a radius of fifteen hundred feet of the proposed licensed premises, plans are being made for the construction of upwards of seven hundred dwelling units. The proposed liquor facility would be the closest such facility to the planned dwelling units and would serve the public convenience and necessity.

Robert P. Karz, who expects to acquire the proposed business by transfer from the preceding witness, Samuel P. Alloway, testified that he intends to personally operate the business together with his wife. His plans for the proposed premises include a counter for the sale of packaged goods, and a bar with ten stools.

William G. Dunn, a member of the Township Council, testified that he was also a member of the local planning board at the time that plans were presented to it for the construction of the shopping center wherein it is proposed to transfer the subject license. The plans were presented to the planning board pursuant to the requirements of local ordinance for review in connection with location and parking. He testified that the shopping center complied with all municipal parking requirements.

Councilman Dunn further testified that, other than bona fide restaurants, plenary retail consumption establishments are not permitted to open on Sundays.

Additionally, he testified that a hearing was held by the Council on June 7, 1971 to consider the objections to the transfer of the subject license raised by a competitor. The matter of the proximity of the church and the Children's Home to the proposed transfer site was considered by the Council prior to making its decision. In arriving at its decision, the Council also considered the traffic and parking problems. The Council was also aware of the proposed by-pass which would alleviate the traffic problem. Due to the prospective growth of the area, the proposed transfer would serve the public convenience and need. The Council felt that the parking problems associated with the operation of the proposed liquor establishment would be the same as in any other "in-and-out type" business.

It was stipulated that the testimony of Councilmen William Gordon, Joseph D. Weber, Jr., and W. Douglas Gesell would be substantially corroborative of the testimony offered by Councilman Dunn.

The burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

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

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the applicable principle (at p.23):

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

I have carefully considered the four points raised by the appellant in its petition of appeal and find them to be without merit.

It is uncontroverted that the Council, in this case, considered the effect that the proposed transfer would have on parking and traffic problems. Evidently it felt that the liquor establishment would create no greater problem than, and perhaps less, than the establishment of some other business or businesses. In this respect, it is noteworthy, that the subject liquor establishment cannot operate on a Sunday, which is the day when the parking problem would be more critical for the communicants of the appellant church. Furthermore, it is not contemplated under the law that a religious entity shall be given preference or accorded primary consideration for public parking. I must also note that, rather fortuitously the appellant church has purchased a sizeable tract in a nearby town which will, no doubt, afford it greater room for development and adequate parking to suit its requirements.

It is my view that the Council considered the proximity of the proposed liquor establishment to the church and to the Children's Home. I must assume that the Council is well aware of the fact that application for the renewal of the license must be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), inhabitants of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic Beverage Law, the licensee would subject its license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown, et al., Bulletin 1572, Item 1.

In conclusion, it may be stated that in matters involving transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Paterson, 33 N.J. 428 (1960). As indicated hereinabove, the Director is governed by the principle that, where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 Super. 306 (App. Div. 1960). In the recent case of Lyons Farms Tavern Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record."

The Council has, in my opinion, understood its full responsibility, has acted circumspectly and in the reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit and thus conclude that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous or in an abuse of its discretion. Rule 6 of State Regulation No. 15.

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

Conclusions and Order

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

Having carefully considered the entire record 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 his recommendations.

Accordingly, it is, on this 14th day of October 1971,

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

2. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1971 THROUGH SEPTEMBER 30, 1971

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
ARRESTS:				
Total number of persons arrested	52	58	41	151
Licensees and employees	20	19	15	54
Bootleggers	12	4	5	21
Minors	20	35	20	75
Disorderly person	-	-	1	1
SEIZURES:				
Motor vehicles - cars	1	-	-	1
Stillis - 50 gallons or under	-	-	1	1
Alcohol - gallons	-	-	50	50
Distilled alcoholic beverages - gallons	7.315	13.472	14.15	34.937
Mash - gallons	-	-	825	825
Wine - gallons	4.85	49.075	8.10	62.025
Brewed malt alcoholic beverages - gallons	75.71	44.319	102.74	222.769
RETAIL LICENSEES:				
Premises inspected	295	423	423	1,141
Premises where alcoholic beverages were gauged	263	351	352	966
Bottles gauged	3,960	5,934	5,913	15,807
Premises where violations were found	112	128	132	372
Violations found	193	190	212	595
SEE Unqualified employees	65	57	61	183
No Form E-141-A on premises	34	39	38	111
Form E-141-A incomplete	25	31	27	83
Application copy not available	12	21	33	66
Disposal permit necessary	9	13	17	39
REVERSE Prohibited signs & practices	1	1	1	3
Other violations	47	28	37	112
STATE LICENSEES:				
Premises inspected	13	18	12	43
License applications investigated	14	11	5	30
COMPLAINTS:				
SIDE Complaints assigned for investigation	333	325	318	976
Investigations completed	354	345	326	1,025
Investigations pending	(304)	(283)	(320)	(320)
Number of visits made on assigned investigations	771	703	1,125	2,599
Contacts made with other law enforcement agencies	230	228	243	701
LABORATORY:				
Analyses made	80	126	82	288
Refills from licensed premises - bottles	47	67	70	184
Bottles from unlicensed premises	4	18	-	22
IDENTIFICATION:				
Criminal fingerprint identifications made	16	20	39	75
Persons fingerprinted for non-criminal purposes	620	492	397	1,509
Ident. contacts made with other enforcement agencies	400	293	274	967
MV identifications made via N.J. State Police Teletype	-	-	1	1
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	-	2	2	4
Violations involved	-	2	2	4
Sale to minors	-	2	1	3
Sale during prohibited hours	-	-	1	1
Cases instituted at Division	40	18	30	88
Violations involved	49	23	36	108
Sale to minors	14	7	8	29
Sale during prohibited hours	5	2	4	11
Possessing liquor not truly labeled	7	1	1	9
Permitting immoral activity on premises	2	1	4	7
Permitting lottery activity on premises	3	-	2	5
Permitting miscellaneous gambling on premises	1	-	3	4
Failure to close premises during prohibited hours	1	2	1	4
Possessing indecent matter	2	1	1	4
Permitting bookmaking on premises	1	2	1	4
Fraud in application	1	1	1	3
Unqualified employees	1	1	1	3
Sale to non-member by club	1	-	2	3
Fraud and front	2	1	-	3
Sale below filed price	2	-	-	2
Permitting hostesses on premises	-	1	1	2
Permitting narcotic activity on premises	2	-	-	2
Possessing contraceptives on premises	1	-	1	2
Permitting foul language on premises	1	-	-	1
Employees working while intoxicated	1	-	-	1
Broad package privilege violation	1	-	-	1
Permitting brawl on premises	-	1	-	1
Failure to keep true books of account	-	1	-	1
Sale outside scope of license	-	1	-	1
Permitting bookmaking, lottery & misc. gambling on prem.	-	-	1	1
Permitting lottery & bookmaking on premises	-	-	1	1
Purchase from improper source	-	-	1	1
Beverage Tax Law non-compliance	-	-	1	1

	<u>JULY</u>	<u>AUGUST</u>	<u>SEPTEMBER</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (CONTINUED)				
Cases brought by municipalities on own initiative and reported to Division	22	16	25	63
Violations involved	29	24	28	81
Sale to minors	10	8	13	31
Sale during prohibited hours	4	3	2	9
Conducting business as a nuisance	2	2	2	6
Failure to close premises during prohibited hours	3	2	-	5
Permitting brawl on premises	-	-	4	4
Permitting minors on prem. unaccomp. by adults (local reg.)	2	1	1	4
Unqualified employees	-	2	1	3
Permitting miscellaneous gambling on premises	2	1	-	3
Act of violence	-	1	2	3
Hindering investigation	1	-	1	2
Failed to afford view into prem. during prohibited hours	1	-	1	2
Permitting premises to be used for narcotic activity	1	-	-	1
No Form E-141-A on premises	1	-	-	1
No copy of license appl. on premises	1	-	-	1
Employee w/o I.D. card (local reg.)	1	1	-	2
Possessing lottery tickets on premises	-	1	-	1
Permitting foul language on premises	-	1	-	1
Permitting persons of ill repute on premises	-	1	-	1
Sale outside scope of license	-	-	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	51	52	43	146
Appeals	8	6	16	30
Disciplinary proceedings	36	29	22	87
Eligibility	7	14	2	23
Seizures	-	3	2	5
Tax Revocations	-	-	1	1
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,406	1,639	1,529	5,574
Licenses	556	10	6	572
Solicitors' permits	51	54	43	148
Employment permits	666	507	391	1,564
Disposal permits	56	77	80	213
Social affair permits	360	419	500	1,279
Miscellaneous permits	441	310	237	988
Wine permits	34	25	54	113
Transit insignia	194	184	134	512
Transit certificates	48	53	84	185
OFFICE OF AMUSEMENT GAMES CONTROL:				
Licenses issued	10	5	-	15
State Fair licenses issued	44	88	44	176
Premises inspected	321	619	135	1,075
Premises where violations were found	18	18	6	42
Number of violations found	20	25	6	51
Enforcement files established	20	17	22	59

RICHARD C. McDONOUGH
 Director of Alcoholic Beverage Control
 Commissioner of Amusement Games Control

Dated: October 19, 1971

** COMPLAINTS AND INVESTIGATIONS:				
Inspections & visits made on assigned investigations	1,079	1,144	1,560	3,783
Complaints assigned for investigation	333	325	313	971
Investigations completed	354	345	326	1,025
Investigations pending	(304)	(285)	(320)	(909)
Premises where alcoholic beverages were gauged	263	351	352	966
Bottles gauged	3,960	5,934	5,913	15,807
Premises where violations were found	137	164	161	462
Number of violations found	221	236	251	708
License applications investigated	14	11	5	30
Contacts made with other law enforcement agencies	230	228	243	701

3. DISCIPLINARY PROCEEDINGS - CRIMINALLY DISQUALIFIED
EMPLOYEE - CHARGE DISMISSED.

In the Matter of Disciplinary Proceedings against)

Grace Calabrese)
t/a Da Vinci)
672-674 Fourth Street)
Newark, N. J.,)

Holder of Plenary Retail Consumption License C-175, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.)

CONCLUSIONS
and
ORDER

-----)
Thomas E. Durkin, Jr., Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

"On July 8, 1971, and on divers days and occasions prior thereto, you employed and had connected with you in a business capacity, Vincent J. Calabrese, a person convicted of crime, including a conviction on or about February 15, 1939 of atrocious assault and battery, assault with intent to kill and robbery, and on or about February 24, 1940 of robbery, all being crimes involving moral turpitude; in violation of Rule 1 of State Regulation No. 13."

ABC Agent T testified that on August 4, 1970, accompanied by Agent B, he visited the premises of the licensee following information received that shots had been fired from the building in which the licensed premises were located to the wall of a warehouse across the street. However, they found the premises locked. After a routine inspection of the area, they returned about two hours later and found the premises open. Upon entry they found no patrons present but Vincent Calabrese (husband of the licensee) was behind the bar apparently emptying a sack containing change. A routine inspection of the premises resulted in the collection of cancelled checks and other papers from the licensee who, during the inspection, had emerged from her office. The agents then departed the premises.

Agent B testified in corroboration of Agent T in support of his testimony that Calabrese was emptying a change sack behind the bar.

Further testimony of Agent T elicited the information that a return visit to the premises was made on July 8, 1971 when a statement was taken of the licensee which in substance denied ownership by or employment in the licensed premises of her husband (James Vincent Calabrese). She did admit, however, that he accompanies her to the bank and does have a key to the establishment for emergency purposes.

In defense of the charge the licensee testified that the statement she had given to the agents was a truthful one; that her husband accompanies her to the bank, and that he does have a key with which he permits entry for delivery or cleaning persons on those occasions when she is prevented from getting to her premises. He is not employed by her nor does he have any incidents of ownership. Furthermore, she has not violated a warning letter precluding his association with the licensed premises.

Rule 1 of State Regulation No. 13 requires that "No licensee shall employ or have connected in any business capacity with the licensee any person who has been convicted of a crime involving moral turpitude...." The Division has advanced the argument that the presence of the disqualified husband emptying a change sack behind the bar, with no patrons present, and the wife's subsequent admission that her husband has a key is sufficient to establish the subject charge.

It has been long established that "With the advent of the Married Women's Acts ... the former rights of a husband to his wife's property were extinguished ..." and the wife was given "wider latitude in dealing with her separate estate." N.J.S. 37:2-1; Van Inwegen v. Van Inwegen, 4 N.J. 46 (1950). There has never been a prohibition against women becoming licensees and many licensees are wives. Hence the right of Mrs. Calabrese to be a licensee is undisputed. Nor can the Division be precluded from forbidding the employment of or association in business by the disqualified husband. Rule 1 of State Regulation No. 13. There thus arises a dichotomy of responsibilities.

"There is imposed upon the husband the duty to protect his wife and, if he sees acts or conduct on her part which a reasonable man could not see without being convinced that his wife's honor is being placed in jeopardy, he is called upon to exercise vigilance in the care of his wife" Bingenheimer v. Bingenheimer, 2 N.J. 284, 289 (1949).

The word "honor" above includes, among others, her safety as well. It is thus reasonable to expect that the husband should consider it his responsibility to safeguard his wife to and from the bank in transport of money, for not to do so could well be marital dereliction. Therefore, such activity in escort of his wife could not reasonably be construed as an employment or connection in any business capacity proscribed by the above rule.

Agent T testified and the licensee admitted that her husband possessed a key to the licensed premises. The possession of the key alone was considered by the Division as such business connection that would be violative of the rule. The licensee explained that the possession of the key by her husband was a convenience to her so that in an emergency the premises could be opened for deliveries, other employees or whatever. She described as a typical emergency the illness of a child.

The subject of a disqualified husband's participation in a licensed premises owned by a wife has been previously treated in this Division. In Re Szodowski, Bulletin 404, Item 1, conclusions were reached as follows:

"In view of the evidence, there is strong possibility that the defendant's husband, failing on two occasions to obtain a consumption license for himself, engineered the scheme of having the defendant seek such a license and, if she were successful, to operate under her license.

"However, it appears equally plausible, in view of the defendant's ownership of the premises and her having financed her husband's 'package' store business there, that, when he was unable in 1935 to obtain a license for a tavern at the premises, he turned everything over to her so that she might seek such a license, and, as actual proprietor, conduct a tavern there."

Hence, as here, the husband's association with the licensed premises was merely a presumption, which presumption was rebuttable.

In a parallel matter it was found that:

"... At the time of the first investigation the petitioner [husband] was sweeping the barroom, and at the time of the second investigation he was repairing the air-conditioning equipment. At that time petitioner's wife admitted that petitioner had been cleaning the premises one day a week for a month past, and had been making various repairs. She stated that she thought that her husband was merely prohibited from tending bar. I have decided to give her the benefit of the doubt and, hence, I shall not institute disciplinary proceedings against the licensees for employing an unqualified person...." Re Disqual. #826, Bulletin 879, Item 10.

In the matter sub judice we have no evidence that the husband did any act in furtherance of the business other than possession of the key and the frank admission of the wife that such key had been used in emergencies. Possession of such key can hardly be termed a connection in any business capacity, as required by the aforesaid rule.

We are guided by the principle of fairness. "As with all administrative tribunals, the spirit of the Alcoholic Beverage Law and its administration must be read into the regulation...." Samuel Berelman, Inc. v. Camden, Bulletin 1940, Item 1. It would be manifestly unfair to find the licensee guilty of violating the rule merely because she provided her disqualified husband with a key for emergency purposes.

Since there appears to be a lack of the necessary preponderance of the evidence herein, I recommend that the licensee be found not guilty and the charge be dismissed.

Conclusions and Order

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

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

Accordingly, it is, on this 12th day of October 1971,

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

Richard C. McDonough,
Director.

4. DISCIPLINARY PROCEEDINGS - GAMBLING (LIARS POKER) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)	
)	
Ye Olde Ratskeller of Cranford, Inc.)	
t/a Ye Olde Ratskeller)	
523 Centennial Avenue)	CONCLUSIONS
Cranford, N. J.,)	and
)	ORDER
Holder of Plenary Retail Consumption License C-6, issued by the Township Committee of Cranford.)	
-----)	
Licensee, Pro se)	
Edward F. Ambrose, Esq., Appearing for Division)	

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 26, 1971, it permitted gambling, viz., wagering on a game of "Liar's Poker" utilizing serial numbers on United States currency, for money stakes on the licensed premises, in violation of Rule 7 of State Regulation No. 20.

Absent prior record the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Dowling, Bulletin 1945, Item 7. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400 in lieu of suspension.

Accordingly, it is, on this 15th day of October 1971,

ORDERED that the payment of a \$400 fine by the licensee is hereby accepted in lieu of a suspension of license for ten (10) days.

Richard C. McDonough
Director

5. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA - APPLICATION FOR FINE IN LIEU OF SUSPENSION GRANTED.

In the Matter of Disciplinary Proceedings against)

Peter McAndrew)
t/a Peter's Place)
5 1/2 Zabriskie Street)
Jersey City, N.J.,)

CONCLUSIONS
and
ORDER

Holder of Plenary Retail Consumption License C-418, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City.)

-----)
Licensee, Pro se
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on August 14, 1971, he sold alcoholic beverages to two minors, both age eighteen, in violation of Rule 1 of State Regulation No. 20.

Licensee has a prior record of suspension for twenty days by the Director, effective April 17, 1963 for possession of alcoholic beverages not truly labeled. Re McAndrew, Bulletin 1512, Item 9. Prior record of suspension for dissimilar violation occurring more than five years ago disregarded for penalty purposes, the license would normally be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Jack's Bar, Inc., Bulletin 1967, Item 7. However, the licensee has made application for the imposition of a fine in lieu of suspension in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$400 in lieu of suspension.

Accordingly, it is, on this 15th day of October 1971,

ORDERED that the payment of a \$400 fine by the licensee is hereby accepted in lieu of a suspension of license for ten (10) days.

Richard G. McDonough
Director

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF RULE 1 OF STATE REGULATION NO. 38 - HINDERING INVESTIGATION - SALE TO MINOR - LICENSE SUSPENDED FOR 50 DAYS, LESS 10 FOR PLEA.

In the Matter of Disciplinary Proceedings against
 William A. Doyle
 4806 Broadway
 Union City, N. J.,
 Holder of Plenary Retail Consumption License C-120, issued by the Board of Commissioners of the City of Union City.

CONCLUSIONS
 and
 ORDER

 Licensee, Pro se
 Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads guilty to three charges alleging that (1) on June 25, 1971 he permitted the sale of alcoholic beverages for off-premises consumption during prohibited hours in violation of Rule 1 of State Regulation No. 38; (2) on June 25, 1971 he caused the hindrance and delay of an investigation being conducted by investigators of this Division in violation of Rule 35 of State Regulation No. 20, and (3) on July 30, 1971 he permitted the sale of alcoholic beverages to a minor, age 16, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended on the first charge for fifteen days (Re Barnes & Mazyack, Bulletin 2001, Item 10); on the second charge for ten days (Re The Stonehouse, Inc., Bulletin 1985, Item 3, and Re Callahan, Bulletin 1967, Item 6), and on the third charge for twenty-five days (Re J.B.T., Inc., Bulletin 1996, Item 7), making a total of fifty days, with remission of ten days for the plea entered, leaving a net suspension of forty days.

Accordingly, it is, on this 15th day of October 1971,

ORDERED that Plenary Retail Consumption License C-120, issued by the Board of Commissioners of the City of Union City to William A. Doyle, for premises 4806 Broadway, Union City, be and the same is hereby suspended for forty (40) days, commencing at 3 a.m. Monday, November 1, 1971, and terminating at 3 a.m. Saturday, December 11, 1971.

Richard C. McDonough,
 Director.

7. DISCIPLINARY PROCEEDINGS - AMENDED ORDER STAYING SUSPENSION.

In the Matter of Disciplinary Proceedings against
 Mario Marranzini and Italia Marranzini
 t/a Melrose Hotel & Restaurant
 144 E. Garfield Avenue
 Wildwood, N. J.,
 Holders of Plenary Retail Consumption License C-21, issued by the Board of Commissioners of the City of Wildwood.

 AMENDED ORDER

Cafiero and Balliette, Esqs., by William M. Balliette, Jr., Esq., Attorneys for Licensees
 Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

On October 7, 1971 Conclusions and Order were entered herein suspending the license for fifteen days commencing October 25, 1971, after licensees pleaded non vult to a charge alleging that on August 15, 1971 they sold alcoholic beverages to a minor, age seventeen, in violation of Rule 1 of State Regulation No. 20. Re Marranzini, Bulletin 2012, Item 7.

Investigation prior to the commencement of the suspension indicates that the licensees are not presently operating on a substantial full-time basis. Thus no effective penalty can be imposed at this time. I shall, therefore, amend the order to provide that the said period of suspension be deferred until such time as the licensed business is being operated on a substantial full-time basis.

Accordingly, it is, on this 19th day of October 1971,

ORDERED that the fifteen-day suspension of plenary retail consumption license C-21, issued by the Board of Commissioners of the City of Wildwood to Mario Marranzini and Italia Marranzini, t/a Melrose Hotel & Restaurant, for premises 144 E. Garfield Avenue, Wildwood, be and the same is hereby deferred, the effective dates of said suspension to be fixed by further order as aforesaid.

Richard C. McDonough
 Richard C. McDonough,
 Director.