Director

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

BULLETIN 1918

July 20, 1970

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
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1. APPELLATE DECISIONS - CRANER & PILON v. PATERSON.

JOHN A. CRANER & RAYMOND P. PILON, t/a MUGGSY'S FRIENDLY TAVERN, Appellants, v. BOARD OF ALCOHOLIC BEVERAGE CONTROL FOR THE CITY OF PATERSON, Respondent.	)	ON APPEAL CONCLUSIONS AND ORDER

John A. Craner, Esq., Attorney for Appellants
Joseph L. Conn, Esq., by Samuel K. Yucht, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

On June 25, 1968, respondent (hereinafter Board) unanimously denied appellants' application for renewal of their plenary retail consumption license for the licensing year 1969-70 for premises 839 Main Street, Paterson. The stated basis for its action was that "it appears that the premises sought to be licensed constitute a public nuisance and a detriment to the health and safety of the people of the City of Paterson."

Appellants challenge the Board's action as being erroneous for reasons which might be briefly summarized as follows: (a) their "business" is not a nuisance; (b) no charges were brought against the applicant charging a nuisance; (c) they were denied due process because they received no notice of the said application hearing; and (d) that the action was based upon hearsay and is untrue.

The Board filed a general denial of the allegations of the petition.

Upon the filing of the said appeal the Director entered an order extending the term of the 1968-69 license pending the determination of this appeal and the entry of a further order herein.

This is an appeal de novo with full opportunity for counsel to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15. Thus, full "due process" has been accorded appellants in these proceedings.

The central issue herein is whether the evidence justifies the Board's refusal to renew the appellants' license. Nordco, Inc. v. Newark, Bulletin 1148, Item 2. The burden of

proof in cases involving discretionary matters, where renewal of license is sought, falls upon appellant to show manifest error or abuse of discretion by the issuing authority. Downie v. Somerdale, 44 N.J. Super. 84; Nordco, Inc. v. State, 43 N.J. Super. 277. As the court stated in Zicherman v. Driscoll, 133 N.J. L. 586, 587:

> "The question of a forfeiture of any property right is not involved. R.S. 33: 1-26. A liquor license is a privilege. A renewal license is in the same category as an original license. There is no inherent right in a citizen to sell intoxicating liquor by retail, Crowley v. Christensen, 137 U.S. 86, and no person is entitled as a matter of law to a liquor license. Bumball v. Burnett, 115 N.J.L. 254; Paul v. Gloucester, 50 Id. 585; Voight v. Board of Excise, 59 Id. 358; Meehan v. Excise Commissioners, 73 Id. 382, affirmed, 75 Id. 557. No licensee has vested right to the renewal of a license. Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. Unless there has been a clear abuse of discretion this court should not interefere with the actions of the constituted authorities. Allen v. City of Paterson, 98 Id. 661; Fornarotto v. Public Utility Commissioners, 105 Id. 28. We find no such abuse. The liquor business is one that must be carefully supervised and it should be conducted by reputable people in a reputable manner. The common interest of the general public should be the general guide post in the issuing and renewing of licenses."

In its consideration of this matter, the Board was guided by the principles enunciated in Tumulty v. Dunellen et al. (App. Div. 1963), not officially reported, reprinted in Bulletin 1519, Item 1, as follows:

> "The problem before [the Board], upon the application for the renewal of the license, was whether it was in the public interest that this establishment be licensed in the future. Subject to law and to the Director's right of review, a municipality has the power to set its own reasonable standards for the conduct of its licensees. We hold that Dunellen had the right to say that since these licensees permitted the things recited in the Director's 'Conclusions and Order' of June 13, 1962, they were not worthy to continue to hold their license and that it was not in the public interest that the license should be renewed." (Emphasis supplied)

William W. Harris, Secretary of the Board, produced the record of previous violations which the Board took into consideration in arriving at its determination. It appears that on October 7, 1968 appellants' license was suspended by the Director of this Division for forty-five days, effective

October 14, 1968 for possession of indecent photographs on the licensed premises, in violation of Rule 17 of State Regulation No. 20. Re Craner & Pilon, Bulletin 1825, Item 6.

Upon appeal to the Appellate Division of the Superior Court prior to the effectuation of the suspension, the operation of the suspension was stayed until the outcome of the appeal.

This action was affirmed by the Appellate Division on September 18, 1969. Craner and Pilon v. Division of Alcoholic Beverage Control (App. Div. 1969), not officially reported, recorded in Bulletin 1877, Item 1. The suspension was reinstated for forty-five days, effective September 30, 1969.

The records of this Division further disclose that appellants were found guilty in disciplinary proceedings conducted by the Board, of five charges which may be summarized as follows:

> "(1) Permitting premises to be conducted in such manner as to become a nuisance by permitting a brawl to take place on their licensed premises on December 8, 1968, between the appellant Raymond Pilon and a local police detective, in violation of Rule 5 of State Regulation No. 20.
>
> "(2) Hindering and delaying a police officer in the performance of his duty on the said date, in violation of Rule 35 of State Regulation No. 20.
>
> "(3) Selling and serving alcoholic beverages after hours, in violation of local ordinance.
>
> "(4) Failing to have their premises closed between the hours of 3:00 a.m. and 3:35 a.m. on the said date, in violation of local ordinance.
>
> "(5) Permitting said Raymond Pilon (a member of the licensed partnership) to work in the said premises while actually or apparently intoxicated, in violation of Rule 24 of State Regulation No. 20."

Their license was suspended for a period of seventy-five days effective March 24, 1969. Upon appeal to this Division the action of the Board was affirmed by Conclusions and Order dated December 4, 1969. Craner & Pilon v. Paterson, Bulletin 1895, Item 1. Appellants thereupon appealed to the Appellate Division of the Superior Court from the said order and on January 5, 1970, the order of suspension was stayed pending the outcome of the said appeal. Pilon and Craner v. Div. of Alcoholic Beverage Control (App.Div.1970). This matter is presently pending before the Appellate Division.

Harris further testified that a recommendation was made by the Mayor to deny the subject application for renewal based upon the police investigation of this tavern.

Lieutenant Urban Giardino of the Paterson Police Department testified that he found a considerable lack of cooperation by the appellants "as far as investigative work involving a multitude of sins. They weren't giving us assistance that we required." In

his opinion this was "a pretty average tavern in our city, not good, not bad. It has had its share of good and bad times."

He does not recall whether he was asked to make a recommendation with respect to this tavern at the time the application for renewal was considered by the Board. However, he felt that the tavern is a "lot better today than in June."

Raymond Pilon, one of the appellants herein, testified that he has made considerable physical improvements to his facility during the present year. There have been no complaints made by any of the residents against this tavern and appellants have never been charged with conducting these premises as a nuisance. Questioned on cross examination if whether he operated a "quiet" tavern, he replied that he considered it an average tavern "like normal taverns around the neighborhood."

He insisted that he did not know why the Board refused to renew this license nor did he receive any notice of any hearing with respect to the said renewal.

Appellants maintain that they were denied due process because they did not receive notice of the hearing before the Board on their application for renewal. Such hearings are required where objections are lodged against the issuance and renewal of licenses. However, in this case there were no objections filed; therefore, Rule 8 of State Regulation No. 2 is applicable. Said Rule reads as follows:

> "No hearing need be held if no such objections shall be lodged (but this in no wise relieves the issuing authority from the duty of making a thorough investigation on its own initiative), or if the issuing authority, on its own motion, after the requisite statutory investigation, shall have determined not to issue a license to such applicant. In every action adverse to any applicant or objector, the issuing authority shall state the reasons therefor."

It is clear from the testimony herein that the Board did make its own investigation and accordingly set forth its reasons for the denial. In any event, the appellants have been afforded "due process" because they had an opportunity at this plenary de novo hearing on appeal to present testimony and cross-examine witnesses.

This license was one of several licenses which the Board refused to renew because it felt that certain taverns were trouble spots and that the City should rid itself of those facilities. With a community already over-burdened with liquor licenses the Board properly determined that only those facilites which were operated in an orderly manner and which did not permit disturbances or objectionable conditions, as were reflected in the record, should be permitted to exercise the licensed privilege. Re Nordco, Inc. v. State, supra; Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 36 N.J. Super. 512; aff'd 20 N.J. 373.

In the area of licensing, as distinguished from disciplinary proceedings, the determinative consideration is the public

interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In issuing or renewing licenses, the responsibility of a local issuing authority is "high", its discretion "wide" and its guide "the public interest." Lubliner v. Paterson, 33 N.J. 428,449 (1960).

The record does not reflect any improper motivation on the part of the Board; it must be assumed that it acted in good faith and in the best interests of the community. Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501; Frey v. Hoboken, Bulletin 1768, Item 1.

The Director's function on appeal is not to substitute his personal judgment for that of the issuing authority but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view. Lekas & Paroby v. Newark, Bulletin 1802, Item 2. Or, as more definitively stated: where reasonable men, acting reasonably, determine that the license should not be renewed, the Director should affirm such determination in the absence of a finding that "the act of the board 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, 511.

After carefully considering the evidence presented herein, the exhibits and the argument of counsel in summation, I reach the irresistible conclusion that the Board acted circumspectly, reasonably and in the best interests of the community in its determination to deny renewal of the said license for the current licensing year. It is, therefore, recommended that the Board's action be affirmed, and that the appeal herein be dismissed.

Conclusions and Order

Exceptions to the Hearer's report and argument in support thereof have been filed by the appellants pursuant to Rule 14 of State Regulation No. 15.

No answer to the exceptions and argument was filed by respondent.

Appellants argue that there is insufficient evidence in the record herein upon which to sustain the action of respondent Board. They contend that their disciplinary record, by itself, is not adequate ground for denying their license renewal and that there is a lack of requisite evidence of other improper activity at the licensed premises to establish a "nuisance" therein as found by the Board.

However, I find that the disciplinary record of appellants, standing alone, was sufficient to justify the action taken here by the Board, which, in its June 25, 1968 resolution, specifically stated that it denied the license renewal after having "reviewed the history of these premises". The seventy-five day license suspension by the Board, coming upon the heels of the forty-five day license suspension imposed by this Division for the possession of pornographic playing cards on the licensed premises (there was an interval of only two months between the original effective date of the first suspension and the date on which the offenses occurred on the second suspension), called into question the fitness of the licensees to continue to hold their license.

On both dates when the violations in question were

committed, Raymond P. Pilon, one of the partner licensees, was in charge of the licensed premises. On the later date, December 8, 1968, Mr. Pilon was found to have assaulted a police officer then investigating his licensed business for being open during prohibited hours. Mr. Pilon was also found to have been intoxicated while working in the licensed premises that date. Moreover, the licensees were found guilty of then permitting their premises to be conducted as a nuisance by reason of the occurrence of a brawl therein.

Nevertheless, appellants in their exceptions and argument, state:

> "The two violations certainly are not the basis. One case involved some cards on a shelf. The other case involved an isolated incident - multiplied by five. Certainly, if the City wanted a more severe penalty, they would have done so at that time."

I do not minimize the seriousness of the series of violations in question, as appellants do. Further, the Board was not precluded from imposing a penalty of less than revocation in the more recent disciplinary proceeding and then refusing to renew the license at the end of the licensing year because of the self-same offenses. See Downie v. Somerdale, 44 N.J. Super 84, 88 (App. Div. 1957), in which the Court stated:

> "The mere fact that the license was suspended because of these two offenses (the Director in the prior proceeding also took into account the above-mentioned sales after hours), does not necessarily mean that a refusal thereafter to renew the license because of the same offenses is assailable as a double penalty."

To the same effect, see Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946). In imposing the seventy-five day suspension (which would have run almost to the expiration of the term of appellants' then license), rather than a penalty of revocation, the Board may well have considered that revocatory action would have brought the disqualifying effects of R.S. 33:1-31 upon both licensee-partners, although only one was personally involved in these most serious type of infractions.

I have carefully considered the entire record herein, and find that the action of the Board in denying renewal of appellants' license was reasonable and justified under the circumstances. Consequently, I concur in the conclusions of the Hearer and shall affirm the Board's action.

Accordingly, it is, on this 26th day of May 1970,

ORDERED that the action of the respondent Board 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 Order dated June 30, 1969, extending

the term of appellants' 1968-69 license pending determination of the appeal herein be and the same is hereby vacated, effective immediately.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - MITCHELL'S CAFE, INC. v. LAMBERTVILLE

MITCHELL'S CAFE INC.,
Appellant,
v.
BOARD OF COMMISSIONERS OF THE CITY OF LAMBERTVILLE,
Respondent.

ON APPEAL
CONCLUSIONS
AND ORDER

Italo M. Tarantola, Esq., Attorney for Appellant
Barrie T. McIntyre, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Board of Commissioners of the City of Lambertville (hereinafter Board) which by resolution dated November 26, 1969 ordered the suspension of appellant's plenary retail consumption license for premises 11½ Church Street, Lambertville, for a period of ten days effective December 8, 1969, after finding it guilty of a charge alleging that on April 26, 1969 it permitted in and upon its licensed premises a brawl, in violation of Rule 5 of State Regulation No. 20.

Upon the filing of the appeal an order entered by the Director stayed the Board's order of suspension until the entry of a further order herein.

Appellant in its petition of appeal alleges that the action of the Board was erroneous for reasons which may be briefly summarized as follows:

1. It was denied due process of law;
2. It was denied the full right of cross examination;
3. The Board erred in ruling on the admissibility of evidence;
4. A member of the Board was related to the Chief of Police, "the complaining witness", and showed prejudice in his favor.
5. The determination was against the weight of the evidence.
6. Counsel for appellant was prevented from examining certain documents and statements of the Police Department and witnesses.

7. The appellant was refused the right to introduce rebuttal witnesses.

8. They were refused the opportunity to show "shootings, fights, assaults and batteries in other bars" on which no action was taken.

The Board in its answer denied the substantive allegations of the appellant and incorporated therein a copy of the resolution which set forth the basis for its determination. The pertinent statement in the resolution hereinabove referred to is as follows:

"WHEREAS, charges having been heretofore duly served upon the above named licensees charging that on or about Saturday, April 26, 1969, they did permit a brawl upon the licensed premises during which Mr. John Burroughs, Sr., 36 S. Union Street, Lambertville, New Jersey, sustained a broken leg. Participants in this brawl were Mr. Gerald Newcomb of Flemington, N. J., and another unknown white male, in violation of Rule 5 of State Regulation #20 of the Alcoholic Beverage Control, State of New Jersey, and at a hearing duly held thereon the testimony having established the truth of said charge ...."

The appeal was heard de novo and was based upon the transcript of the proceedings held before the Board, supplemented by additional testimony adduced at this de novo hearing on behalf of the appellant, pursuant to Rules 6 and 8 of State Regulation No. 15.

Before evaluating the testimony as reflected in the record herein, it might be well to dispose of several of the contentions raised in the petition of appeal.

The attorney for the appellant argues that it was denied due process, the full right of cross examination, and the right to examine certain statements and documents. I find from the voluminous record herein that the appellant's attorney was afforded full right of cross examination of witnesses in this matter which consisted of three lengthy hearings on separate days before the Board. There is nothing to indicate in the record that the Board was prejudiced against the appellant and permitted a great amount of leeway in both examination and cross examination of witnesses.

The appellant was improperly denied the right to examine statements of witnesses and other relevant documents. However, it is clear that the appellant was afforded full opportunity at this plenary de novo hearing to present such additional testimony that it considered relevant to this proceeding and to subpoena witnesses and documents. Accordingly, any infirmities that may have existed at the hearing before the Board were cured on this appeal. Cino v. Driscoll, 130 N.J.L. 535 (1943). I find no merit to the contention that appellant was refused permission to introduce evidence of incidents in other licensed premises, since the same would be immaterial and irrelevant.

The transcript of the hearing before the Board, which consists of more than four hundred pages of testimony therein, reflects the following: On the date and time alleged in the complaint, Lester H. Miller and Gerald Newcomb (patrons in this tavern)

became involved in a heated argument because Miller felt that Newcomb was annoying his female companion. Newcomb had asked this girl (a former girl friend of his) to dance with him and Miller became enraged at Newcomb's persistence. Words led to a fist fight between them.

James A. Bishop (a principal stockholder of the corporate appellant), who was then engaged as a bartender, came from behind the bar and told the men to stop fighting or he would have to put them out. Without more, he returned to the service side of the bar because, according to the testimony of a patron (Anna Schwartz), he did not want to become further involved.

Shortly thereafter the two men started to fight again and at this point John Burroughs, Sr. (a patron and former police officer), who was seated at the bar, jumped off his stool and grabbed one of the men, intending to stop the fight and separate Miller and Newcomb. During the scuffle he was thrown to the ground and several of the persons involved fell on top of him. As a result thereof, he sustained a broken leg.

It further appears that, during the course of these incidents, bottles were thrown and tables were pushed from their places. Significantly, most of the male patrons, with the exception of several of the female patrons, refused to become involved and merely observed the fracas.

According to the police dispatcher, a person who identified himself as John Burroughs, Jr., telephoned police headquarters and stated that there was a fight in progress. When Patrolman Cooper and Special Officer Scheetz responded to the call and entered the premises, Bishop identified Newcomb as the person who was in the fight and asked the police officers to arrest him. In the meantime, during the general confusion, Miller left the premises. A call was made to the local Rescue Squad; they responded and treated Burroughs, Sr. They then removed him on a stretcher from the premises.

The critical and dispositive issues on this appeal are (1) was there a brawl on the date alleged herein, and (2) did the appellant permit, allow and suffer the same. A brawl is defined as "a loud, angry, and disorderly quarrel; a rough noisy and often prolonged hand to hand fight," (Webster's Third New International Dictionary); a "clamorous or tumultuous quarrel in a public place, to the disturbance of the public peace" (Black's Law Dictionary, 11 C.J.S. 767).

Physical violence is not a necessary ingredient of a brawl or disturbance. See Woodland Rod and Gun Club v. Belleville, Bulletin 569, Item 3. It may, however, reasonably be expected to result therefrom, since words borrow one another and oft beget blows. Plikaytis v. Harrison, Bulletin 754, Item 1.

I find from the record herein that a brawl did in fact occur on the date alleged herein. It then must be determined whether the appellant, through its agents or employees (Rule 33 of State Regulation No. 20) permitted, allowed or suffered such occurrence.

In Essex Holding Corp. v. Hock, 136 N.J.L. 28 (Sup. Ct. 1947) the court said that, within the meaning of the alcoholic

beverage regulations, the word "suffer" imposes disciplinary responsibility on a licensee, regardless of knowledge, where there is a "failure to prevent prohibited conduct by those occupying the premises with his authority." Cf. Greenbrier v. Hock, 14 N.J. Super. 39 (1951).

The question involved here is whether the appellant could reasonably have taken steps to prevent the brawl that took place on the licensed premises but failed to do so. While it is true that a licensee has been held not to be responsible for a "sudden flare-up" on its premises where it could not have been aware of its imminence, such is not the case here.

The testimony herein clearly establishes that there were two separate incidents, the latter of which resulted in the injury to Burroughs as aforesaid. It became the responsibility of Bishop, who apparently interceded during the first argument between Miller and Newcomb, to remain with these patrons until they left the premises or until he was fully satisfied that the heated argument would not eventuate in a brawl. The record shows that he merely warned them and then returned to the service part of the bar. According to the testimony of Miss Schwartz, Miller "looked like a crazy man." Miller stated that he had had three or four drinks of alcoholic beverages and Newcomb was very aggressive. Thus it should have been apparent to appellant's employees that the situation required more than a mere warning. Bishop admits that he did not ask them to leave; he walked away after allegedly warning them; "I just got behind the bar because the police were summoned. There was no reason for me to get involved in it."

"Q No reason for you to stop it or squash it?
A No. I got involved when I went over there to tell them to break it up and they broke it up...."

Although there is a sharp dispute between the testimony of the witnesses for the appellant and the Board, I am persuaded that the appellant's witnesses were not forthright in their testimony and played "fast and loose" with the truth. The testimony of the witnesses for the Board was more credible and stood in a better light.

I also conclude that this was not a "sudden flare-up;" there was reasonable opportunity for the appellant's employees to observe the demeanor and actions of the participants in this brawl and to take more affirmative action to prevent any further disturbance. See Jackson v. Newark, Bulletin 1600, Item 2.

Having carefully examined the entire record herein, I find that the relevant evidence adequately supports the conclusion reached by the Board. "The choice of accepting or rejecting the testimony of witnesses rests, therefore, with the administrative agency." Hornauer v. Div. of Alcoholic Beverage Control, 40 N.J. Super. 501 (App.Div. 1956).

In view of the aforementioned finding, I conclude that the Board has sustained the burden of establishing the charge herein of permitting "a brawl upon the licensed premises" by a fair preponderance of the believable evidence. I recommend therefore that an order be entered affirming the action of the Board, dismissing the appeal, and fixing the effective dates for said suspension imposed by the Board and stayed pending the

entry of a further order herein.

Conclusions and Order

Written exceptions to the Hearer's Report with supportive argument thereto were filed by the appellant's attorney pursuant to Rule 14 of State Regulation No. 15. Written Answer to the Exceptions was filed by the attorney for the respondent.

Having carefully considered the entire record herein, including the transcript of the testimony, the Hearer's Report, the exceptions thereto, and the Answer to the said exceptions, I concur in the findings and conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is on this 26th day of May 1970,

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

ORDERED that Plenary Retail Consumption License C-5, issued by the Board of Commissioners of the City of Lambertville to Mitchell's Cafe, Inc. for premises 11½ Church Street, Lambertville, be and the same is hereby suspended for ten (10) days, commencing at 2 a.m. Tuesday, June 9, 1970, and terminating at 2 a.m. Friday, June 19, 1970.

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - SWEET v. LEBANON.

CLIFFORD SWEET,)
Appellant,) ON APPEAL
v.) CONCLUSIONS AND ORDER
BOROUGH COUNCIL OF THE BOROUGH OF LEBANON,)
Respondent.)

Mark J. Ingraham, Esq., Attorney for Appellant
Raymond B. Drake, Esq., by Jeffrey M. Martin, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the respondent Borough Council of the Borough of Lebanon (hereinafter Council) which in effect denied appellant's application for a plenary retail distribution license for premises 152 Main Street, Borough of Lebanon.

The petition of appeal alleges that the action of the

Council was unreasonable, arbitrary and an abuse of its discretion.

The answer of the Council sets forth certain procedural infirmities on the part of appellant which it alleges deprived the Council of jurisdiction with respect thereto. It also defends that it acted in good faith in its purported denial of the said application.

At this plenary de novo hearing on appeal appellant was afforded full opportunity to present testimony and cross-examine witnesses. Rule 6 of State Regulation No. 15.

I

At the outset of the hearing a motion to dismiss the petition of appeal because it was fatally defective on jurisdictional grounds was made by the attorney for the Council.

From the testimony and the record herein I find the following facts which fully support the said motion: The original application for a plenary retail distribution license was filed by the appellant on February 27, 1968. Significantly, the jurat attesting to the signature of the applicant, was not signed by the notary public and therefore was incomplete. It is admitted by the attorney for appellant that notice of intention was not published in the form prescribed once a week for two weeks successively in a newspaper published and circulated in the municipality, as required by R.S. 33:1-25 and Rule 1 of State Regulation No. 2. Thus the Council did not have jurisdiction or authority to consider the said application. Klein and Tucker v. Fair Lawn et al., Bulletin 1175, Item 3: Re Soriano, Bulletin 323, Item 2.

The application was nevertheless considered by the Council at its meeting on October 16, 1968, at which time it decided by resolution that no action was to be taken on all applications received in 1968, including that of the appellant. However, no notice was served upon the appellant of its said action.

In July 1969 the attorney for appellant wrote to the Council to determine what the status of the application was, and on July 31, 1969 a letter was sent to the attorney for appellant advising him that the Council at its July 16, 1969 meeting decided to take no action on liquor license applications to date and "do not contemplate any further action will be taken this year." This was in effect a denial of any pending applications.

The instant appeal was filed on September 19, 1969, which is more than thirty days from the date of the action complained of and receipt of notice of the said action. Rule 3 of State Regulation No. 15, in so far as applicable herein, provides as follows:

> "...all other appeals [which includes applications from denial] must be taken within thirty (30) days after the service or mailing of notice by the municipal issuing authority of the action appealed from."

In Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396, the court stated:

> "...Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956), affirming 36 N.J. Super. 485 (App. Div. 1955), and not with the agency or the courts,

Scrudato v. Mascot S. & L. Assn., 50 N.J. Super. 264, 270 (App.Div. 1958).

Added the court in that case:

> "Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal" (citing cases).

See Handon and Coward v. Newark, et al., Bulletin 1764, Item 1; R.S. 33:1-22.

Furthermore, it should be added that appellant was certainly guilty of laches in waiting for nearly eighteen months, until July 1969, before inquiring as to the status of his application.

In any event, the application filed in February 1968 lost its vitality, and could not validly be considered or acted upon for the 1969-70 licensing period. Thus, even if the application were properly executed, it would have been necessary for appellant to resubmit a new application and fulfill the requirements of notice and advertising as set forth in Rules 1, 2 and 5 of State Regulation No. 2. For these reasons the motion to dismiss the petition of appeal should be granted.

II

Nothwithstanding the above finding, testimony was taken with respect to the substantive merits.

I am satisfied from the testimony of the members of the Council who appeared at this plenary de novo hearing that they acted reasonably and in the proper exercise of their discretion in denying this application. Councilman Gordon E. Graham expressed his reasons for his vote:

> "I just felt that it was not necessary, that alcoholic beverages were available to the people in the Borough which -- who wanted to avail themselves of them, and there was a considerable number of people who objected to another alcoholic beverage outlet. And, I felt that there was no need for it at this time."

And Mayor J. Knox Felter, Jr. added as his reason for voting to deny the application, "I can't see the benefit to the town." And further:

> "I feel also that the liquor if wanted is available. We have our consumption license and also the town is small.... and the town has not developed substantially. And, at this time, I can see no immediate increase in population."

There was also testimony from a local clergyman who expressed the views of his congregation that there was no need for another liquor license at this time.

The attorney for appellant argues that, since an ordinance was passed authorizing the issuance of another plenary retail distribution license, such license should now be issued.

However, the mere fact that there is such authorization does not mandate such issuance. The legislature has entrusted the municipal issuing authorities with the initial authority and charged them with the duty to approve or disapprove the applications for licenses. Such action of the Council may not be reversed by the Director unless he finds "the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, 135 N.J.L. 502, 511 (E. & A. 1947). As the court stated in Fanwood v. Rocco, 59 N.J. Super. 306, 320:

> "The primary purpose of the act is to promote temperance (R.S. 33:1-3) and 'to be remedial of abuses inherent in liquor traffic and shall be liberally construed' to effect those purposes. R.S. 33:1-73; Hudson Bergen County Retail Liquor Stores Ass'n, Inc. v. Board of Com'rs. of City of Hoboken, supra. Because these are the purposes there is a sharp and fundamental distinction between the power of the Director when a license is denied by the municipality and when one is granted, because refusing a license cannot lead to intemperance or to any of the other evils the act is intended to prevent."

Finally, it has been held that, even though the municipality has an ordinance giving it the authority to issue licenses, it may reasonably decline to issue such licenses if in the reasonable exercise of its discretion it determines that the public interest warrants such action. See Bumball v. Burnett, 115 N.J.L. 254; Po Ambo Democratic Club, Inc. v. Perth Amboy, Bulletin 1158, Item 3; cf. Tara Bay Club v. Upper, Bulletin 1627, Item 1.

I therefore conclude that the Council acted circumspectly and within the sound exercise of its discretion in denying the said application. Accordingly, for the aforesaid reasons 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 13th day of May 1970,

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

RICHARD C. McDONOUGH,
DIRECTOR

4. DISCIPLINARY DECISIONS - SALE TO MINOR - FALSE STATEMENT IN LICENSE APPLICATION - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST JAMES PLACE CORPORATION T/A JAMES PLACE 1007 S. BLACK HORSE PIKE GLOUCESTER TOWNSHIP PO BLACKWOOD, N.J., HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE C-7, ISSUED BY THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF GLOUCESTER.	CONCLUSIONS AND ORDER

Wilinski, Coruzzi & Suski, Esqs., Attorneys for Licensee
Walter H. Cleaver, Esq., Appearing for Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that (1) on October 17, 1969, it sold ten seven-ounce bottles of beer to a minor, age 20, in violation of Rule 1 of State Regulation No. 20, and (2) in its current license application it failed to disclose record of a prior license suspension, in violation of R.S. 33:1-25.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective October 13, 1968, for sale of alcoholic beverages to a minor, non-disclosure of which being the subject of a second charge. However a complete change of stockholders in the licensee corporation has occurred in the meantime.

The prior record of suspension of license disregarded in admeasuring the penalty by reason of intervening change of stockholders (Re Green Lantern, Inc., Bulletin 1859, Item 4), the license will be suspended on the first charge for ten days (Re Belco Liquor Store, (a corporation), Bulletin 1897, Item 4), and on the second charge for ten days (Re Paul's Shore Liquors, Inc., Bulletin 1899, Item 13), or a total of twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days.

Accordingly, it is, on this 11th day of June 1970,

ORDERED that Plenary Retail Consumption License C-7, issued by the Township Committee of the Township of Gloucester to James Place Corporation, t/a James Place, for premises 1007 S. Black Horse Pike, Gloucester Township, be and the same is hereby suspended for the blance of its term, viz., until midnight June 30, 1970,* commencing at 2:00 a.m. Monday, June 29, 1970; and it is further

ORDERED that any renewal license that may be granted shall be and the same is hereby suspended until 2:00 a.m. Tuesday, July 14, 1970.

RICHARD C. McDONOUGH
DIRECTOR

*By Order dated June 11, 1970 the 15 day suspension was deferred to commence 2:00 a.m. Monday, July 6, 1970 and terminate 2:00 a.m. Tuesday, July 21, 1970.

5. DISCIPLINARY PROCEEDINGS - ORDER REIMPOSING SUSPENSION.

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST	)	
OCEAN DRIVE HOTEL, INC. 3909-3915 LANDIS AVENUE SEA ISLE CITY, NEW JERSEY,	)	SUPPLEMENTAL ORDER
HOLDER OF PLENARY RETAIL CONSUMPTION LICENSE C-6, ISSUED BY THE BOARD OF COMMISSIONERS OF THE CITY OF SEA ISLE CITY.	)	

Florence E. Josephson, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

On October 16, 1969 an order was entered herein deferring the license suspension of five days for sale to minors because it appeared that the licensed business was not being conducted on a substantial full-time basis following the conclusion of the summer season. Re Ocean Drive Hotel, Inc., Bulletin 1887, Item 9.

Report of recent investigation discloses that the licensed business has now been resumed for the current season and is being conducted on a substantial basis. Consequently, I am satisfied that the deferred suspension may now be imposed.

Accordingly, it is, on this 12th day of June 1970,

ORDERED that Plenary Retail Consumption License C-6, issued by the Board of Commissioners of the City of Sea Isle City to Ocean Drive Hotel, Inc., for premises 3909-3915 Landis Avenue, Sea Isle City, be and the same is hereby suspended for five (5) days commencing at 1:30 a.m. Monday, June 22, 1970, and terminating at 1:30 a.m. Saturday, June 27, 1970.

Richard C. McDonough
Director