STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1256

JANUARY 8, 1959.

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STATE OF NEW JERSEY
Department of Law and Public Safety
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1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1256 JANUARY 8, 1959.

1. COURT DECISIONS - PRESBYTERIAN CHURCH OF LIVINGSTON v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL ET AL. - ORDER OF DIRECTOR REVERSED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-403-57

PRESBYTERIAN CHURCH OF LIVINGSTON, a New Jersey corporation,

Appellant,

-vs-

DIVISION OF ALCOHOLIC BEVERAGE CONTROL, an Agency of the State of New Jersey, and THE COLUMBIAN ASSOCIATION OF LIVINGSTON, a New Jersey corporation,

Respondents.

Argued December 1, 1958 -- Decided December 22, 1958.

Before Judges Goldmann, Conford and Freund

Mr. William J. Reimer argued the cause for appellant.

Mr. Samuel B. Helfand argued the cause for respondent Division of Alcoholic Beverage Control (Mr. David D. Furman, Attorney General of New Jersey, attorney).

Mr. Edward W. Connolly argued the cause for respondent The Columbian Association of Livingston (Messrs. Connolly, Vreeland & Connolly, attorneys).

The opinion of the court was delivered by

FREUND, J.A.D.

This is an appeal from an order of the Director of the Division of Alcoholic Beverage Control granting the application of The Columbian Association of Livingston for a club liquor license at its premises, No. 272 West Northfield Avenue, Livingston.

On June 17, 1957 The Columbian Association of Livingston (Association) acquired the frame dwelling at No. 272 West Northfield Avenue, located in a residential zone. Upon application to the local zoning board permission was granted, over objection of the appellant, to operate a clubhouse on the premises. The Presbyterian Church of Livingston (Church) is situated diagonally across the street, southwest from the applicant's premises. Adjoining the Church premises on the north, and directly across the street from the Association's premises, is located the manse of the Reverend William S. Ackerman, pastor of the Church. Next door to the manse is the home of Homer Asher. The Temple Emanu-El is located to the south of the Association's premises on the same side of West Northfield Avenue. These two properties are separated by a residential property, No. 268 West Northfield Avenue,

having a frontage of 55 feet. This residence is owned by a Mr. Piserchio, who did not testify in this proceeding. A substantial part of the rear portion of the Temple's property is contiguous to the premises of the Association beyond the rear line of Piserchio's property.

An application by the Association for a club liquor license was filed with the Director of the Alcoholic Beverage Control rather than with the local issuing authority because a member of the Association was also a member of the issuing authority. R. S. 33:1-20.

Written objections to the issuance of a liquor license were filed with the Director by the Church, the Temple, and Asher. The objections stated that the premises of the applicant were within 200 feet of each of the religious institutions, and that as a result the granting of a license would violate R. S. 33:1-76, which provides:

> "* * * no license shall be issued for the sale of alcoholic beverages within two hundred feet of any church or public schoolhouse or private schoolhouse not conducted for pecuniary profit, * * *. Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed. * * *"

It was further claimed that the sale of alcoholic beverages in such close proximity to the Church and Temple would be incompatible with their religious purposes. In addition, Asher stated that a liquor license on premises in such close proximity to his property, "in a strictly residential zone," would depreciate the value of the property. At the formal hearing on the application, the testimony disclosed that the Church has a membership of 750 adults and 600 children. The Association has a membership of 260 male adults.

After the taking of proofs, the Hearer of the Division filed his report and recommended that the Association's application be denied for the reason that "the location of its club premises is in too close proximity to the churches * * *." Exceptions were then filed on behalf of the applicant, and after oral argument before the Director by the respective parties he reversed the recommendations of the Hearer and granted the club liquor license on the grounds that, as to the Church, the proper measurement

> "* * * from applicant's premises would be a point opposite its own entrance * * * along the northerly side of Northfield Avenue in southeast direction approximately 202 feet to a point opposite the parking lot of the church and then at right angles across Northfield Avenue 40 feet to the entrance of the parking lot or a total distance of approximately 242 feet,"

and, as to the Temple,

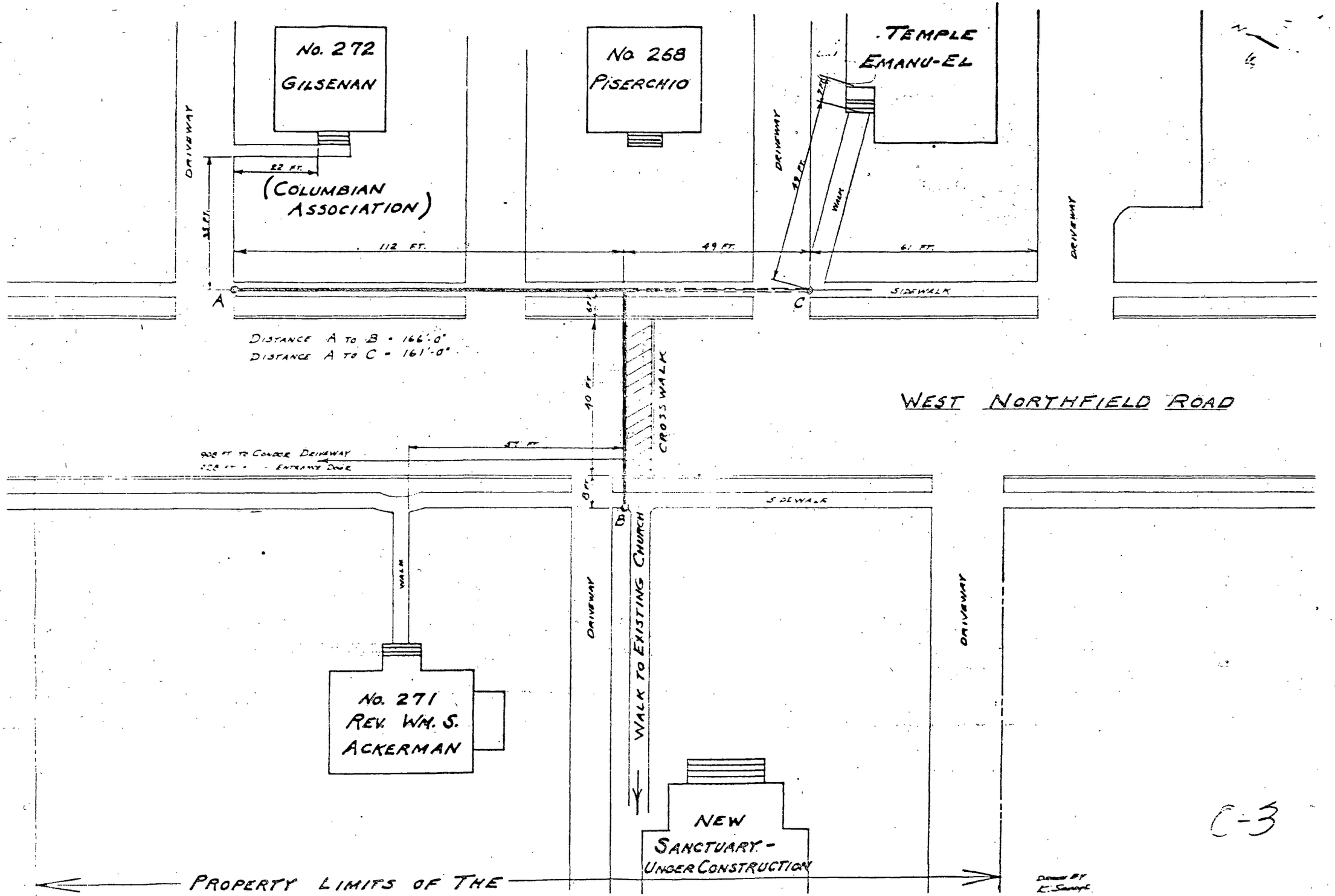
> "* * * that there is a distance of 224 feet * * * between the entrance of the applicant's premises and the entrance to the Temple on the east side of the building."

Appeal is taken by the Church from this determination.

Appellant asserts as grounds of appeal that the premises of the applicant are within the 200 feet of the Church and of the Temple, using the measurement prescribed by R. S. 33:1-76, and, alternatively, that the granting of the license by the Director was an abuse of discretion.

The basic question to be determined from the proofs is the proper measurement of the distance from the applicant's premises to the Church and to the Temple. For many years, as conceded at the oral argument, the Director has given R. S. 33:1-76 a practical construction, i.e., that the measurement should be, not between the actual entrances, but between points on the sidewalk intersecting any walk which a person would use in entering the properties in question. The Director has stated that this method of measuring the distance from the applicant's premises to a church or school is from the "nearest entrance" to the "nearest entrance," and that this formula has been relied upon in prior decisions. That method was used by the Director in this case and all the parties are in accord with it. Where the language of a statutory provision fairly admits of several interpretations, the contemporaneous and long-continued usage and practice under it require the construction thus put upon it to be accepted as the proper one. State v. Kelsey, 44 N. J. L. 1, 22, 23 (Sup. Ct. 1882); In re Hudson County, 106 N. J. L. 62, 75 (E. & A. 1929); Trustees of Rutgers College v. Richman, 41 N. J. Super. 259, 295 (Ch. Div. 1956). The dispute concerns not the propriety of this rule of measurement but its application by the Director in the present case.

The Church argues that the Director was in error when he used "the entrance of the parking lot" of the Church as one of the termini in measuring the distance. It is contended that he disregarded a crosswalk painted by the local police department across West Northfield Road which led directly into the paved walk leading to the entrance of the Church. By disregarding the crosswalk and measuring to the parking lot entrance, the Director found the distance to be approximately 242 feet. We reproduce here a drawing, received in evidence, showing the beginning point marked "A," the crosswalk, and point "B" where the sidewalk on the west side of West Northfield Road intersects the walk leading to the nearest entrance door of the Church.



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There was testimony by Kennedy Savage, the engineer who prepared the drawing and a member of the Church, that he had made the measurements shown with a 300-foot steel surveyor's tape. He testified that the measurement began at a point (designated "A") on the walk in front of applicant's premises where it meets the driveway entering that property and proceeded south along the pathway to a point at the beginning of the crosswalk which is painted on the road. He testified that the distance was 112 feet. He then measured from the last-mentioned point across the road to the point designated "B" on the drawing, "where there is a paved walkway leaving the public sidewalk to the entrance to the church door," a distance of 54 feet. Thus, if the crosswalk is used, the total distance as found by Savage is about 166 feet. There was no objection to the qualifications of Savage, his drawing, or his measurements.

It must be observed at the outset that there was no tenable basis for the Director's delineation of a pedestrian route involving crossing the street in front of the driveway to the parking area of the Church. No pedestrian would "normally" walk that way from applicant's premises to the Church entrance. Nor would that be a "proper" place to cross except perhaps on Sunday mornings when a policeman is assigned there to direct automobile traffic into the Church grounds. The route contemplated by the statute is one which would be used by pedestrians generally, not merely on one morning a week. The evidence indicates that the Church building is used every day.

The argument advanced by the Association is that the Director was justified in disregarding the crosswalk, mainly because West Northfield Road is a county road upon which local police have no statutory authority to paint a crosswalk. N.J.S.A. 39:4-202 requires that any traffic regulation under Article 21 of Title 39 be submitted to and approved by the Director of Motor Vehicles before becoming effective as provided in N.J.S.A. 39:4-8. And see N.J.S.A. 39:4-191.1. But we find this argument not responsive to the question we are called upon to decide. Under R. S. 33:1-76, we must determine whether a pedestrian would "properly" walk across this crosswalk as the "normal way" of proceeding from the Association's premises to the Presbyterian Church. Hopkins v. Municipal Board of Alcoholic Beverage Control, 4 N. J. Super. 484 (App. Div. 1949). And it is absurd to suggest that the average pedestrian would be "improperly" crossing the painted crosswalk simply because the local police authorities had failed to obtain the approval of the Motor Vehicle Director. In using the language of the statute, the Legislature should be deemed to have been contemplating the average pedestrian. The average pedestrian, in planning his route, would hardly take into consideration that West Northfield Road was or was not a county road, or know whether or not the crosswalk had been sanctioned by the proper county or state authorities. He would rightfully assume that a painted crosswalk was authoritative and would "properly" follow it.

The respondents' argument that under R. S. 33:1-76 the "lawful" way is the only "proper" way for pedestrians to walk evidently rests upon certain language in the Hopkins case, supra. But Hopkins addressed itself to the question of whether a crosswalk was "proper" although not at a through intersection; it did not hold that the legality of a crosswalk for vehicular observance purposes necessarily governed

in measuring the proximity of a church or school to a liquor license applicant's site. More nearly in point is Warren Street Chapel v. Excise Commissioners, 56 N.J.L. 411, 413 (Sup. Ct. 1894), where the distance between a church and the applicant's premises was held to be measurable under a local ordinance "by the shortest way of access between the two places." See also Langella v. Bayonne, 134 N. J. L. 235, 238 (Sup. Ct. 1946). Cf. Esso Standard Oil Co. v. North Bergen Twp., 50 N. J. Super. 90, 93 (App. Div. 1958).

The evidence reveals that about the year 1953 at the request of the Church a crosswalk was painted at the same location by the Livingston police which was repainted "during the early part of the summer of 1957" by the police at the request of the Church. It had been almost entirely obliterated before it was repainted. The present application for a liquor license is dated August 13, 1957. This and other crosswalk paintings by the police at various locations on county roads in Livingston were done without any authorization by any county or state agency.

The parties have also stipulated that Essex County employees first participated in the painting of the crosswalk, at the same location, during the 1958 painting season and that the traffic engineer, under the authority of the County Engineer, intends to maintain this crosswalk in the future "as a part of the county crosswalk program." The applicant and the Director have reserved objection to the relevancy of these facts. At the oral argument, the Director took the position that anything which occurred after his decision on March 12, 1958 is irrelevant to the question before us. See the second paragraph of R. S. 33:1-76 which provides in part:

> "The prohibition contained in this section shall not apply to the renewal of any license where no such church or schoolhouse was located within two hundred feet of the licensed premises as aforesaid at the time of the issuance of the license, * * *"

There is a factual dispute as to the condition and visibility of the crosswalk in the summer of 1957. The Association maintains that the crosswalk, in addition to its "demonstrated illegality," had been abandoned for use before it was repainted. But four witnesses before the Division testified as to its visibility and use for at least two years prior to the summer of 1957. For present purposes it is sufficient, as clearly appears to be the fact, that the walk was plainly visible in repainted condition prior to August 13, 1957, the date when this application was filed with the Director, and prior to the date when the Director decided the application. Thus the walk must be deemed to have been in existence for purposes of the making of the statutory measurement in this case.

In reference to the contention of the Church that the license should have been denied for the additional reason that the applicant's premises were less than 200 feet from the Temple Emanu-El, we are not in agreement. The argument of the Church is based upon the contention that a door on the northwest side of the Temple building should be considered an entrance to that building. The proof is clear, however, that the door in question is only a fire exit. There is no outside handle on it, and it is not intended to afford ingress from

the outside. The regular entrances to the Temple are in the rear of the building. Access is gained thereto from a driveway on the southeast side of the building. In our opinion, the point of measurement should be in reference to that driveway, and this would result in the entrance to the Temple being more than 200 feet from the applicant's premises.

Although the Director's error in the method of measuring the distance from the applicant's premises to the Church leads to a reversal, we make passing reference to an alternative ground for reversal urged by the Church. It argues that the Director abused his discretion in granting the license. It maintains that even if the clubhouse were more than 200 feet from the Temple and from the Church, still the statute vests the Director with a discretionary power to deny the license which should have been exercised against the applicant in a case where, as here, two houses of worship are in such close proximity, albeit beyond the statutory 200 feet, not to mention a minister's residence across the street. Hickey v. Division of Alcoholic Beverage Control, 31 N. J. Super. 114, 117 (App. Div. 1954); Price v. Millburn, 29 N. J. Super. 103 (App. Div. 1953). In his decision, the Director said:

> "Were this a retail consumption license permitting the sale of alcoholic beverages to the general public, I would have no hesitation in denying the application because of the proximity of applicant's premises to a church and a synagogue * * *."

But since the Director's distinction between a retail consumption license and a club liquor license enjoys no statutory sanction insofar as the 200-foot limitation is concerned, see Bivona v. Hock, 5 N. J. Super. 118, 121 (App. Div. 1949), there would seem no logically valid basis for it in respect of the present contention that there was a mistaken exercise of discretion in allowing a license to an applicant in such close proximity to two houses of worship. However, in view of our holding we find it unnecessary to determine the question as to whether the Director properly exercised his discretion in granting the application.

The determination by the Director granting a club liquor license for the premises at No. 272 West Northfield Road is reversed.

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2. APPELLATE DECISIONS - SHELL v. TRENTON.

ISABEL SHELL, trading as SHELL'S BAR & RESTAURANT, Appellant, -vs- BOARD OF COMMISSIONERS OF THE CITY OF TRENTON, Respondent.	ON APPEAL CONCLUSIONS AND ORDER

William Reich, Esq., Attorney for Appellant.
Louis Josephson, Esq., by John A. Brieger, Esq., Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby on June 19, 1958 it unanimously denied, by resolution, appellant's application for renewal of her 1957-58 license for the following stated reasons:

'1. That on May 10, 17, 18, 23 and 24, 1958, the licensee allowed, permitted and suffered her licensed place of business to be conducted in such manner as to become a nuisance in that she allowed, permitted and suffered female impersonators and persons who appeared to be homosexuals in and upon her licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and upon her licensed premises; and otherwise conducted her place of business in a manner offensive to common decency and public morals, in violation of Rule 5 of State Regulation No. 20.

'2. That on May 24, 1958, she conducted her licensed business without having a photostatic or other true copy of her application for her current license on the licensed premises available for inspection, in violation of Rule 16(b) of State Regulation No. 20.

'3. That the licensee is unfit to operate said licensed premises for the reason that said licensed premises were conducted improperly and in violation of the law and the rules and regulations relating to the conduct of the licensed premises, and it would be contrary to the best interests of the public health, public safety, public welfare and public morals to approve the application for the renewal of said license.

'4. That it is to the best interests of the surrounding community and the city in general that said application be denied.'

"Upon the filing of the appeal an order was entered by the Director on June 27, 1958 extending the term of appellant's license until further order herein.

"Appellant, in her petition of appeal, alleges in substance that respondent's action was an abuse of its discretionary power and that if said action is affirmed she will sustain irreparable loss and damage.

"Respondent contends that its action was predicated upon a consideration of all the facts and surrounding circumstances relating to the conduct in and operation of appellant's licensed premises.

"At the time appellant's application was denied and before the appeal herein was filed, disciplinary proceedings, instituted against appellant by the Director, were pending and unheard. The violations alleged in the charges preferred in said proceedings are identical with those set forth in paragraphs 1 and 2 of the reasons asserted by respondent for denying appellant's application for renewal. On July 11, 1958 the disciplinary case was heard at the offices of this Division and thereafter on the same day, the appeal was heard. In lieu of presenting testimony on the appeal, it was stipulated that the evidence adduced at the prior hearing should be considered as the evidence adduced at the hearing on appeal and that the Director's determination with respect to the disciplinary charges should be the basis of his conclusions and order herein.

"On September 18, 1958 the Director decided in Re Shell, Bulletin 1247, Item 3, that the evidence adduced in the disciplinary proceeding supported a finding of defendant's guilt as to the charges preferred and ordered that her license be suspended for a period of 65 days, effective September 27, 1958.

"Since the Director's Conclusions and Order in Re Shell, supra, established as facts the violations considered by respondent as reasons for its action, the question to be determined herein is whether or not said action was an abuse of respondent's discretionary power.

"The principles applicable to and dispositive of the issues raised by appellant were enunciated by Justice Oliphant in Zicherman v. Driscoll, 133 N.J.L. 586, wherein he said:

> '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 N.J.L. 585; Voight v. Board of Excise, 59 N.J.L. 358; Meehan v. Excise Commissioners, 73 N.J.L. 382, aff'd 75 N.J.L. 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 interfere with the actions of the constituted authorities. Allen v. City of Paterson, 98 N.J.L. 661; Fornarotto v. Public Utility Commissioners, 105 N.J.L. 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 guide post in the issuing and renewing of licenses.'

"In view of the aforesaid and because of the absence of any evidence tending to show that the members of respondent Board were improperly motivated, I recommend that respondent's action in denying appellant's application for renewal of her license be affirmed."

Written exceptions to the Hearer's Report and written argument with respect thereto were filed with me by appellant's attorney and written answering argument was filed by respondent's attorney, pursuant to Rule 14 of State Regulation No. 15.

After carefully considering the entire record herein, including the transcript of the proceedings, the Hearer's Report, the written exceptions thereto and the arguments advanced by the attorneys for the respective parties herein, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 14th day of November, 1958,

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

ORDERED that my order dated June 27, 1958 extending the term of appellant's license be and the same is hereby vacated, effective immediately, notwithstanding the license under said extended term is under suspension until 2:00 a.m. Monday, December 1, 1958, in accordance with my order dated September 18, 1958.

WILLIAM HOWE DAVIS
Director.

3. DISCIPLINARY PROCEEDINGS - NUISANCE (FEMALE IMPERSONATORS AND OBSCENE LANGUAGE) - SALE TO INTOXICATED PERSON - LICENSE SUSPENDED FOR BALANCE OF ITS TERM.

In the Matter of Disciplinary Proceedings against

CLOVER LEAF INN, INC.
t/a CLOVER LEAF INN
n/s Black Horse Pike
Hamilton Township
PO RD #1, Mays Landing, N. J.,

Holder of Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton.

CONCLUSIONS AND ORDER

C. Zachary Seltzer, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to the following charges:

"1. On August 31, September 5 and 6, 1958, you allowed, permitted and suffered your licensed place of business to be conducted in such manner as to become a nuisance in that you allowed, permitted and suffered persons, females impersonating males and males impersonating females, who appeared to be homosexuals, in and upon your licensed premises; allowed, permitted and suffered such persons to frequent and congregate in and

upon your licensed premises; allowed, permitted and suffered lewdness and immoral activity and foul, filthy and obscene language and conduct in and upon your licensed premises; and otherwise conducted your licensed place of business in a manner offensive to common decency and public morals; in violation of Rule 5 of State Regulation No. 20.

"2. On September 6, 1958, you sold, served and delivered and allowed, permitted and suffered the sale, service and delivery of alcoholic beverages, directly or indirectly, to a person actually or apparently intoxicated and allowed, permitted and suffered the consumption of alcoholic beverages by such person in and upon your licensed premises; in violation of Rule 1 of State Regulation No. 20."

The file herein discloses that ABC agents visited defendant's licensed premises on dates set forth in such charges. The agents report that on their first visit early on Sunday morning, August 31, 1958, there were about 125 persons present and on their second visit late on Friday night, September 5, extending to the early hours of Saturday morning, September 6, 1958, there were about 30 persons present; that on both occasions a large percentage of the females present appeared to be Lesbians and the males homosexuals, as evidenced by their attire, walk and mannerisms, which sexual deviation they exhibited most offensively in mutual endearments and sexual indecencies; that this type of patronage was encouraged by the licensee's agents was evident and the licensed premises had acquired a reputation therefor, which seemed to attract normal persons to witness such exhibitionism. The details of this conduct will serve no useful purpose.

On their second visit the agents observed a patron who was obviously intoxicated served alcoholic beverages in the presence of Helen N. Palma, an officer of the corporate-licensee. On this occasion, when the agents disclosed their identity to Joy Rex, an apparent Lesbian, who acted as a bartender on both occasions, and to Helen N. Palma, who was tending bar on this last occasion, Mrs. Palma admitted in the patron's presence that he was intoxicated. When the agents told her that on the previous Sunday they had observed that the great majority of the patrons appeared to be sexual deviates, she replied, "What are people like this supposed to do when they don't have any place to go?" The agent then reminded her that the premises had been closed for 60 days the previous year for a similar violation (see Bulletin 1159, Item 1), and she replied, "What am I going to do, I can't very well insult everyone who I think is a homosexual by telling them that I can't serve them because they look queer."

It is significant that it appears in the conclusions in the previous case above referred to that Mrs. Palma represented that her husband, Louis Palma, president of the corporate-licensee, was in the hospital and that neither she nor her husband had been able to devote much time to the business and that Joy Rex "came with the business" and continued to work for the corporation. It is obvious that Mrs. Palma continued to encourage apparent homosexuals and Lesbians to congregate on the premises and conduct themselves indecently and continued to employ Joy Rex even after such suspension. Mrs. Palma's claimed inability to eliminate the aggravated improper use of the licensed premises is therefore more fanciful than real. At the very least her conduct demonstrates that

she is not capable of operating the licensed business in a proper manner, and revocation of the license might well be merited.

However, in view of representation that Louis Palma has not as yet recovered from his illness, and taking into consideration the other circumstances urged in mitigation, I shall suspend the defendant's license for the balance of its term.

Accordingly, it is, on this 17th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-41, issued by the Township Committee of the Township of Hamilton to Clover Leaf Inn, Inc., t/a Clover Leaf Inn, for premises on n/s Black Horse Pike, Hamilton Township, be and the same is hereby suspended for the balance of its term, effective at 4:00 a.m. Monday, November 24, 1958.

WILLIAM HOWE DAVIS
Director.

4. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

STATUTORY AUTOMATIC SUSPENSION - PETITION TO LIFT GRANTED AT EXPIRATION OF SUSPENSION IN DISCIPLINARY PROCEEDINGS.

In the Matter of Disciplinary Proceedings against

THOMAS B. POSKA & ANNA M. POSKA
Highway corner Route 28 and 22
Pohatcong Township
PO RD 1, Phillipsburg, N. J.,

Holders of Plenary Retail Consumption License C-1, issued by the Pohatcong Township Committee.

CONCLUSIONS AND ORDER

Auto. Susp. #159
In the Matter of a Petition by

THOMAS B. POSKA & ANNA M. POSKA
Highway corner Route 28 and 22
Pohatcong Township
PO RD 1, Phillipsburg, N. J.,

To Lift the Automatic Suspension of aforesaid license.

ON PETITION
O R D E R

J. Francis Moroney, Esq., Attorney for Defendant-licensees-petitioners.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold and permitted the sale of alcoholic beverages to a minor and permitted said minor to consume alcoholic beverages on the licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that ABC agents, acting on information received from State Police officers, obtained a copy of a written statement of Edward --- which he gave the State troopers, and also obtained an additional sworn, written

statement from him, from both of which statements it appears that Edward (16 years of age) met a group of other minors on September 27, 1958; that someone suggested a beer-drinking contest between two of the minors, whereupon Edward volunteered that perhaps he could obtain beer; that he and his companions drove to defendants' licensed premises; that Edward entered and purchased a bottle of beer which he consumed on the premises and purchased four quart-containers of beer which he brought to one of the cars in which some of his companions were seated; that they drove off and were later stopped by the troopers. Edward further stated that the bartender asked him for identification and thereupon he displayed a National Guard identification card which he had previously found on the highway; that, when the bartender asked him to sign some paper, he refused and said if he had to sign he would go elsewhere.

ABC agents report that, when they visited defendants' premises with the minors for the purpose of identification, they asked Thomas Poska for his version of what occurred. He verbally stated that his wife was in the tavern when Edward came in, asked for the beer and showed her a card; that his wife asked him to look at the card; that he called Edward's attention to the fact that the card indicated that Edward was 22 years of age, but in Poska's judgment he appeared to be only 18; nevertheless, Poska sold Edward two, not four, containers of beer.

On October 27, 1958, defendant Thomas B. Poska was fined $100.00 and $5.00 costs in the Municipal Court of Pohatcong Township after conviction of selling alcoholic beverages to the same minor, in violation of R. S. 33:1-77. R.S. 33:1-31.1 provides that said conviction automatically suspends defendants' license for the balance of its term. Because of the petition and the pendency of these proceedings, the license has not yet been picked up by ABC agents.

Defendant has no prior adjudicated record. The display of the card of identification cannot be accepted as mitigating circumstances since Edward was in fact only 16 years of age (see Re Shinkunas, Bulletin 1253, Item 2). Moreover, Poska, despite the card, considered Edward to be a minor. I shall suspend the license of defendants for twenty-five days (Re Jennings, Bulletin 1244, Item 3). Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Defendants have filed with me a petition to lift the statutory automatic suspension of their license upon the expiration of the suspension imposed in the disciplinary proceedings. I shall grant the requested relief.

Accordingly, it is, on this 13th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-1, issued by the Pohatcong Township Committee to Thomas B. Poska & Anna M. Poska, for premises on Highway corner Route 28 and 22, Pohatcong Township, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Tuesday, December 2, 1958, and terminating at 3:00 a.m. Monday, December 22, 1958; and it is further

ORDERED that the statutory automatic suspension be lifted effective at 3:00 a.m. Monday, December 22, 1958, at which time the license will be restored to full force and operation.

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - PERMITTING OBSCENE LANGUAGE - LICENSE SUSPENDED FOR 10 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

PETER WALCZAK & STELLA WALCZAK, Partnership
t/a "803 BAR"
803 South Broad Street
Trenton 10, N. J.,

Holders of Plenary Retail Consumption License C-113, issued by the Board of Commissioners of the City of Trenton.

CONCLUSIONS AND ORDER

Peter Walczak & Stella Walczak, Partnership, by Stella Walczak, Partner.

Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to the following charge:

"On October 7, 1958, you allowed, permitted and suffered foul, filthy and obscene language in and upon your licensed premises; in violation of Rule 5 of State Regulation No. 20."

The file herein discloses that on Tuesday, October 7, 1958 at about 1:30 p.m. two ABC agents entered the defendants' licensed premises and remained therein until about 3:00 p.m. There were five male patrons seated at the bar which was being tended by Peter Walczak and Stella Walczak, the licensees. During their visit to the premises the agents heard Peter Walczak and Stella Walczak, without any apparent provocation, use foul, filthy and obscene language (the repetition of which would serve no useful purpose). At about 2:45 p.m. the agents identified themselves to the licensees, both of whom admitted aforesaid violation.

By way of mitigation Stella Walczak has submitted a letter setting forth therein that she is under a doctor's care because of some difficulties with her eyes and that she is negotiating for the sale of the licensed premises. I have read the letter and examined the file, but find no extenuating circumstances that would impel me to impose a lesser penalty than that fixed in cases of this kind.

Defendant has no prior adjudicated record. I shall suspend defendants' license for ten days. Re Caridi's Bar, Incorporated, Bulletin 1185, Item 3. Five days will be remitted for the plea entered herein, leaving a net suspension of five days.

Accordingly, it is, on this 6th day of November, 1958,

ORDERED that Plenary Retail Consumption License C-113, issued by the Board of Commissioners of the City of Trenton to Peter Walczak & Stella Walczak, Partnership, t/a "803 Bar", for premises 803 South Broad Street, Trenton, be and the same is hereby suspended for five (5) days, commencing at 2:00 a.m. Monday, November 17, 1958 and terminating at 2:00 a.m. Saturday, November 22, 1958.

WILLIAM HOWE DAVIS
Director.

6.

ACTIVITY REPORT FOR DECEMBER 1958

ARRESTS:
Total number of persons arrested ---------- 26
- Licensees and employees ---------- -13
- Bootleggers ---------- -13

SEIZURES:
- Motor vehicles - cars ---------- 2
- trucks ---------- 1
- Stills - over 50 gallons ---------- 2
- Alcohol - gallons ---------- 1,950.00
- Distilled alcoholic beverages - gallons ---------- 34.84
- Wine - gallons ---------- 7.26
- Brewed malt alcoholic beverages - gallons ---------- 13.40

RETAIL LICENSEES:
- Premises inspected ---------- 813
- Premises where alcoholic beverages were gauged ---------- 444
- Bottles gauged ---------- 7,782
- Premises where violations were found ---------- 95
- Violations found ---------- 147
  - Unqualified employees ---------- -68
  - Reg. #38 sign not posted ---------- -18
  - Application copy not available ---------- -17
  - Prohibited signs ---------- -10
  - Other mercantile business ---------- 2
  - Other violations ---------- -32

STATE LICENSEES:
- Premises inspected ---------- 28
- License applications investigated ---------- 10

COMPLAINTS:
- Complaints assigned for investigation ---------- 426
- Investigations completed ---------- 383
- Investigations pending ---------- 131

LABORATORY:
- Analyses made ---------- 175
- Refills from licensed premises - bottles ---------- 3
- Bottles from unlicensed premises ---------- 57

IDENTIFICATION BUREAU:
- Criminal fingerprint identifications made ---------- 8
- Persons fingerprinted for non-criminal purposes ---------- 163
- Identification contacts made with other enforcement agencies ---------- 107
- Motor vehicle identifications via N. J. State Police teletype ---------- 3

DISCIPLINARY PROCEEDINGS:
- Cases transmitted to municipalities ---------- 18
- Violations involved ---------- 26
  - Sale during prohibited hours ---------- -13
  - Sale to minors ---------- 3
  - Sale to non-members by club ---------- 3
  - Failure to close premises during prohibited hours ---------- 2
  - Sale to intoxicated persons ---------- 1
  - Employee w/o requisite identification card (local reg.) ---------- 1
  - Permitting foul language on prem. ---- 1
  - Permitting lottery activity (fight pool, drawing, raffle) ---------- 1
  - Service to women at bar (local reg.) 1
- Cases instituted at Division ---------- 18*
- Violations involved ---------- 30
  - Sale during prohibited hours ---------- 7
  - Possessing liquor not truly labeled ---- 2
  - Conducting business as a nuisance ---- 2
  - Sale to intoxicated persons ---------- 2
  - Unqualified employees ---------- 2
  - Failure to close premises during prohibited hours ---------- 2
  - Accepting unlawful inducements from wholesaler ---------- 1
  - Employee w/o requisite identification card (local reg.) ---------- 1
  - Permitting bookmaking on premises ---- 1
  - Sale outside scope of license ---- 1
  - Sale below minimum resale price ---- 1
  - Fraud in application ---------- 1
  - Permitting foul language on prem. ---- 1
  - Permitting brawl on premises ---- 1
  - Hindering investigation ---------- 1
  - Permitting hostesses on premises ---- 1
  - Aiding and abetting unauthorized sale 1
  - Sale to minors ---------- 1
  - Permitting lottery activity (numbers) 1

*Includes one cancellation progeeding against blanket employment permit--females who acted as hostesses.

- Cases brought by municipalities on own initiative and reported to Division ---------- 20
- Violations involved ---------- 22
  - Sale to minors ---------- 8
  - Sale during prohibited hours ---------- 5
  - Permitting brawls on premises ---------- 5
  - Employee working while intoxicated ---- 1
  - Permitting gambling (dice) on prem. - 1
  - Permitting minor to loiter on premises (local reg.) ---------- 1
  - Hindering investigation ---------- 1

HEARINGS HELD AT DIVISION:
Total number of hearings held ---------- 43
- Appeals ---------- 8
- Disciplinary proceedings ---------- -20
- Eligibility ---------- -11
- Seizures ---------- 2
- Tax revocations ---------- 1
- Applications for license ---------- 1

STATE LICENSES AND PERMITS ISSUED:
Total number issued ---------- 1,119
- Licenses ---------- 5
- Employment permits ---------- 142
- Solicitors' " ---------- 21
- Disposal " ---------- 81
- Social affair " ---------- 287
- Wine permits ---------- 62
- Miscellaneous permits ---------- 195
- Transit insignia ---------- 311
- Transit certificates ---------- 15

Dated: January 7, 1959

WILLIAM HOWE DAVIS
DIRECTOR

7. STATE REGULATIONS - REGULATION NO. 34 - ANNOUNCEMENT OF FUTURE PENALTY POLICY IN DISCIPLINARY PROCEEDINGS AGAINST DISTILLERS PARTICIPATING IN UNLAWFUL DEALS.

November 19, 1958.

TO ALL DISTILLERS AND THEIR NEW JERSEY STATE MANAGERS, AND TO ALL WHOLESALERS:

Information received during the conduct of recent investigation indicates the brief resurgence of a disorderly market in which all levels of the industry were participating by offering and giving unlawful gifts, rebates, discounts or other allowances generally known as deals, principally by way of cash kick-backs and free goods, in violation of Rule 11 of State Regulation No. 34.

Despite previous announcements of drastic action to be taken against violators of the Rule, the approaching holiday season appears to have stimulated an unwholesome desire to increase sales volume by any means, fair or foul, by some distillers and their missionary men and some wholesalers and their salesmen.

It is a matter of record that every effort has been made in recent years to obtain from the industry voluntary compliance with both the letter and the spirit of the applicable Rule, in its own best interest, even if it was foolishly heedless of the larger public interest in an orderly market.

Plainly, no deal of any magnitude sufficient to break a clean market into a disorderly one can be launched or sustained without the participation of the distiller who must support and finance it, directly or indirectly, at least in part.

Prior warnings having apparently fallen upon deaf ears, it is hereby announced that if investigation establishes that dealing or unlawful price-cutting, direct or indirect, is occurring hereafter, in which sufficient evidence appears that any distiller is involved as originator or participant, disciplinary proceedings will be instituted against the distiller, and in the event of a finding of guilt, not only will the license be suspended for a minimum of sixty days but also, by special ruling in support of the suspension order, the products of the distiller will be barred from sale in New Jersey by any licensee, wholesale or retail, during the period of the suspension.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATIONS FILED.

Harborside Terminal Co., Inc.
34 Exchange Place, Jersey City, N. J.
Application filed January 5, 1959 for person-to-person transfer of Public Warehouse License X-19 from Harborside Warehouse Company, Inc.

Rosa Wine Co.
830 Raymond Boulevard, Newark, N. J.
Application filed January 6, 1959 for Plenary Winery License.

William Howe Davis
Director.