

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
NEWARK INTERNATIONAL PLAZA
U.S. Routes 1-9 (Southbound) Newark, N. J. 07114

BULLETIN 2367

OCTOBER 1, 1980

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OCTOBER 1, 1980

1. SPECIAL RULING PURSUANT TO N.J.A.C. 33:1-12.39 - IN THE MATTER OF THE PETITION OF WEST END RACQUET CLUB, INC.

In the Matter of an Application by :

West End Racquet Club, Inc. :

Holder of Plenary Retail Consumption :
License No. 1325-33-062-001 issued :
by the City Council of the City of :
Long Branch. :

-----:
Robinson, Wayne & Greenberg, Esqs., by Richard J. Webb, Esq.,
Attorneys for Petitioner

Initial Decision Below

Hon. Joseph Rosa, Jr., Administrative Law Judge

Dated: November 19, 1979

Received: November 21, 1979

BY THE DIRECTOR:

No written Exceptions to Petitioner's application for relief pursuant to N.J.S.A. 33:1-12.39 were filed herein.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Initial Decision Below, I differ in the conclusions arrived at by the Administrative Law Judge upon the facts presented, and reject said Initial Decision.

The within application is the second application filed on behalf of petitioner under N.J.S.A. 33:1-12.39, The factors set forth, sub judice, are no different than those submitted in the 1978-79 renewal period application, other than delays in obtaining renewal. I have given consideration to those factors previously. I must now review what supplemental activity occurred since then.
Re: Herbert Prentice, Bulletin No. _____ Item _ (decided 11-29-79).

An agreement to sell the realty and liquor license to H.T.B.G. for \$530,000.00 was entered on December 5, 1977 and closing occurred on September 27, 1978. Of that sum, only \$5,000.00 was attributed to the liquor license. If the license was not transferred, the purchase price would be reduced \$5,000.00. Clearly, the parties to this agreement ascribed little value to the license in relationship to the total agreement. More

importantly, this Division is asked to tie up this liquor license to the development of a project of vast magnitude which, if ever constructed at all, would take years to complete. I do not find that these facts give reasonable and proper recognition to the legislative intent of N.J.S.A. 33:1-12.39.

Additionally, the City of Long Branch has 55 retail consumption licenses for a population, as per last Federal Census, of 31,774. Thus, it is 45 licenses over the standard set forth in N.J.S.A. 33:1-12.14. When the fact of license concentration is considered in the context of the facts herein, I find no reasonable basis to authorize a further application for renewal of the subject license.

Since August of 1977, petitioner was noticed that the inactive status of its license would no longer be condoned by the issuing authority. I see nothing in the record to indicate any realistic prognosis that this license will be activated in the existing license term.

Therefore, I shall deny the petitioner's request and reject that portion of the Initial Decision which finds that the petitioner has made "good faith" efforts to activate this license.

Accordingly, it is, on this 2nd day of January, 1980,

ORDERED that the application of the West End Racquet Club pursuant to N.J.S.A. 33:1-12.39 for authorization to apply to the City Council of the City of Long Branch for renewal of Plenary Retail Consumption License No. 1325-33-062-001 for the 1979-80 license term be and the same is hereby denied.

JOSEPH H. LERNER
DIRECTOR

Initial Decision Below

IN RE:

INITIAL DECISIONI/M/O PETITION FOR RENEWAL OF
LICENSE, WEST END RACQUET CLUBDKT. NO. 7/31/79
OAL DKT. NO. ABC 3433-79

APPEARANCE:

Richard J. Webb, Esq., attorney for the Petitioner

BEFORE THE HONORABLE JOSEPH ROSA, JR., A.L.J.:

Pursuant to R.S. 33:1-12.39, the West End Racquet Club, Inc. (hereinafter Petitioner), filed an application to determine if the petition for license renewal comes within the purview of R.S. 33:1-12.39. The Division of Alcoholic Beverage Control transmitted the matter to the Office of Administrative Law for determination as a contested case pursuant to N.J.S.A. 52:14F-1, et seq., where a hearing was held on October 16, 1979, before the Honorable Joseph Rosa, Jr. All parties were given the opportunity to be heard and to cross-examine witnesses. In accordance with R.S. 33:1-12.39, the sole issue is whether or not good cause can be shown by the Petitioner for renewal of a plenary retail consumption license which has not been actively used in connection with the operation of a licensed premises within a period of two years prior to the commencement date of the license period. The Division of Alcoholic Beverage Control advised the Office of Administrative Law, through Deputy Attorney General Mart Vaarsi that they would not appear at the hearing but would leave the Petitioner to its proofs in the matter of good cause.

The relevant testimony was as follows:

Alan Anchen, Vice President of the West End Racquet Club, Inc. testified and adopted by reference the affidavit previously submitted of Walter Liebowitz, (P-1 Evidence), President and one of the Directors of the West End Racquet Club, Inc., a New Jersey corporation. He testified that the West End Racquet Club is the holder of Plenary Retail Consumption License C-47 issued to it by the City of Long Branch, New Jersey. The Petitioner first obtained this license by transfer in April of 1967. In the same year a lounge and bar facility were built on the West End Racquet Club property where liquor was dispensed to members of the West End Racquet Club. These premises contained a swimming pool, cabana, a nightclub, and a lounge. In 1968 a fire occurred which destroyed the building whereon the nightclub activity had been conducted. The fire did not interrupt the business of the swim club. The only aspect of the business that ceased was the nightclub. The remainder of the club continued to serve alcoholic beverages in limited quantities to its members.

The license continued to be used as part of the swim club operation until 1973, when the club's remaining facilities were demolished in preparation for construction of a high-rise condominium project. This was a cooperative venture between the Petitioner and a corporation known as Raco Construction Company. Petitioner was a limited partner, whose sole contribution to the partnership was the real property on which the club was located. Raco, the general partner, was a New York corporation which was to obtain all the necessary

financing, building permits and was to act as the general contractor. The building permit for the purposes of the condominium project was obtained in the Fall of 1973. Initial excavation was begun, however the general partner, was unable to secure adequate construction financing. Petitioner could not locate any of the principals of the general partner to continue the construction project. To date, Petitioner has still been unable to locate any principals of the general partner, as it appears that the general partner and its principals were adjudicated bankrupt. The license therefore remained in the name of the Petitioner.

Subsequently, Petitioner actively pursued a new purchaser for its property. In 1976 negotiations were begun with the Harbor Island Spa for the purposes of selling the real property to them. It appears that these negotiations never reached fruition.

In August of 1977, the City Council of the City of Long Branch renewed the Petitioner's liquor license upon the special condition that the license not be delivered to the Petitioner, but be held by the City Clerk for a period of one year, ending June 30, 1978 or until a Certificate of Occupancy be issued for the West End Racquet Club property, whichever occurred first.

On December 5, 1977 Petitioner entered into a contract with Julian Hoffman, as nominee for a partnership or corporation to be formed, for the purchase of the West End Racquet Club real property and liquor license. Subsequently, a partnership identified as H.T.B.G. Associates was formed, and a transfer of the real property took place on September 27, 1978, from West End Racquet Club to H.T.B.G. Associates. The purchase price of the entire transaction was five hundred thirty thousand dollars (\$530,000). It appears that the purchaser intends to construct a high-rise facility on the site which will include a restaurant and a lounge which it is intended will dispense alcoholic beverages. Petitioner, subsequent to the hearing, submitted an affidavit of one of the principals of H.T.B.G. Associates to this effect, (P-7). At the time of closing, the amount of five thousand dollars (\$5,000) was held in escrow pending the subsequent renewal and transfer of the plenary retail consumption license from Petitioner to H.T.B.G. Associates. A copy of the contract of the sale of premises, and the statement of closing title, were introduced into evidence (P-2, P-3).

In May 1978, Petitioner submitted an application for the renewal of the liquor license for the year 1978-79 on the grounds that the West End Racquet Club property was under contract of sale, and the purchaser of the property intended to construct a building on the property which would include a bar and a restaurant, necessitating the transfer of the liquor license from Petitioner to the purchaser. In June, 1978, Counsel for the Petitioner wrote to Mr. Joseph H. Lerner, Director of the Division of Alcoholic Beverage Control seeking approval of the application for renewal for the 1978-1979 year, as required by R.S. 33:1-12.39. On July 13, 1978, a hearing was held before hearing officer William Lovell. As a result of that hearing, the Director issued a special ruling on July 26, 1978 holding that the requirement "good cause" had not been established. (P-6) By letter dated July 27, 1978, counsel for Petitioner applied to the Director for a rehearing on the matter. Pending the rehearing, the

closing of title was held on the property with the aforementioned funds being held in escrow pending the renewal of the liquor license. It was agreed that if the license were renewed, Petitioner would immediately apply for transfer to H.T.B.G. Associates. On December 12, 1978, a second hearing was heard concerning the "good cause" requirement of R.S. 33:1-12.39. On February 14, 1979, hearer William E. Lovell filed his report with Director Lerner in which he found that the "good cause" as required by statute had been shown. On April 27, 1979, Director Lerner issued an order vacating his special ruling of July 26, 1978 and found that the "good cause" required by the statute had been shown and authorized the City of Long Branch to consider the application of West End Racquet Club for renewal of the license for the year 1978-79. A copy of the April 27, 1979 ruling of Director Lerner was introduced into evidence (P-4). On May 4, 1979, counsel for Petitioner communicated with the City Clerk of the City of Long Branch and requested a hearing date at which time the City Council would consider the application for the 1978-79 renewal.

The Long Branch City Council twice adjourned the meeting at which the Petitioner could be heard concerning its application for the liquor license renewal for 1978-79. On June 13, 1979, counsel appeared before the Long Branch City Council for the purpose of a hearing for the renewal of the liquor license. A subsequent hearing was held on June 19, 1979 at which time the Long Branch City Council passed a resolution renewing the West End Racquet Club liquor license for the year 1978-79 subject to the following conditions:

1. That the license be held by the City Clerk for a period of one year or until a Certificate of Occupancy was issued, whichever occurred first;
2. That the license be restricted to the use of the proposed condominium association;
3. That the license not be transferred from the site at any time.
4. That the license at the site be in conjunction with the high-rise condominium project proposed by H.T.B.G. Associates.

In effect the license was renewed for a period of 11 days or until June 30, 1979, thereby necessitating the renewed application for renewal for the year 1979-80. If the finding of "good cause" is made, the Petitioner has stated that it will immediately apply to the City of Long Branch seeking permission to transfer the license in question to H.T.B.G. Associates. Petitioner further stated that H.T.B.G. Associates intend immediately to proceed with the condominium project they have planned for and that they will actively use the liquor license in connection with that project.

After carefully reviewing all of the evidence and the testimony and having observed the demeanor of the witnesses, I FIND:

1. The Petitioner, West End Racquet Club, a New Jersey corporation, is the holder of liquor license No. C-47 issued to it by the City of Long Branch, New Jersey.

2. Petitioner first obtained this liquor license by transfer in April of 1967.
3. The premises on which the license was used was partially destroyed by a fire in the year 1968.
4. The license continued to be used as part of the Petitioner's activities and operations until the year 1973 when those portions of the premises which were not previously destroyed by fire were demolished in preparation for construction of a high-rise condominium project.
5. The condominium project was a cooperative venture between the Petitioner and a corporation known as Raco Construction Company.
6. Due to the subsequent bankruptcy of Raco Construction Company the condominium project was never completed.
7. During the year 1976 negotiations were begun with another prospective purchaser for the purchase of the real property and liquor license owned by Petitioner.
8. These subsequent negotiations never reached fruition.
9. In August of 1977 the City Council of the City of Long Branch renewed the Petitioner's liquor license upon the special condition that the license not be delivered to Petitioner but be held by the City Clerk for a period of one year ending June 30, 1978.
10. On December 5, 1977 Petitioner entered into a contract with Julian Hoffman as nominee for a partnership or corporation to be formed, for the purchase of the West End Racquet Club real property and liquor license.
11. Subsequently, a partnership identified as H.T.B.G. Associates was formed, and a transfer of the real property took place on September 27, 1978 from Petitioner to H.T.B.G. Associates.
12. The liquor license of Petitioner was not transferred at that time, but a sum of five thousand dollars (\$5,000) was held in escrow pending the transfer of the Petitioner's liquor license to H.T.B.G. Associates.
13. H.T.B.G. Associates intends to construct a high-rise facility on the real property owned by Petitioner which will include a restaurant and a lounge which will include the active use of the liquor license in question.

Based on the facts adduced at the hearing and the exhibits submitted and the applicable law, I CONCLUDE that the "good cause" required by R.S. 33:1-12.39 has been shown. The applicable statute, R.S. 33:1-12.39, provides that Class C Licenses not actively used in connection with the operation of a licensed premises within the past two licensed terms shall not be renewed unless the Director of the

Division finds good cause to warrant a further application for renewal. This statute was remedial in nature and designed to halt the continuous renewal of licenses which had no Situs and were not actively used. These licenses, so called "Pocket licenses", were continuously renewed year after year without any attempt made to dispose or use them.

In the present matter, Petitioner actively used its license for its entire premises from April 1967 until 1968 when the fire occurred which destroyed a portion of the premises. From the time of the fire until early 1973, the license continued to be used on a reduced basis. Since September 1973, the history of this license has been one of mortgage funding difficulties, construction permit applications, negotiations for sale, various contracts, renewal applications, alcoholic beverage hearings, all without finality to date. In December of 1977 Petitioner executed a contract which, it was hoped, would result in the ultimate sale of the property and transfer of the licensed premises to a new partnership. The sale of the premises was consummated on September 27, 1978 and the license ultimately renewed subject to construction completion on June 19, 1979.

This statute was designed to afford applicants such as this one an opportunity to renew a license for active use in a subsequent transferee. The applicant has amply demonstrated that since the fire of 1968, it has actively sought to transfer the license to a new owner. The applicant was not dilatory in pursuing this transfer, but appears to have become enmeshed in the legal process attendant to new construction and a license transfer. I CONCLUDE therefore that the Petitioner has shown the "good cause" required by R.S. 33:1-12.39, for renewal of its plenary retail consumption license for the year 1979-80. Accordingly, it is HEREBY ORDERED that the City Council of the City of Long Branch be and the same is hereby authorized in its discretion to consider the application for renewal of the subject license of the 1979-1980 term, subject to the special condition that, if renewed, the license certificate shall not be delivered, and unless and until an approved situs for the license is obtained.

This action shall not become final until forty-five (45) days after agency receipt of this order, unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.A.C. 13:2-31.1.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record in these proceedings.

- 2. DISCIPLINARY PROCEEDINGS - TWO COMMONLY OWNED LICENSES - LICENSEES FOUND GUILTY OF EMPLOYING THE LOCAL CHIEF OF POLICE TO PERFORM AS AN ENTERTAINER AT THE TWO LICENSED PREMISES - EACH SUSPENDED FOR FIFTEEN (15) DAYS.

In the Matter of Disciplinary Proceedings against	:	
	:	
Harry J. Sosangelis and Helen Sosangelis	:	S-12,282
t/a Indian Chief Tavern	:	X-23,906-K
Route 70	:	
Medford Township, New Jersey	:	Affil. File X-55,610-A
	:	
Holder of Plenary Retail Consumption License No. 0320-32-003-001 issued by the Township Committee of the Township of Medford.	:	
	:	
AND	:	CONCLUSIONS AND ORDER
	:	
Zarifis Corporation	:	
t/a Harry's	:	
24-36 A Stokes Road	:	S-12,280
Medford Township, New Jersey	:	
	:	X-55,610-A
	:	
Holder of Plenary Retail Consumption License No. 0320-32-004-001 issued by the Township Committee of the Township of Medford.	:	

 Skoloff & Wolfe, Esqs., by Saul A. Wolfe, Esq.,
 Attorneys for Licensee
 David Griffiths, Esq., Deputy Attorney General for the Division

Initial Decision Below

Hon. Gerald I. Jarrett, Administrative Law Judge

Dated: November 27, 1979 - Received: November 28, 1979

BY THE DIRECTOR:

No written Exceptions to the Initial Decision of the Administrative Law Judge of the Office of Administrative Law were filed pursuant to N.J.A.C. 13:2-19.6.

These matters involve a violation of N.J.A.C. 13:2-23.31 by the said licensees because they "employed" a municipal police chief on liquor licensed premises. The employment consisted of the police chief of Medford Township performing as an entertainer at two taverns owned by the licensees. Having carefully reviewed the entire record herein, I concur with the factual findings of the Administrative Law Judge that violations of N.J.A.C. 13:2-23.31 occurred but I specifically reject both his penalty recommendation and the reason advanced in support of the said recommendation.

The Administrative Law Judge found that the licensees were misled by the Chief of Police, and employed him upon his representation to the licensee that such employment would not be a violation of the Rules and Regulations of this Division.

It is clear that the Governing body, as the issuing authority, and not the Chief of Police, is the entity entrusted and mandated by the Legislature to enforce the provisions of the Alcoholic Beverage Law and its Rules and Regulations as it relates to retail licensees. N.J.S.A. 33:1-24.

Additionally, it is irresponsible to rely upon the solicited advice from the individual (here the Medford Chief of Police) who is beneficially involved in the matter, since such advice is obviously self-serving. This is particularly true when the licensees admit that they doubted the propriety of the proposed arrangement; and where the terms and provisions of N.J.A.C. 13:2-31 are so clear and unambiguous. Therefore, I reject the penalty recommendation of the Administrative Law Judge.

The precedential penalty for the employment of a regular police officer on liquor licensed premises is a 30 day license suspension. However, in view of the circumstances which may be considered minimally mitigating in nature, I shall impose a modified penalty of 15 days. I would add that this should not serve as a precedent, but is limited to the facts in the matter sub judice.

Accordingly, it is, on this 7th day of January, 1980.

ORDERED that Plenary Retail Consumption License No. 0320-33-003-001 issued by the Township Committee of the Township of Medford to Harry J. Sosangelis and Helen Sosangelis, t/a Indian Chief Tavern, for premises Route 70, Medford, New Jersey and Plenary Retail Consumption License No. 0320-32-004-001 issued by the Township Committee of the Township of Medford to Zarifis Corporation, t/a Harry's for premises 24-36A Stokes Road, Medford, New Jersey be and the same is hereby suspended for 15 days commencing 2:01 a.m. on Thursday, January 17, 1980 and terminating 2:01 a.m. on Friday, February 1, 1980.

JOSEPH H. LERNER
DIRECTOR

Appendix - Initial Decision Below

In the Matter of:)

HELEN & HARVEY SOSANGELIS)
t/a INDIAN CHIEF TAVERN)
and ZARIFIS INCORPORATED)

INITIAL DECISION

OAL DKT. NO. ABC 2756-79
AGENCY DKT. NO. S 12282
AGENCY DKT. NO. S 12280

Appearances:

Skoloff & Wolfe
by: Saul A. Wolfe, Esq.

David Griffiths, Esq.,
Deputy Attorney General
for the Division of Alcoholic Beverage Control

BEFORE THE HONORABLE GERALD I. JARRETT, A.L.J.:

This is a hearing pursuant to New Jersey Revised Statutes, 33:1-31, charging Petitioner with employing or having had connected with their business a person who is a regular police officer in New Jersey, in violation of N.J.A.C. 13:2-23.31.

Respondents, Helen and Harvey Sosangelis, t/a Indian Chief Tavern, presently own Plenary Retail Consumption License No. 0320 33 003 001 located in the Township of Medford. The Zarifis Corporation t/a Harry's, owns Plenary Retail Consumption License No.0320-32-004-001 also in the Township of Medford.

The matters were forwarded to the Office of Administrative Law as contested matters pursuant to N.J.S.A. 52:14F-1 et seq. They were set down for a hearing and heard before the Honorable Gerald I. Jarrett, Administrative Law Judge, on September 18, 1979. Final papers, letter memorandum, were received by the Court on October 15, 1979. Appellants contend that pursuant to N.J.S.A. 33:1-39 that the Director lacked authority to promulgate rules and regulations covering employment of police officers. They also contend that pursuant to N.J.S.A. 33:1-26 the Appellant must knowingly be in violation of the law, and finally, that the Division of Alcoholic Beverage Control is estopped from proceeding in this matter due to Petitioner's re-

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liance on the advice rendered to them by the Chief Law Enforcement Officer of the municipality. Respondent, The Alcoholic Beverage Control Commission, contends that the Director of the Alcoholic Beverage Control, pursuant to N.J.S.A. 33:1-39, has the inherent authority to promulgate rules and regulations covering employment of police officers and that ignorance of the law is no excuse to the charge of employing a police officer in the capacity hereafter mentioned.

Charles C. Graeber, Inspector for the Division of Alcoholic Beverage Control, testified that he has been an inspector for the past 14 years with the Division. He stated that he received a directive from his supervisor to contact a detective in the Burlington County Prosecutor's Office in regard to a police officer who was alleged to have been singing in two taverns in the Medford Township area. He contacted the individual by phone but was unable to ascertain who the officer was. He then contacted the Township Administrator of Medford, Mr. Harold E. Euslick, and found out that the officer involved was the police chief of Medford. Mr. Graeber stated that he met with Chief Anthony with regard to the allegations and that Chief Anthony admitted to him that he did sing in two licensed premises on a few occasions but that he never received any monies from a licensee. The Inspector then went to the licensed premises, Harry's and Indian Chief Tavern and met with the licensee, Mr. Sosangelis, who admitted that the Chief had sang in his premises a few times but that he did not think it was a violation. Mr. Graeber advised the court that when he questioned Chief Anthony as to whether or not he had been paid, Chief Anthony testified that on the occasions that he sang at the various licensed premises, he received payment from the band itself. Mr. Graeber testified that he spoke with Mr. Sosangelis with regard to the allegations and that he obtained a signed statement dated April 16, 1979, wherein Mr. Sosangelis admitted to the fact that Chief Anthony had performed at his premises on several occasions. He then submitted to the Court the signed statement which was marked S-1 into evidence. He stated that Mr. Sosangelis in the statement indicated that he did not pay Mr. Anthony directly but paid the band and assumed that Mr. Anthony was paid by the band.

Under cross-examination, he testified that when he asked Mr. Sosangelis whether he was aware of the fact that a police officer isn't permitted to sing with the band at any licensed premises, Mr. Sosangelis stated "No, he wasn't and that he did not even know if the officer had been paid because he himself had paid the band leader. Mr. Graeber stated that in his 14

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years as an inspector with the Division of Alcoholic Beverage Control, he had never had any previous occasion to issue charges against a licensee for employing the Chief of Police of a community as a member of the band nor had he had an occasion to have a county prosecutor's office direct him to conduct an investigation as to alleged employment of a police officer on a licensed premise. He also stated that in his interview with Chief Anthony, that Chief Anthony indicated to him that it was his understanding of the law that it was not a violation for him to sing in the band in a licensed premise.

The State then concluded its testimony and Petitioner made another motion to dismiss the action based upon its previous arguments.

The Petitioner presented the following testimony: Chief Anthony testified that he has been a police officer for the past 14 years and the Chief of Police for three years. He stated that he has never been employed or connected in a business capacity with Mr. or Mrs. Sosangelis or the Zarifis Corporation. However, he did state that he had sung at their establishments but was never paid by them. He also sang on several occasions with the Cherry Hill Wing Orchestra of which William Hyland, Ex-Attorney General, was a member. He stated it never entered his mind that he was employed by the licensee. He was aware of the statute and felt that since he was not paid by the licensee, but by the band, that he was not violating any law.

He particularly recalled on occasion when he was questioned by the Sosangelis' whether or not his singing there was a violation of any kind and that he had specifically informed them that it was not and for them not to worry about it since they would have to employ him directly and that he did not feel that he was being employed as such.

Under cross-examination, Chief Anthony testified as follows: that when he first considered singing at the Sosangelis' premises, he gave thought as to whether or not it would be proper for him to do so and felt that since the statute specifically stated that he not be employed by the establishment, he felt that it did not apply to him since he was not being directly employed. He did admit that he fell within the group of prohibited employees who were not to be connected or employed in any business

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capacity with a license premise. Employment to him was interpreted as meaning that someone was telling him what to do and giving him money for doing same. He felt that he was providing a service such as a doctor might do and not actually working for anyone.

Prior to performing for the Sosangelis', he spoke with the county prosecutor, Mr. Sullivan, with regard to whether or not he was doing anything wrong by performing and was informed by Mr. Sullivan that he was not. Based upon this conversation with Mr. Sullivan, he allayed the Sosangelis' fears with regard to his singing on the premises.

Chief Anthony, when questioned by the Court whether or not he arrived at his determination as an individual or Chief of Police, stated that he believed he made the determination as Chief of Police but he could not be absolutely certain.

Helen Sosangelis testified as a partner of Helen & Harvey Sosangelis, t/a Indian Chief Tavern, and as a 50% stockholder and secretary in the Zarifis Corporation. She stated that they have been operating as licensed premises for approximately the past 20 years without any violations by the local or state Alcoholic Beverage Control Agency. She said that she has never employed or had connected with her establishment in a business capacity Chief Anthony. However, she admitted that he had sung in their licensed premises on several occasions. She stated that at the times that she hired the various bands she never specified who was to perform or to sing and that on the occasions that Chief Anthony sang, she was not aware on some of them that he would be performing. She verified the fact that Chief Anthony sang twice at the Indian Chief Tavern and three times at Harry's. Additional testimony elicited the fact that she, being a very suspicious person, approached Chief Anthony and questioned him with regard to whether or not there was a conflict of interest as to his appearing at their establishment and that he assured them he was doing nothing improper or illegal. Additionally, she stated that what totally convinced her that it was not improper for him to perform was the Attorney General Hyland performed at a place called the 'Honeydew' during the time that he was Attorney General.

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The parties rested their case and were to submit letter memoranda with regard to their position. The Deputy Attorney General of the Department of Law and Public Safety submitted his memoranda on September 25, 1979, and Saul A. Wolfe, Esq., submitted his memoranda on October 15, 1979.

The motion by licensee's counsel that the director of the Division of Alcoholic Beverage Control had not been granted the powers to promulgate the regulations regarding employment of police officers must be denied for the following reasons. In Benedetti vs. Board of Commissioners of Trenton, 35 N.J. Super. 30, 35 (App. Div. 1955) the Court stated that in the public interest the right to prescribe the conditions under which intoxicants may be sold is practically limitless. Such powers are vested in the Division or other issuing authority by R.S. 33:1-31 and the intent of any penalty imposed for violations of a law or regulation promulgated thereunder, rests within the sound discretion of the adjudicating authority. The Court at that time cited Grant Lunch Corp. vs. Driscoll, 129 N.J.L. 408, Sup. Ct. 1943. This Court arrived at its decision based upon the reasons cited by the Court and because of the last enumerated subject contained in the statute which grants general powers to regulate such other matters whatsoever as are or may become necessary in the fair and impartial, stringent and comprehensive administration of the Chapter. Therefore, this Court finds that it was within the powers of the Director of the Division of Alcoholic Beverage Control to regulate who may or may not be employed or connected in a business capacity with a licensed premise.

Petitioner's counsel's argument with regard to Petitioner's knowingly employing a person who fails to qualify as a licensee under the A.B.C. Chapter is denied for the following reasons. Helen Sosangelis, on direct testimony, page 89 of the transcript made on Tuesday, September 18, 1979, before this Court, at line 17 continuing, admitted that though she was not exactly aware of the specific law with regard to employing Chief Anthony, that it was suggested to her that there was a possible violation. She approached Chief Anthony with regard to the matter and asked him whether or not there was a conflict of interest and was informed by Chief Anthony that there was no conflict. Therefore, Mrs. Sosangelis was on notice with regard to possible regulation dealing with the employment of a regular police officer and should have consulted the proper authorities, that being the Division of Alcoholic Beverage Control, for the proper determination and not the local police department or officer who was involved.

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N.J.A.C. 13:2-23.31 reads in part, that "no license shall be held by any regular police officer...nor shall any licensee employ, or have connected with him in any business capacity whatsoever, any such officer or person". That particular administrative code does not state knowingly or make the knowledge of the statute a requirement for the violations. In addition, Halsted v. State, 41 N.J.L. 552 at page 589, stated it has become a general admitted principal, one deeply rooted in criminal jurisprudence, that ignorance of the law is not a defense. Therefore, the Court must deny Petitioner's motion.

Finally, with regard to Petitioner's motion that Chief Joseph A. Anthony was not an employee or connected in a business capacity with the establishment and therefore the Court should dismiss the action, is also denied for the following reasons. Kravits vs. Hock at 137 N.J.L. 255 at page 255 in part stated that the Commissioner...has constantly construed the word employed..." to embrace all persons whose services are utilized in furtherance of the licensed business, notwithstanding the absence of a technical employer-employee relationship". In Freud vs. Davis at 64 N.J. Super. 242 at page 249, (App. Div. 1960) it stated that the fact that he received no compensation from the licensee for the work is of no moment. We hold that Johnson's playing was "work within the intendment of the rule...". In that particular matter, Johnson was a drummer and performed at the licensed premise, receiving no compensation but was still held to be an employee. Having covered the various motions that were presented by the licensee's attorney, the Court finds the facts as follows:

1. Helen and Harvey Sosangelis are partners in the Indian Chief Tavern, Plenary Retail Consumption License #0320 33 003 001 in the Township of Medford and are the stockholders in Zarifis Corporation, Plenary Retail Consumption License #0320 32 004 001 in the Township of Medford.
2. That on or about July, August, October 1978, and February of 1979, they did employ and have connected in a business capacity, Chief Anthony, a regular police officer of the Medford Township, by the Zarifis Corporation and that on December 31, 1978, and January 1, 1979 and March 22, 1979, they did employ and have connected with them in a business capacity a person, more particularly Chief Anthony of the Medford Township Police Department at the Indian Chief Tavern.

3. That Chief Joseph A. Anthony is a regular police officer and Chief of Police of the Medford Township Police Department.
4. That the Division of Alcoholic Beverage Control has the power under N.J.S.A. 33:1-39 to regulate and control the employment of police officers.
5. That Helen and Harvey Sosangelis had or should have had knowledge that a regular police officer could not be employed or connected in a business capacity with a licensed premise.
6. That the performing of Chief Anthony in a band at a licensed premise is employment within the purview of the administrative regulation.

The Court, based upon its findings of facts, concludes that the Petitioners did employ or have connected with them in a business capacity Chief Joseph Anthony on the various occasions cited in paragraph 2 of its findings of fact. The Petitioners are therefore found to be in violation of N.J.A.C. 13:2-23.31. Having found that the Sosangelis' trading in the various capacities were in violation of N.J.A.C. 13:3-23.31, for all the reasons as aforesaid in denying Petitioner's motion, it is a recommendation of the Court that any fine or penalty to be imposed upon Petitioner be suspended. The Court makes this determination based upon the Petitioner's being misled by the Chief of Police with regard to his eligibility for employment at their premises.

It is therefore RECOMMENDED that this decision be accepted in its totality.

This decision shall not become final until forty-five (45) days after agency receipt of this order unless the agency head acts to affirm, modify or reverse during the forty-five (45) day period, N.J.S.A. 52:14B-10.

I HEREBY FILE with the Director of the Division of Alcoholic Beverage Control, Joseph H. Lerner, my Initial Decision in this matter and the record of these proceedings.

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Joseph H. Lerner
Director