

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 2324

July 2, 1979

TABLE OF CONTENTS

ITEM

1. APPELLATE DECISIONS - RAMBLEWOOD SPIRIT SHOP, INC. et als. v. MOUNT LAUREL, et als.
2. APPELLATE DECISIONS - ZALINSKI ENTERPRISES, INCv. v. VINELAND.
3. SEIZURES - ENUMERATED MISCELLANEOUS SEIZURE CASES.
4. LETTER OF DIRECTOR - RE REMOVAL OF CRIMINAL DISQUALIFICATION - DATE OF INITIAL CONVICTION TO BE USED TO CALCULATE BEGINNING OF STATUTORY PERIOD.
5. STATE LICENSES - NEW APPLICATION FILED.

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1. APPELLATE DECISIONS - RAMBLEWOOD SPIRIT SHOP, INC. et als v. MOUNT LAUREL, et als.

Ramblewood Spirit Shop, Inc.,	:	
A New Jersey Corporation;	:	
F & M Delicatessen, Inc.,	:	
A New Jersey Corporation;	:	ON APPEAL
William Prettyman and Garry Prettyman,	:	CONCLUSIONS
t/a Prettyman's Liquors;	:	
Mount Laurel Liquors, Inc.,	:	AND
t/a Laurel Liquors; and Thomas	:	ORDER
Joseph Cinelli,	:	
	:	
Appellants,	:	
	:	
vs.	:	
	:	
Township Council of the Township of	:	
Mount Laurel; TEC Liquors, Inc., and	:	
Thomas Campbell,	:	
	:	
Respondents.	:	

.....
Martin Margolit, Esq., Attorney for Appellants.
Trimble & Master, Esqs., by John W. Trimble, Esq., Attorneys
for Respondents, Township Council of the Township of Mount
Laurel.
Brandt, Haughey, Penberthy & Lewis, Esqs., by Edward A. Penberthy,
Esq., Attorneys for the Respondents, TEC Liquors and Thomas
Campbell.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal by the unsuccessful applicants to the issuance of a new plenary retail distribution license by the Township Council of the Township of Mount Laurel (Council), to TEC Liquors, Inc. (TEC), by Resolution dated April 3, 1978.

The appellants allege that the action of the Council was erroneous for the following reasons:

- (a) In the official publication, the first public notice that applications would be accepted appeared alongside TEC'S notice of application, giving rise to the appearance, if not the actuality, of collusion.

- (b) Thomas Campbell, sole stockholder of TEC was, at the time of its application, a Democratic Committeeman and member of the Township Planning Board, serving as Vice-Chairman, and the majority of Council are also members of that political party.
- (c) TEC failed to file plans with its application showing the appearance and design of the proposed building, the type of exterior building material, and the overall as well as room dimensions, as required by State Regulation No. 2.
- (d) TEC'S site is patently the least desirable of all, and its approval by the Council clearly demonstrates a failure to have applied the factors respecting location, service of the citizens, and the generation of tax revenues which Council had indicated to be among those to be considered.
- (e) Council failed to secure information from the Tax Assessor for the purpose of comparing the rateables involved in the various applications.
- (f) The aesthetics of TEC'S proposed building could not have been considered from the inadequate plans submitted with the application, whereas the plans submitted by all petitioners were thoroughly acceptable.
- (g) The availability of the subject license arose out of a population growth primarily concentrated in sections of Mt. Laurel other than that wherein the TEC site is located. Petitioners' sites all fall within that area of Population growth.
- (h) The only existing plenary retail distribution license in Mt. Laurel is situated within the same area thereby giving rise to the question whether the respondents followed their own factors respecting location.

- (i) Questions of conflict of interest, collusion, arbitrary and illegal discrimination and abuse of public trust are apparent in the issuance of the license to TEC.
- (j) The provisions of N.J.S.A. 33:1-20 apply because the majority members of the Council had an indirect interest, in that its Incorporator, Thomas Campbell, was and is a member of the Mt. Laurel Planning Board and Chairman of the Mt. Laurel Democratic Party, of which the said Council members were and are also members, and consequently, the application by TEC should have been made directly to the Director.
- (k) The resolution granting the license to TEC is invalid in that one of the Council members who cast a favorable vote was at that time no longer a resident of the Township and therefore, ineligible to cast a vote.

In their respective Answers, respondents deny the substantive allegations set forth in the original and amended Petitions of Appeal.

A de novo appeal was held in this Division pursuant to N.J.A.C. 13:2-17.6, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

- I -

Thomas E. Campbell, sole stockholder of TEC, was called to testify on behalf of the appellants as to the location, size, available parking, distance from the other distribution licensee, etc., of his proposed license location.

He later testified on behalf of the respondent, stating that his only political position was that of Township Committeeman and Executive Representative to the County Democratic Committee. In that capacity his function is to inform the constituents of his district as to what is happening on a local and county level and endeavor to get his constituents to cast their ballot on election day. As the Township Representative on the Executive Committee, he attends a monthly meeting that attempts to formulate policy. Additionally, he serves as Vice-Chairman of the local Planning Board.

When questioned as to having knowledge on December 30, 1977, that the ordinance was going to be approved, he responded "that whenever the Township Council, on first reading, votes four to nothing or five to nothing, the ordinance has always been approved". This was the situation herein.

Councilman Morris Goldstein was also called to testify on behalf of appellants. He stated that he was a township resident throughout this period, although he owns dwellings in other nearby towns.

He stated that the informational sheet developed by the Council titled "Factors To Be Considered By The Township Council For Issuance Of An Additional Plenary Retail Distribution License in Mount Laurel Township" was not intended to be all-inclusive or establish binding requirements, but rather, of guidance to applicants as to some of the factors the Council might consider in their deliberations.

Appellants' attorney inquired whether the various items on the information sheet, such as, location, ratables, aesthetics, financial ability, zoning compliance, traffic flow, etc., were discussed and compared with respect to each applicant in order to arrive at a relative rating in order of desirability. Goldstein responded that in general, each member weighed the various applicants in their own mind and arrived, independent of joint discussion, at their choice. They then wrote their choice upon a slip of paper and an official who was present collected the slips and announced the result. A resolution was then prepared naming TEC as the successful applicant. The resolution was passed five in favor; none against; one abstention.

Goldstein acknowledged that the Council did not consult with or secure advice from the Tax Assessor; nor did they confer or share each others viewpoints and opinions respecting the various applicants.

Paul A. Ansaldo, Mayor of Mount Laurel, was called to testify on behalf of appellant. He stated that as a result of a special census conducted in 1977 for the purpose of qualifying for additional Federal grants, it was ascertained that the growth qualified the Township for an additional plenary retail distribution license. He stated that the major growth in the Township is in the area where TEC Liquors happens to be located. When asked if he were speaking from the standpoint of past or future growth, he stated present and future. He was asked whether or not the Councilmen specifically and in conjunction with one another went through the list of factors,

rating each applicant as to their standing on each one, in order to award the license to the most desirable of the applicants. He stated that he used the list of factors as a guide, as it was intended to be used, plus his own thoughts on the matter after private deliberation. He did not specifically list and rate them on paper, performing the function instead in his mind. The Mayor was then asked:

- Q. ...How, other than by giving each of the applicants a rating in comparison to each of the other applicants as to each specific point under the consideration, and then totalling the ratings of each, and awarding the license to the one with the highest total rating, how, other than by doing that, can you totally and fairly and without any discrimination whatsoever arrive at a decision?
- A. Mr. Margolit, there was no values assigned to any of these conditions here that we could even think about giving them a rating. I wouldn't even know how to start the philosophy or make up a rating system. It would have to be judged based on what I personally felt would have been in the best interests of the Township, that it would serve the best interests of the Township and it happened to be that Larchmont, being the biggest growth area in the Township, that that would serve that area and I believe, well, since we can't bring in other liquor stores, that the other areas are served by outside liquor stores.

Michael J. Traino, another Council member, was called by appellant and corroborated Goldstein and Ansaldo testimony relative to how the Council conducted the proceedings which resulted ultimately in the awarding of the license to TEC. He too, indicated that the Council, in general, touched base with the various criteria it had established. He abstained from voting because his family (father and two brothers) is actively engaged in the retail liquor business in the immediate area.

- II -

Initially it should be noted that the decision whether or not a license should be issued rests within the sound discretion of the local issuing authority in the first instance.

Blanck v. Mayor and Borough Council of Magnolia, 38 N.J. 484 (1962); Fiory v. Ridgewood, Bulletin 1932, Item 1, (and cases cited therein).

The Alcoholic Beverage Law, N.J.S.A. 33:1-1 et seq., contains no objective criteria which a local issuing authority must follow (or be guided) in deliberating, and, ultimately, ascertaining whom amongst the various applicants will be selected. The Director of the Division of Alcoholic Beverage Control has similarly issued no rule or regulation governing the selection procedure.

It is, therefore, the responsibility of the local issuing authority to determine (within normal bounds of fairness and reasonableness) the ground rules and then act accordingly.

The evidence elicited clearly establishes that the Council, in preparing and publishing the informational sheet referred to in testimony, did so as a helpful guide to applicants. It was not intended to be the sole basis or criteria in the determination of whom should be awarded the license.

It is a firmly settled principle that the Director's function on appeal is not to substitute his judgement for that of the municipal issuing authority, absent a finding of a clear abuse of discretion or unwarranted findings of fact or mistake of law by respondent. Monteiro v. Newark, Bulletin 2073, Item 2, and cases cited therein.

The Director will not, therefore, review those aspects of the appeal relating to exterior appearance, relative desirability of one site as opposed to another, location, service to local citizens, the generation of tax revenues, zoning, traffic flow, and the aesthetics of the various proposed sites, in the absence of a clear abuse of discretion, which I do not find.

The individual members of the municipal issuing authority are uniquely qualified to review and make appropriate, sensible findings in these areas, by virtue of residence in the jurisdiction. There has been nothing presented by appellants to suggest that in the selection process, the members failed to consider these various factors.

Appellants' attorney, throughout the hearing and in his Written Summation, takes the position that fairness in selection can be accomplished only by adhering to the procedure employed by the municipal issuing authority in Shoprite of Hunterdon County, Inc. v. Township of Raritan, Bulletin 2206,

Item 3, although never referring to it by name. There the Committeemen were furnished with tally sheets on which to insert their relative judgement of the weight of each of the twenty-two applicants on a scale of one to fifteen, based upon location, rateable and character of each.

The procedure employed in that case is a fair one, and one way to handle an admittedly difficult selection process where such large numbers of qualified persons are in contention. However, it is not the only way in which the selection process could have fairly and reasonably determined the successful applicant.

The absence of objective criteria or rules imposed upon the municipal issuing authority by either the legislature or the Director of the Division of Alcoholic Beverage Control is not an act of omission. It must be presumed that the intention was to leave the selection process and the attendant procedures to the local authority. Each license is by its nature, unique, and no set of rules could fairly cover the almost limitless variations (and problems) that would occur across the state.

I am convinced, from the testimony of the three Councilmen who gave testimony, that the Council understood its responsibility and considered the various factors before arriving at its selection. I am mindful too, that in the matter sub judice there were only six applicants as distinguished from the twenty-two that applied in the Shoprite of Hunterdon County v. Township of Raritan case referred to hereinabove. The three Councilmen who appeared were, in my opinion, intelligent individuals capable of weighing the pluses and minuses of six applicants in their mind, without confusion. I assume too, that the others are of similar ability, without impediment.

I was disturbed initially by the factual circumstance of both advertisements, as described more fully previously, appearing in the same issue of the municipality's official publication. However, Campbell offered convincing testimony as to how that came about and my earlier suspicions were allayed.

Campbell's interest in local politics motivated him to attend all Council meetings. His familiarity and foresight combined resulted in his seeking legal advice early. Thereafter, his attorney assumed the active management of the application process and the placing of the advertisement was handled by the law office, not by Campbell. I find this testimony to have been believable and Campbell, credible. Impropriety cannot be inferred under these circumstances.

Campbell served as Vice-Chairman of the Mount Laurel Planning Board and as Executive Representative to the County Democratic Committee (County Committeeman). As such, he is not a member of the municipal issuing authority, who, by statute (N.J.S.A. 33:1-20), must submit his application to the Director of this Division for consideration. He holds no other position, official or political, despite appellants' attorney's reference to him as County Democratic leader, Township Democratic leader and the like.

I reject as unplausible, the argument that a person serving as a County Committeeman wields such political power or influence, by virtue of that position, that the Director should make the determination in lieu of the local authority under the provisions of N.J.S.A. 33:1-20. In light of the clear, concise language of the section, and the subsequent case law, the position taken is untenable.

Appellants further assert that N.J.S.A. 33:1-20 applies because the majority members of the Council had an indirect interest, in that, Campbell was and is a member of the Mt. Laurel Planning Board and Chairman of the Mt. Laurel Democratic Party (Club), of which the said Council members were and are also members. No allegation or claim is made that anyone held stock or financial interest in the licensee corporation other than Campbell; a fact sworn to by Campbell in the application and at the de novo hearing. Were it factually correct that Campbell was Chairman of the Mt. Laurel Democratic Club, it is as untenable as the prior argument and I reject it for the same reasons as stated above.

- III -

The final issue raised by appellants, a serious one and concerns the allegation of conflict of interest, collusion, discrimination and abuse of public trust, which they assert is apparent by the issuance of the license to TEC. The crucial issue revolves about the allegations of impropriety, favoritism, lack of impartiality and conflict of interest which, if established, would render the action of the Council voidable and subject to reversal.

It is well settled that bias and prejudice or improper motivation may not be presumed but must be established by convincing proof. Gentile v. Manalapan, Bulletin 1514, Item 2.

Beyond bare allegations made in the Petition of Appeal, and repeated throughout the hearing, no proofs were submitted. Appellants' rely solely upon inferences. Among them, the

coincidence of TEC'S notice of intention to apply for the available license and the Town's notice to the public that a new license is available appearing in the same issue of the newspaper. Were the allegation true, logic would dictate that great care would have been exercised to avoid any actions which would expose the participants in the commission of the improper act.

Campbell testified to the facts and circumstances which led him to conclude, earlier than the other applicants, that an additional license was about to become available. His testimony was credible and convincing. Surely TEC is not to be penalized for Campbell's constant attendance at Township Committee meetings. Too few citizens avail themselves of this right today. Nor should TEC be penalized because he is of the same political party as the majority of the Council members who voted to award this license to TEC.

I thus find that appellants have failed to meet the burden imposed upon it by N.J.A.C. 13:17.6 of establishing that the action of the Council was unreasonable, arbitrary or erroneous.

Accordingly, it is recommended that the action of the Council be affirmed and the appeal herein be dismissed.

Conclusions and Order

Written Exceptions to the Hearer's Report were filed by appellant, and written Answers thereto were submitted by respondent TEC Liquors and Thomas Campbell, pursuant to N.J.A.C. 13:2-17.14.

In its Exceptions, the appellant reiterates the argument advanced in its appeal that the filing of the advertisement for the issuance of a license by the successful applicant was premature. This argument was considered and correctly resolved by the Hearer in his report. I find this exception to be without merit.

Appellant also states that the application filed by TEC Liquors, Inc. was erroneous because, at filing, it did not have any legal right to the premises sought to be licensed. The application for the issuance of a new license is an instrument which evidences representations which must be accurate at the time a license is to be issued. At its filing, the applicant has no interest in a liquor license.

My review of the transcript indicates that, before the license was awarded to TEC Liquors, Inc., a binding assignment

and agreement of sale for the proposed situs of the licensed premises were executed, which thereby vested an equitable interest in the applicant for the premises sought to be licensed. Thus, I dismiss this Exception as lacking merit.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the written summations of the parties, the Hearer's Report, the written Exceptions filed by appellant, and the written Answers submitted thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 21st day of February, 1979,

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

JOSEPH H. LERNER
DIRECTOR

2. APPELLATE DECISIONS - ZALINSKI ENTERPRISES, INC. v. VINELAND.

Zalinski Enterprises, Inc. :
t/a Sue's Three Oaks, :
: Appellant, :
v. :
City Council of the City of :
Vineland :
Respondent. :

ON APPEAL
CONCLUSIONS
AND
ORDER

.....
Reuss, Spall & Cavagnaro, Esqs., by Carl W. Cavagnaro, Esq.
Attorneys for Appellant.
Robert F. Butler, 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 City Council of the City of Vineland (Council) which, on March 2, 1977 suspended appellant's license for twenty-one (21) days, effective April 14, 1978, upon a finding of guilt of a charge alleging that, on September 14, 1977 it allowed, permitted and suffered the sale of an alcoholic beverage to a person under the age of 18 years; in violation of Rule 1 of State Regulation No. 20 (now N.J.A.C. 13:2-23.1).

In its Petition of Appeal, appellant contends that its action was erroneous in that respondent failed to prove that the alleged person was under the age of 18 and that it failed to prove the charge by a preponderance of the evidence. In its Answer, the Council denies the substantive matters contained in the Petition of Appeal.

Upon the filing of the written appeal, suspension was stayed by Order of the Director dated March 31, 1978 pending determination of this appeal.

A de novo appeal was heard in this Division pursuant to Rule 6 of State Regulation No. 15 (now N.J.A.C. 13:2-17.6), with full opportunity afforded the parties to introduce evidence and to cross-examine witnesses. By stipulation of counsel, a transcript of the record of proceedings before the Council was accepted into evidence in lieu of further evidence presented at this hearing, pursuant to N.J.A.C. 13:2-17.8.

In testimony before the Council, Sandra Smith, employed as a County Sheriff's Officer, testified that, on September 14, 1977, she observed a male identified as Carlos A. exiting from appellant's licensed premises carrying a bag. After she followed Carlos for some distance, she confronted him and ascertained that the bag contained two quart bottles of beer. Carlos admitted purchasing the beer in appellant's premises.

Smith explained that in her capacity as a Sheriff's Officer she had been in contact with Carlos approximately a year and a half to two years ago, and that her last contact with him was approximately six months ago. Smith asserted that by reason of such contacts she knew that Carlos was 17 years of age on September 14, 1978.

Patrick Dougherty, employed as a Patrolman by the local police department, testified that, on September 14, 1977, he was summoned to meet Officer Smith relative to the subject investigation, he found that Smith had Carlos in custody. Carlos displayed a driver's license to the police officer which indicated to him that Carlos was 17 years of age. Upon interrogation, Carlos admitted that he purchased the alcoholic beverages at appellant's bar.

Carlos furnished Dougherty with a description of the bartender who served him the beer. Dougherty accompanied Carlos to appellant's premises. The bartender admitted selling the beer to Carlos.

On cross-examination, the Officer conceded that he did not recall the birthdate contained on Carlos's driver's license.

Although Carlos was subpoenaed to attend the hearing before the Council, he failed to appear.

At the de novo hearing held on June 6, 1978, this Hearer expressed his thinking that the sale of the alcoholic beverage had been proven but that he had a serious doubt concerning the establishment of the proof of age of the purchaser thereof. He then suggested that, inasmuch as the public interest was involved herein, the Council should be afforded an opportunity to subpoena the alleged minor at a supplemental hearing to be held by it, and that the de novo hearing would be adjourned for that purpose.

At the adjourned hearing, subsequently held at this Division, the attorney for the Council explained that he requested the police officer assigned to the subject proceeding to renew his efforts to locate Carlos. The officer reported that Carlos's last known address was in York, Pennsylvania, and that an attempt to locate him there was fruitless. Counsel further represented he was, therefore, unable to produce additional testimony herein in order to further establish the age of the alleged minor.

Although I am convinced that a sale of an alcoholic beverage has been established, I am not satisfied that the age of the purchaser thereof has been established by competent evidence. Therefore, I recommend that the action of the respondent be reversed, and that the charge against the appellant be dismissed.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed by the parties pursuant to N.J.A.C. 13:2-17.14.

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

Accordingly, it is, on this 1st day of March, 1979,

ORDERED that the action of the City Council of the City of Vineland be and the same is hereby reversed; and the charge herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

3. SEIZURES - ENUMERATED MISCELLANEOUS SEIZURE CASES.

- SEIZURE CASE NO. 13,533 - On March 25, 1977 on the New Jersey Turnpike, Mount Holly, alcoholic beverages, ordered forfeited.
- SEIZURE CASE NO. 13,563 - On July 16, 1977 at 19 Florence St., Englewood, alcoholic beverages, miscellaneous personal property and \$147.16 in cash and the sum of \$300.00 posted by claimant, ordered forfeited.
- SEIZURE CASE NO. 13,580 - On August 28, 1977 at 32 Willowdale Avenue, Montclair, alcoholic beverages and \$72.50 in cash, ordered forfeited.
- SEIZURE CASE NO. 13,587 - On September 17, 1977 at 20 Riverside Avenue, Little Ferry, alcoholic beverages, miscellaneous personal property and \$24.68 in cash and \$1,000.00 posted by owner of a boat marina, ordered forfeited.
- SEIZURE CASE NO. 13,597 - On October 6, 1977 at 50 Railroad Avenue, Summit, alcoholic beverages, miscellaneous personalty and \$61.22 in cash and \$2,000.00, posted by claimant, ordered forfeited.
- SEIZURE CASE NO. 13,589 - On September 18, 1977 at West Bergen Street and Willow Street, Red Bank, alcoholic beverages, soda, \$47.72 in cash and \$800.00, deposited by claimant, ordered forfeited.
- SEIZURE CASE NO. 13,603 - On October 26, 1977 at Brookside Square, Hillsboro Township, alcoholic beverages, miscellaneous personal property, \$56.39 and \$3,000.00, posted by claimant, ordered forfeited.
- SEIZURE CASE NO. 13,620 - On January 10, 1978 at 3422C Pemberton-Browns Mills Road, Pemberton Township, alcoholic beverages, miscellaneous personalty and \$370.70 in cash, ordered forfeited.
- SEIZURE CASE NO. 13,627 - On February 10, 1978 at Calabrese Way, Little Egg Harbor Township, alcoholic beverages and \$1,200.00, deposited by claimant, ordered forfeited.

- SEIZURE CASE NO. 13,635 - On March 17, 1978 at 1122 East Grand Street, Elizabeth, alcoholic beverages, miscellaneous personalty, \$500.00, deposited by claimant; \$300.00, deposited by claimant and \$117.62 in cash, ordered forfeited. \$250.00, deposited by claimant, ordered returned.
- SEIZURE CASE NO. 13,665 - On June 6, 1978 at Bechtel Construction Company, Lower Alloways Creek Township, alcoholic beverages, miscellaneous personalty and \$51.25 in cash, ordered forfeited. \$1,500.00 posted by owner of motor vehicle, ordered returned.
- SEIZURE CASE NO. 13,666 - On June 6, 1978 at Bechtel Construction Company, Lower Alloways Creek Township, alcoholic beverages, \$27.28 in cash and Dodge Pick-Up truck ordered forfeited with lien claim of Princeton Bank & Trust Company recognized in the sum of \$1,837.63, together with lawful accrued interest to be satisfied with proceeds from sale.
- SEIZURE CASE NO. 13,669 - On June 13, 1978 at 168 Fleming Avenue, Newark, alcoholic beverages, miscellaneous personal property, \$64.80 in cash, \$400.00 deposited by claimant, ordered forfeited. \$225.00, deposited by claimant, ordered returned.
- SEIZURE CASE NO. 13,680 - On July 18, 1978 at 22nd Avenue and 32nd Street, Paterson, alcoholic beverages, a 1968 Pick-Up Truck and \$20.50 in cash, ordered forfeited.
- SEIZURE CASE NO. 13,690 - On August 6, 1978 at 37 Paterson Street, Paterson, alcoholic beverages and personal property and sums of \$200.00 and \$150.00, deposited by claimants, ordered forfeited. \$350.00, deposited by claimant, ordered returned.
- SEIZURE CASE NO. 13,691 - On August 21, 1978 at Dock Road, South Brunswick Township, \$9.38 in cash and motor vehicle ordered forfeited. Alcoholic beverages ordered returned to innocent owner from whom it was stolen.
- SEIZURE CASE NO. 13,692 - On August 10, 1978 at 6319 Bergenline Avenue, West New York, alcoholic beverages, \$20.00 in cash and \$2,500.00, deposited by claimant, ordered forfeited.

4. LETTER OD DIRECTOR - RE REMOVAL OF CRIMINAL DISQUALIFICATION - DATE OF INITIAL CONVICTION TO BE USED TO CALCULATE BEGINNING OF STATUTORY PERIOD.

March 2, 1979

Mr. Adrian M. Unger
Newark, N. J. 07102

Re: Mr. Frank LaBate - 23457

Dear Mr. Unger:

This is in response to your letter dated February 20, 1979 requesting a determination as to the eligibility of Mr. Frank LaBate to apply for removal of his criminal disqualification.

N.J.S.A. 33:1-31.2 reads, in pertinent part:

"Any person convicted of a crime involving moral turpitude, may after the lapse of five years from the date of conviction, apply to the commissioner for an order removing the resulting statutory disqualification from obtaining or holding any license or permit under this chapter."
(Emphasis added)

The exact definition of the word "conviction" is critical, the dispositive issue here is whether a subsequent modification to a sentence by an appellate court changes the date of conviction.

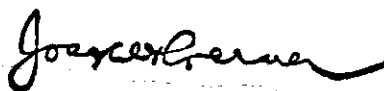
After a review of the applicable legal precedents and principles, I am of the opinion that the date of the entry of judgment of conviction by the trial court is the operative date for purposes of N.J.S.A. 33:1-31.2. The appeal of the sentence and the order of the Appellate Court modifying the sentence relate back to the date of conviction, and do not operate to change that date.

Therefore, it is my determination that five years have elapsed from the date of conviction and that Mr. LaBate is eligible to apply for removal of a criminal disqualification. In light of this determination, I deem it unnecessary for me to decide at this time any other issues raised in your letter.

JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATION FILED.

All World Brands, Inc.
120 Milik Street
Carteret, New Jersey
Application filed June 25, 1979
for plenary wholesale license.



Joseph H. Lerner
Director