

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 2306

December 28, 1978

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December 28, 1978

1. COURT DECISIONS - BLUE RIBBON INN OF IRVINGTON, INC. v. DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-436-77

BLUE RIBBON INN OF IRVINGTON, INC.
t/a BLUE RIBBON INN,

Appellant,

v.

DIVISION OF ALCOHOLIC BEVERAGE CONTROL
and JOSEPH H. LERNER, DIRECTOR of the
DIVISION of ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Submitted October 17, 1978 - Decided October 25, 1978

Before Judges Lora and Michels

On appeal from the order of the Director of the Division
of Alcoholic Beverage Control

Mr. Leon Sachs attorney for appellant (Mr. Hugh M. Blair on
the brief).

Mr. John J. Degnan, Attorney General of New Jersey, attorney
for respondent (Ms. Erminie L. Conley, Deputy Attorney
General, of counsel; Mr. Mart Vaarsi, Deputy Attorney
General, on the brief).

PER CURIAM

(Appeal from the Director's decision in Re Blue Ribbon Inn of
Irvington, Inc., Bulletin 2276, Item 3. Director affirmed.
Opinion not approved for publication by the Court Committee
on Opinions).

2. APPELLATE DECISIONS - GARRISON v. BRIDGETON.

Samuel T. Garrison &
Robert C. Garrison,
t/a Sam and Bob's Bar,

Appellants,

v.

City Council of the City
of Bridgeton,

Respondent.

ON APPEAL
CONCLUSIONS
AND
ORDER

Basil D, Beck, Jr., Esq., Attorney for Appellants.
Alan Harbert, 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 Bridgeton (Council) which, on June 21, 1977, denied appellants' application for renewal of their Plenary Retail Consumption License C-1, for the 1977-78 licensing period.

Appellants contend in their Petition of Appeal that the action of the Council was arbitrary, capricious, unreasonable and erroneous. The Council, in its Answer, denies the substantive allegations of the appellants' petition.

Upon filing of the appeal, an Order to Show Cause was entered by the Director on June 27, 1977, why the appellants' license should not be extended pending determination of the appeal. In addition thereto, an ad interim extension of license was granted to appellants pending the return date of the Order to Show Cause and further order of the Director.

A de novo hearing was held in this Division pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity afforded the parties to introduce evidence and cross-examine witnesses.

From the pleadings and informal discussion with counsel, it appears that the license ceased active operation in connection with

a licensed premises during the 1972-73 licensing period, as a consequence of urban renewal.

When the City Council renewed appellants' license for the 1976-77 license term, it imposed the following special conditions:

WHEREAS, said premises have been taken pursuant to condemnation proceedings by the Redevelopment Agency of the City of Bridgeton; and

WHEREAS, the Director of Alcoholic Beverage Control has ruled that under these circumstances, the municipality may renew the license subject to certain conditions.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Bridgeton that said license be renewed provided that said license shall not be issued or effective unless and until the following conditions are met:

1. The license is transferred to other suitable premises approved by Council on or before July 1, 1977.

2. If the said transfer is not granted within the above stated time, or any extension of time thereof granted by the Council or Division of Alcoholic Beverage Control, the said license shall not be renewed.

3. The renewed license shall not be issued but shall remain in the custody and control of the Council until such time as a transfer in conformance with the provisions of this resolution are made.

In June 1977, the City Council denied appellants' application for renewal, inasmuch as they did not comply with the prior year's special condition, which required that the license become active during that year. The denial is set forth in Resolution 237-76, dated June 21, 1977.

In the period between this resolution and the *de novo* hearing, the Legislature enacted Assembly Bill 1875 (Chapter 246, Laws of 1977, Approved and Effective October 3, 1977). This recent enactment, N.J.S.A. 33:1-12.39, provides:

No Class C license, as the same is defined in R.S. 33:1-12, shall be renewed if the same has not been actively used in connection with the operation of a licensed premises

within a period of 2 years prior to the commencement date of the license period for which the renewal application is filed unless the director, for good cause and after a hearing, authorizes a further application for renewal provided, however that, if the licensee has been deprived of the use of the licensed premises as a result of eminent domain, fire or other casualty, and establishes by affidavit filed with the director that he is making a good faith effort to resume active use of the license in connection with the operation of a licensed premises then the period of 2 years provided for in this section shall be automatically extended for an additional period of 2 years.

The Hearing Officer ruled that, pursuant to Walker v. New Jersey Department of Institutions and Agencies, 147 N.J. Super 485 (App. Div. 1977), and administrative agency decides an appeal with reference to the state of the law at the time of the resolution of the appeal and, as a consequence, Chapter 246 is applicable as it clearly states that it shall take effect immediately. Inasmuch as the legislature has removed jurisdiction in this circumstance from the local issuing authority, the only issue remaining is the good faith efforts made by the appellants to resume active use of subject license. Testimony concerning the Council's Resolution for the 1976-77 license term, was, therefore, precluded.

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Samuel T. Garrison, who, with his brother, Robert own the license, testified at the Division hearing that, during the 1972-73 licensing period, the then Mayor advised them that the Urban Renewal Agency was going to demolish the buildings in his area within three months and asked them to voluntarily close. This request was complied with, although no official advise, resolution or request was served upon or mailed to them.

The Urban Renewal Agency had prepared a scale model of the proposed redevelopment which included a motel-restaurant-cocktail lounge complex. Appellants were advised that they would have first option to reestablish their licensed business with regard to this aspect. The appellants requested, but were denied, permission to independently develop this type of operation in conformity with the proposed plan. Due to the inability to obtain financing, the planned redevelopment has not, to date, become reality.

In 1975, appellants became suspicious that the inability to obtain financing would prevent the realization of the redevelopment

plan, and actively sought to locate another suitable premise in which to site their license. They engaged Carl F. Bea, whom the witness characterizes as the most prominent realtor in Bridgeton, to seek out possible locations for a motel-restaurant-cocktail lounge complex. Several possible sites were inspected, all of which, for one of various reasons described, were unsuitable or not zoned for the uses intended. Garrison described them in detail, but for purposes of this report, repetition here is unnecessary.

In February, 1978, the Garrisons entered into a contract to purchase real property with the intention of constructing premises within which to relocate the license. A down payment of \$3,500.00 was given to the prospective sellers, the contract being contingent upon, among other things, obtaining necessary approvals.

Carl F. Bea, the realtor mentioned above testified in behalf of appellants at length, and in great detail, as to the various properties seen and rejected, or upon which offers were made but not accepted, as well as property currently being considered. From the numbers of properties and the details discussed, it was obvious that his organization worked long and diligently in an effort to obtain a suitable site.

Joseph A. McCulley, a councilman, gave testimony on behalf of the appellants as to local conditions relative to the city, the numbers of licenses not currently in use due to redevelopment, and the appellants attempts to relocate, insofar as they discussed the matter with the local issuing authority.

The respondent offered no witnesses in rebuttal.

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The sole issue to be considered at the de novo appeal is whether good faith efforts were made by licensee to relocate and resume active operation in accordance with N.J.S.A. 33:1-12.39.

Respondent argues that should this statute remove jurisdiction from the local issuing authority and vest it in the Director of the Division of Alcoholic Beverage Control, then, in that case, more than four years have already elapsed since the licensee ceased operations. Therefore, the maximum time allotted to a licensee has already been granted to appellant.

The statute is quite clear upon its face that its applicability is measured from the filing of an application for renewal of license and does not consider the length of time (beyond the requisite two years) that subject license was inactive prior to the hearing. See Special Rulings In the Matter of the Application for Extension of Renewal of Haledon Diner, Inc., inactive since May, 1975; In the

Matter of the Application for Extension of W.K. Reed Corp., inactive since December, 1974; In the Matter of the Application for Extension of Renewal of Frank Treska, Administrator of the Estate of Tekla Treska, deceased, inactive since 1972, all of which were favorably acted upon by the Director.

I find, as a fact, that the appellants have made good faith efforts to resume active use of the license in connection with the operation of a licensed premises. Thus, it has satisfied the statutory requirements as set forth in N.J.S.A. 33:1-12:39.

I, therefore, recommend that the action of the City Council of the City of Bridgeton denying appellants' application for renewal of its Plenary Retail Consumption License be reversed, and that an order be issued directing the renewal of subject license for the 1977-78 licensing term, nunc pro tunc.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14 (formerly Rule 14 of State Regulation No. 14).

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

I note that the appellants filed a second appeal (No. 4247) from the denial of renewal of their license for the 1978-79 license term, which is now pending in this Division. By Resolution of July 18, 1978, the City Council of the City of Bridgeton reconsidered its denial of renewal and granted the same, subject to the outcome of the appeal, sub judice. In consequence, contemporaneously herewith, I shall enter an Order dismissing the second appeal (Appeal No. 4247).

Accordingly, it is, on this 24th day of October, 1978,

ORDERED that the action of the City Council of the City of Bridgeton be and the same is reversed; and it is further

ORDERED that the City Council of the City of Bridgeton be and the same is hereby directed to renew Plenary Retail Consumption License No. 1601-33-026-001 issued to Samuel T. Garrison and Robert C. Garrison, t/a Sam and Bob's Bar, for premises at 19-21 Broad Street, Bridgeton for the 1977-78 license term, nunc pro tunc, as of July 1, 1978.

JOSEPH H. LERNER
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - SALE TO MINORS - LICENSE SUSPENDED FOR 20 DAYS - FINE IN LIEU OF SUSPENSION PERMITTED.

In the Matter of Disciplinary Proceedings against

D & R Spirits of North Caldwell, Inc. 33 Bloomfield Avenue North Caldwell, N.J.

CONCLUSIONS AND ORDER

Holder of Plenary Retail Distribution License D-1, issued by the Mayor and Council of the Borough of North Caldwell.

Piltzer & Piltzer, Esqs., by David S. Piltzer, Esq., Attorneys for Licensee. Sherman T. Brewer, Esq., Deputy Attorney General, Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

Licensee pleads "not guilty" to a charge alleging that, on Friday, May 27, 1977, it sold alcoholic beverages, or permitted the delivery of alcoholic beverages to two minors, Robert M---, age 16 and Randall S---, age 17; in violation of Rule 1 of State Regulation No. 20.

In behalf of the Division, Robert M--- testified that he was born on February 11, 1961, and is a student at the local high school. On May 27, 1977, he entered the car of Randall S--- and they drove to a parking lot adjoining the subject licensed premises, a packaged goods establishment. Upon entering alone, he ordered, paid for and received two six-packs of Michelob (beer) from a male clerk in the premises whom he identified at the hearing. The male clerk identified himself as Robert McDermott.

After acquiring the beer, the two youths drove to a parking lot of a local industrial park: they parked the car and walked into the nearby woods, carrying the beer with them. They drank from one bottle of beer when they were apprehended by a policeman who brought them to police headquarters. The youths identified the place where the beer had been obtained and gave the police a statement indicating the source of the purchase of the beer.

Randall S--- testified that he was born on November 4, 1959. On the evening of May 27, 1977, while driving his mother's car, he picked up his friend, Robert M--- and, in a short time, arrived at the parking lot of the licensee's premises. He gave Robert money to obtain two six-packs of beer. He did not attempt to make the purchase himself, explaining that:

Well, I didn't think that I would get served any place, so he suggested that he thought he might have been able to get served at the North Caldwell, for what reason I don't know.

After the purchase of the beer, he drove the car to an industrial area, parked, and walked into the woods. One bottle of beer was opened and both boys sipped from it. The package of beer was secreted under a tree and the boys continued walking on the path until a police squad car arrived.

Police Officer Jack Hartwick next testified in support of the charge. He was on duty on the evening of May 27, 1977 when he received a radio call to go to the industrial park to investigate two suspicious males who had entered the woods carrying a package. Upon arrival, he saw the boys and one of them lead the officer to the package of beer. At police headquarters, Robert M--- identified the source of purchase of the beer as the subject licensee.

ABC Agent V also testified in support of the charge. In June, 1977, he conducted an investigation into this alleged sale of alcoholic beverages to the two minors. He visited the Roseland Police Headquarters and conferred with Officer Hartwick and the two youths. He took statements from the boys. They identified the subject licensed premises as the place where the beer was obtained. He described their identification of the subject licensed premises as having been given with reluctance, in that the boys did not wish to cause the liquor store difficulty.

In the conduct of his investigation ABC Agent V entered the subject premises alone to fix the location of the cooler and the counter, which had been described by the youths in their statements. The purpose of these observations was to determine how the description of the interior, or references to the interior, in the youth's statements comported with the observations made.

The owner's husband, Robert McDermott, testified in defense of the charge. He works in these premises, particularly on Fridays, from morning to ten o'clock at night. He had two assistants helping him on Friday evening. He denied that the minor Robert M--- had been in the store at all. He explained that the business custom was to insert a sales tag or slip into the bag containing each purchase.

Edward Carew and William Macowski, clerks employed in the licensed premises, testified that they made no sale to Robert M---. Carew acknowledged that he could have been outside the premises making deliveries part of the evening in question.

This is a disciplinary proceeding which is civil in nature and not criminal. In re Schneider, 12 N.J. Super. 449 (App. Div. 1951). Thus the proof must be supported by a fair preponderance of the credible evidence. Butler Oak Tavern v. Div. of Alcoholic Beverage Control, 20 N.J. 373 (1956). The guiding rule in these matters is that the finding must be based on competent legal evidence, and that it must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

The sharp factual conflict presented by the evidence herein makes the issue of credibility of critical importance. Testimony to be believed, must not only proceed from the mouth of a credible witness, but must be credible in itself. It must be such as the common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 546 (1954).

I have had the opportunity to observe the demeanor of the witnesses as they testified at this hearing, and have been able to evaluate and assess such testimony. I am persuaded that the testimony of the minors, buttressed by that of the police officer and the Division Agent, is both credible and forthright and stands in a much more favorable light than that of the licensee's witnesses.

The spontaneity of identification of the licensee's premises as the source of the beer, made by the youths directly upon their arrest, and the description of the interior, coupled with the apparent reluctance to inculcate the licensee itself, gives wide credence to the testimony of both youths.

On the other hand, I do not attach credence to the testimony of McDermott, His blatant assertion that he could identify every patron of his establishment, including strangers, is not believable.

I find that the Division's evidence does establish the charge based upon a reasonable certainty as to the probabilities arising from a fair consideration of the said evidence, and I recommend that the licensee be found guilty as charged, insofar as it refers to the minor, Robert M---, solely. I further recommend that part of the charge which refers to the minor, Randall S---, be dismissed.

Licensee has no prior adjudicated record. I further recommend that the license be suspended for twenty days.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed by the licensee or the Deputy Attorney General representing the Division, pursuant to N.J.A.C. 13:2-19.6.

I have reviewed the entire record herein, concur with the findings and recommendations of the hearer, and adopt them as my conclusions herein.

Thus, I find the licensee guilty of the charge insofar as it relates to sale to one minor, Robert ---, for which a twenty day suspension would be imposed.

The licensee however, now makes application for the imposition of a fine in lieu of suspension of license in accordance with the provisions of Chapter 9 of the Laws of 1971.

Having favorably considered the application in question, I have determined to accept an offer in compromise by the licensee to pay a fine of \$1,875.00 in lieu of suspension of license for twenty days.

Accordingly, it is, on this 4th day of October, 1978,

ORDERED that the payment of a \$1,875.00 fine by the licensee be and the same is hereby accepted in lieu of suspension of license for twenty (20) days.

JOSEPH H. LERNER
DIRECTOR

4. APPELLATE DECISIONS - TABERNACLE BAPTIST CHURCH ET ALS. v. IRVINGTON ET AL.

Tabernacle Baptist Church, A New Jersey Corporation,
 Charles Johnson, Daisy Johnson,
 Marth Maske, Dolores Blard,
 Carol Gardner, Jr., & Ronald Howard,
 Appellants,
 v.
 Municipal Council of the Town of Irvington and Stanley Szostek
 t/a Westbrook Farms,
 Respondents.

ON APPEAL
 CONCLUSIONS
 AND
 ORDER

 Owen and Harris, Esqs., by Ronald Owen, Esq., Attorneys for Appellants.
 Salvatore Muscato, Esq., Attorney for Respondent, Town of Irvington.
 Samuel Wolf, Esq., Attorney for Respondent, Westbrook Farms.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

HEARER'S REPORT

This is an appeal from the action of the respondent, Mayor and Council of the Town of Irvington (Council), which, on November 9, 1977, granted a person-to-person and place-to-place transfer of Plenary Retail Distribution License D-8, from premises 748 Springfield Avenue to its new owner, Stanley Szostek, t/a Westbrook Farms, (Westbrook) for premises at 649 18th Avenue, Irvington.

In their Petition of Appeal, appellants (hereinafter Church) contend that the action of the Council was erroneous in that (a) the maximum distance from licensee's premises and one of the entrances to the Church is 120 feet; and, therefore, violative of the minimum 200 feet proscription set forth in N.J.S.A. 33:1-76; (b) there are sufficient establishments presently in operation in the vicinity to serve the public; and (c) the Council failed to afford reasonable notice and opportunity to appellants to be heard at the hearing below.

The respondent Council, in its Answer, denies the substantive allegations contained in the appellants' Petition of Appeal, and sets forth, as separate defenses: (a) it held a public meeting at which time none of the appellants were present to voice their objections; and (b) the Council exercised its judgment in accordance with the duties imposed upon it, and granted the application by a unanimous vote of those present (five), there being two absent members.

Respondent, Westbrook, in its Answer, denies the substantive allegations contained in the appellants' Petition of Appeal.

A de novo appeal was heard in this Division, pursuant to N.J.A.C. 13:2-17.6 (formerly Rule 6 of State Regulation No. 15), with full opportunity provided the parties to introduce evidence and to cross-examine witnesses.

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Arthur Jelinski, employed by the Town of Irvington as its Licensing Inspector, testified on behalf of respondent. He authenticated a series of photographs he took of the front (20th Street) and rear (21st Street) doorways of the Church, some time after snow had fallen in February, 1978. The photographs graphically corroborate his testimony that:

(A). the rear (21st Street) entrance gate is chained and secured by a padlock;

(B). the rear entrance door contained a sign, which appears permanent in nature, stating "Please use 20th Street Entrance";

(C). the rear entrance sidewalk and stairs leading to the door are snow covered without any indication that anyone had walked upon it or disturbed it in any manner; and

(D). the front (20th Street) entrance gate is open, and snow can be seen heaped in piles adjacent to the pavement. Concededly, a new, light snow had recently fallen, lightly covering the pavement and stairs; nonetheless, the results of prior shoveling are clearly visible.

Stanley Szostek, the proprietor of Westbrook Farms, next testified on behalf of respondent that the business is basically a del-

icastessan type of food operation. He is familiar with the area, having maintained his business at this and a prior, nearby, site for at least eighteen years. He at one time resided in the area. From his observations, the Irvington (21st Street) door is not used as an entrance. The Church members enter and exit the building from the Newark (20th Street) side.

Reverend William Irving, Pastor of the Church, testified in support of the appellant that, because of the nature of this type of operation by the licensee (a food store), children would normally be sent there by their parents to purchase food and thus would be exposed to liquor. He distinguished this from a tavern or package store, where young children would not be expected to be present. On direct examination he was asked:

Q. "Now, do you use both entrances?"

A. Yes, we do during the summer months, and when it's like it is now (winter weather) we don't use but one."

The pastor further produced a petition signed by approximately one hundred (100) parishioners in opposition to the transfer.

On cross-examination he stated the Church letterhead lists the Newark (20th Street) side as its address, and that the rear (21st Street) door has not been used in the cold weather during the ten years he has been Pastor.

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It is stipulated by the parties that the measurement of distance from the proposed transfer situs to the 20th Street door exceeds two hundred (200) feet, but is within two hundred (200) feet of the 21st Street door.

The well-settled principle governing this Division's function on appeal from the action of the local issuing authority is expressed in Paul v. Brass Rail Liquors, 31 N.J. Super 211, 214, (App. Div. 1954), wherein it was held:

The issuance, renewal and transfer of a liquor licenses rest in the sound discretion of the issuing authority and its action will not be judicially disturbed in the absence of a clear abuse of discretion. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Twp. Council of the Twp. of Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

The following expressions from the recent case of Margate Civic Assoc. v. Board of Commissioners, Margate, 132 N.J. Super. 58, 63

(App. Div. 1975) are pertinent:

The responsibility for the administration and enforcement of the alcoholic beverage laws relating to the transfer of a liquor license from place-to-place or to cover enlarged premises is primarily committed to municipal authorities. N.J.S.A. 33:1-19, 24; Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Con., Newark, supra (55 N.J. 292 (1970)). Local boards considering applications for such transfers are invested by our Legislature with wide discretion, and their principal guide in making a determination is the public interest. Id., 303; Lublimer v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). See Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955).

Once the local board has made its determination the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control who conducts a de novo hearing of the appeal, making the necessary factual and legal determinations on the record before him. Fanwood v. Rocco, 33 N.J. 404, 414 (1960).

However, the rule is well established that the Director will not substitute his judgement for that of the local board, or reverse the ruling if reasonable support for it can be found in the record. On judicial review the court will generally accept the Director's factual findings as well as his ultimate determination unless unreasonable or illegally grounded. Lyons Farms Tavern v. Mun. Bd. Alc. Bev. Con., Newark, supra at 303; Fanwood v. Rocco, supra at 414-415.

N.J.S.A. 33:1-76 provides that no license shall be issued for the sale of alcoholic beverages within two hundred (200) feet of any church or school, It further states that the two hundred (200) feet shall be measured in the normal way 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.

From the testimony of witnesses and the photographs submitted, I find that the 21st Street doorway is not an entrance, as defined by the statute and, subsequent case law. Clearly, it is used only during the warm weather, and then, according to the testimony, only as an exit and as a means of cooling the interior. The posted sign and photographs graphically illustrate the Church's own determination and intent regarding the use of this doorway.

The law is clear that the doorway must be an entranceway in the usual sense. Sovat, Inc. v. Atlantic City, et als Bulletin 2189, Item 1; Presbyterian Church v. Division of Alcoholic Beverage Control, 53 N.J. Super 271, 280-81 (App. Div. 1958).

- III -

Regarding the allegation that there are sufficient establishments presently in operation in the vicinity to serve the public, I must assume that the Council considered this and determined, to the contrary, that it was in the best interest of the community to grant the transfer to the site. I further find no competent evidentiary basis to conclude that such determination by the Council was erroneous.

The Director's function, as previously indicated, on appeals of this kind, is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion, and if so, to affirm irrespective of his personal views. Willner's Liquors v. Irvington, Bulletin 1192, Item 2 and cases cited therein. See also Larijon, Inc. v. Atlantic City, Bulletin 1306, Item 1; Bertrip Liquors, Inc. v. Bloomfield, Bulletin 1334, Item 1.

- IV -

Lastly, appellants alleged denial of a reasonable opportunity to be heard before the Council. This claim arises out of the fact that the objectors' attorney wrote the Council advising that he had been retained and asked to be kept informed of anything relative to the subject application for transfer.

N.J.S.A. 33:1-26 requires the publication of a notice of intention to apply for a transfer. Similarly, the Division Rules and Regulations, N.J.A.C. 13:2-7.1 et seq provides for the notice requirements in applications to transfer a license.

No individual may, by his own act, attempt to establish more stringent rules upon the local issuing authority than those imposed by the Legislature and the Director of the Division of Alcoholic Beverage Control. I find, as a fact, the publication of the required notice was complied with under the statute and Division regulations.

- V -

I conclude the the appellants have failed to sustain the burden imposed upon them under N.J.A.C. 13:2-17.6 (formerly Regulation No. 15) of establishing that the action of the Council was erroneous and should be reversed.

It is, therefore, recommended that an Order be entered affirming the action of the Council and dismissing the appeal.

CONCLUSIONS AND ORDER

No written Exceptions to the Hearer's Report were filed pursuant to N.J.A.C. 13:2-17.14 (formerly Rule 14 of State Regulation No. 15).

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

Accordingly, it is, on this 24th day of October, 1978,

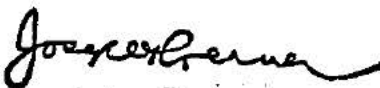
ORDERED that the action of the Municipal Council of the Town of Irvington be and the same is hereby affirmed, and the appeal herein be and is hereby dismissed.

JOSEPH H. LERNER
DIRECTOR

5. STATE LICENSES - NEW APPLICATIONS FILED.

Paterno Imports, Ltd.
2701 S. Western Avenue
Chicago, Illinois
Application filed December 11, 1978
for wine wholesale license.

Alfred Lowe Distributors Inc.
654 Rahway Avenue
Union, New Jersey
Application filed December 14, 1978
for wine wholesale license.


Joseph H. Lerner
Director