

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1111

MAY 10, 1956

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STATE OF NEW JERSEY
Department of Law and Public Safety
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1060 Broad Street Newark 2, N. J.

BULLETIN 1111

MAY 10, 1956.

1. COURT DECISIONS - NEIDEN BAR & GRILL, INC. ET AL. v. NEWARK
ET ALS. - ORDER OF DIRECTOR AFFIRMED.

NEIDEN BAR AND GRILL, INC.,)
and GRANT LUNCH CORPORATION,)
Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC)
BEVERAGE CONTROL OF THE CITY)
OF NEWARK, IRVING GOLD and)
ISSIE'S TAVERN, INC.,)
Respondents.)
-----)

Argued March 26, 1956. Decided April 16, 1956.

Before Judges Clapp, Jayne and Francis.

Mr. Daniel G. Kasen argued the cause for the Appellants.
(Messrs. Kasen, Schnitzer & Kasen, Attorneys.)

Mr. Samuel B. Helfand, Deputy Attorney General, argued
the cause for Respondent, Division of Alcoholic
Beverage Control. (Mr. Grover C. Richman, Jr., Attorney
General.)

Mr. Sidney S. Jaffe argued the cause for Respondent,
Issie's Tavern, Inc.
(Messrs. Milton M. and Adrian M. Unger, Attorneys.)

The opinion of the Court was delivered by

FRANCIS, J.A.D.

The Municipal Board of Alcoholic Beverage Control of the City of Newark approved the transfer of a plenary retail consumption liquor license from Irving Gold to Issie's Tavern, Inc., a New Jersey corporation. The license related to premises at 308-312 Market Street, Newark, New Jersey. Appellants, competitors in the area, opposed the transfer on the ground that Issie Chernichaw, president and principal stockholder of Issie's Tavern, Inc., is not a fit person to hold a liquor license. The approval was reviewed by the Division of Alcoholic Beverage Control where, after a de novo hearing, the Director affirmed the local board. Further appeal is now pursued in this court.

In order to obtain a transfer of a license of the type involved here, the transferee must qualify as an original licensee. N.J.S.A. 33:1-26. Under N.J.S.A. 33:1-25, to obtain a retail license a person must be a citizen of the United States and a resident of New Jersey at the time of submission of the application. He cannot qualify if under twenty-one years of age, if he has been convicted of crime involving moral turpitude or twice convicted in a court of criminal jurisdiction of violation of the Alcoholic Beverage Control Act. A corporation meets the requirements of the statute if each direct or indirect owner of more than 10% of its stock comes up to the legislative standards prescribed for an individual applicant.

At the hearing before the local board, appellants did not undertake to show that Chernichaw lacked any of these statutory attributes. Rather, in order to sustain the claim that he was not a fit person, evidence was adduced to indicate that in the course of operating another tavern he had engaged in certain "deceptive" practices when selling drinks over the bar. The schemes need not be described in detail. It is sufficient to say, for purposes of illustration, that Chernichaw's advertising stimulated the thought in the customer's mind that the purchase of a double drink or a "double-double hooker" -- as it was delicately and euphoniously called -- would make him the beneficiary of a bargain -- a quantity discount. But the Director, a quantitative analyst and an iconoclastic mathematician, discovered that the double drink contained twice the content of a single drink at twice the price, and the "double-double hooker" contained four times the quantity of a single drink at four times the price. The illusion of a bargain having been thus shattered, the Director banned the project. Under the regulations, any practice which is designed or tends to encourage unduly a desire for the purchase of over the bar drinks is condemned as not in the public interest. Chernichaw yielded and no disciplinary action was taken against him.

However, appellants, being wary of such an ingenious mind in a competitor, and fearful that he would ignore the Director's injunction, or worse yet, devise a new and better "mouse trap" which might make their patrons beat a path to his door, charged that the public interest would be served only by a judgment declaring his unfitness to be the transferee of the license in question. But neither before the local board nor before the Director was any substantial evidence adduced to establish that Chernichaw intended to engage in prescribed practices at the new address.

In granting the transfer, the municipal commissioners who heard the matter said:

"After carefully considering all the evidence and the facts and circumstances in this case, Commissioner Walsack and I decided that the application for a person to person transfer should be approved. We could find no sound or reasonable basis for denying this application for transfer."

"It was only the testimony of several objectors who assumed that the applicant would operate a cut rate establishment and by so doing would create a situation in the Market Street area that would be dangerous and undesirable."

On appeal to the Director, the cause was heard de novo. N.J.S.A. 33:1-22; 33:1-39; Rule 6, Regulation 15 of the Division of Alcoholic Beverage Control; Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N. J. Super. 598 (App. Div. 1955); Gino v. Driscoll, 130 N. J. L. 535 (Sup. Ct. 1943). However, the additional testimony taken did not add to the substance of the record made at the municipal level.

The Director likewise sanctioned the transfer of the license. In the conclusions filed, he said:

"No testimony was introduced to indicate that Mr. Chernichaw does not meet the statutory qualifications (R. S. 33:1-25) nor was his personal reputation impugned. On the contrary, it appears that Mr. Chernichaw has been

identified with liquor licenses for about twenty years, during which time no disciplinary proceedings were instituted against him or the corporate licensees in which he was a principal shareholder. The grounds upon which appellants predicate their objections to the transfer of the license in question are speculative. The evidence fails to establish that Mr. Chernichaw is unfit to hold a license or to be a stockholder in a corporate licensee.
* * * ."

The notice of appeal which brings the matter to us properly seeks a review of the "final decision of the Director * * * in granting" the transfer. But the only ground of appeal urged in the brief is that the approval should be reversed because of the failure of the Municipal Board to make findings with respect to the objections raised there.

We incline to the view that the board properly characterized the appellants' objections as mere assumptions that trade practices inimical to the public interest would be engaged in by Issie's Tavern, Inc., upon approval of the license transfer. In any event, postulating a duty to make findings and that they were not made, we fail to see that any prejudice resulted which would justify a reversal.

The order of the municipal board is not the subject of this appeal. It was taken, and necessarily so, from the action of the Director. His review was plenary and resulted in independent findings and decision. And nowhere is it suggested that his conclusion was not justified by the evidence.

In the administrative hierarchy created by the statute for the conduct of such proceedings, the Director provides the final agency review. His findings and decision enterly supersede the action taken at the original hearing level. Khachadorian's Case, 329 Mass. 625, 110 N. E. 2d 115 (1953); Wall v. Registrar of Motor Vehicles, 329 Mass. 70, 106 N.E. 2d 425 (1952); Marshall v. Registrar of Motor Vehicles, 324 Mass. 468, 469, 87 N. E. 2d 7, 8 (1949); McLean's Case, 323 Mass. 35, 80 N. E. 2d 40, 42 (1948); Haves v. Joseph E. Seagram & Co., 222 Ind. 130, 52 N. E. 2d 356 (1944); DiClavio's Case, 293 Mass. 259, 199 N. E. 732, 733 (1936); 73 C.J.S., Public Administrative Bodies and Procedure, § 159c, p. 503.

Apparently realizing the vulnerability of their position, appellants filed a reply brief which in substance attacks the adequacy of the Director's findings. Passing the question as to whether the new note can be injected into the appeal at this late stage, examination of them satisfies us that they sufficiently dispose of the merits of the case.

The order is affirmed.

2. APPELLATE DECISIONS - BRIGHTON HOTEL COMPANY v. WILDWOOD.

BRIGHTON HOTEL COMPANY,
trading as JONE'S KORNER,
Appellant,

-vs-

BOARD OF COMMISSIONERS OF THE
CITY OF WILDWOOD,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Charles Sandman, Esq. and Marvin D. Perskie, Esq., Attorneys
for Appellant.

No appearance on behalf of Respondent.
Jonathan W. Acton, Esq., Attorney for Objectors.

BY THE DIRECTOR:

Appellant herein filed with respondent an application to transfer its Plenary Retail Consumption License C-46 (with broad package privilege) from 3511 Pacific Avenue to premises to be constructed at the southeast corner of Rio Grande and Susquehanna Avenues, Wildwood.

Respondent Board is composed of three members. Mayor W. Harry Steele, Jr. (one of said members) is disqualified from acting upon any alcoholic beverage matters because he is a liquor licensee. On February 9, 1956, the other two members of respondent Board conducted a public hearing upon appellant's application and, at the close of the hearing, adopted the following resolution:

"WHEREAS, application was made by the BRIGHTON HOTEL CORPORATION for a transfer of Plenary Retail Consumption License No. C-46 to premises being the southeasterly corner of Rio Grande and Susquehanna Avenues, and

"WHEREAS, public hearing was held before the Alcoholic Beverage Control Issuing Authority of the City of Wildwood at City Hall on February 9, 1956, before George W. Krogman and Bernard W. Maxwell, the Issuing Authority as aforesaid, and

"WHEREAS, the Honorable George W. Krogman having heard testimony and considered all the other evidence and not being satisfied that public convenience and necessity will be served by the granting of the transfer of said license, and the Honorable Bernard W. Maxwell having likewise heard the testimony and considered all other evidence and being satisfied that public convenience and necessity will be served by the granting of the transfer of said license, and by virtue of such determination by the Alcoholic Beverage Issuing Authority of the City of Wildwood, no decision for or against the granting of the application of transfer can be made.

"NOW, THEREFORE, BE IT RESOLVED by the Alcoholic Beverage Issuing Authority of the City of Wildwood that the transfer of said license can not be granted by reason of division of opinion."

For the reasons set forth in Higgins v. Elizabeth, Bulletin 1081, Item 5, the action taken by respondent Board is equivalent to a denial of the application and an appeal to the Director may properly be taken from said action.

Prior to the hearing herein, the City Attorney for the City of Wildwood advised me that, because of "the clear indication of impasse which exists in the local issuing authority", he has not been authorized to take any action on behalf of respondent. No answer was filed by respondent and no attorney appeared at the hearing to represent respondent. Jonathan W. Acton, Esq. appeared at the hearing as attorney for some individual objectors and introduced into evidence a petition containing the names of one hundred ten residents of Wildwood, which petition stated that the signers objected to the transfer for reasons which may be summarized as follows:

- (1) There are sufficient licensed establishments in the area;
- (2) The proposed establishment would increase traffic congestion and would be detrimental to the general character of the neighborhood;
- (3) The previous manner of operation of appellant's premises makes it undesirable for this type of establishment to invade this neighborhood.

The attorney for objectors also produced as witnesses at the hearing Commissioner Krogman and Joseph Schipani and the testimony of both of these witnesses is hereafter considered.

On behalf of appellant, William Jones, Jr., president of appellant corporation, testified that appellant has operated under a plenary retail consumption license at 3511 Pacific Avenue for the past five years; that the corporation's lease of said premises terminated on January 1, 1956; that it has permission to remain at said premises until May 1, 1956, and that it cannot obtain a renewal of its lease. Mr. Jones further testified that appellant corporation has entered into an agreement with Ward H. Bright and wife to buy an irregular plot of ground running eighty feet along Rio Grande Avenue and two hundred feet along Susquehanna Avenue opposite the Wildwood Yacht Basin; that a prospectus and floor plan for buildings consisting of a liquor store, restaurant with bar and twenty-eight motel units to be erected on said plot had been filed with the application for transfer, and that the plans for construction of these buildings have since been completed. It further appears from Mr. Jones' testimony that the restaurant will have a seating capacity of one hundred sixty; that licensed premises known as the Rio Grande Cafe are located on the opposite corner of Rio Grande and Susquehanna Avenues; that there are no other licensed premises within two full blocks, and that the nearest restaurant is more than two-fifths of a mile from appellant's proposed premises. It was stipulated that the location to which appellant seeks to transfer its license is about twenty blocks from the premises for which appellant now holds a license.

At the hearing held herein three other witnesses testified on behalf of appellant that there was need for a licensed restaurant at the location to which appellant seeks to transfer its license. One of these witnesses was Henry L. Hayes, who has a home less than three blocks from the location and who is president of Schooner Island Yacht Club located at the Wildwood Yacht Basin. Another of these witnesses was William L. F.

Fitzpatrick, a realtor, who testified that the section is sparsely settled and "leans towards being commercial." The third witness was Ward H. Bright, who has owned the Wildwood Yacht Basin since 1927 and who testified that "during the past Summer we catered to around two and three hundred yachts at the yacht basin permanently berthed" and that commercial chartered boats "unload, approximately, well, close to 2,000 people on a Friday, Saturday and Sunday on that corner." This witness also testified that appellant will have an easement on a portion of the land owned by him sufficiently large to park over two hundred automobiles.

On behalf of the objectors, Commissioner Krogman testified that he voted to deny the application because he believes the area to which transfer was sought is adequately served by the present licensed places and because of the attitude of the people who reside in that area. He admitted that the area is essentially commercial and is generally undeveloped except along Rio Grande Avenue. Joseph Schipani testified that he operates a tavern three blocks from the proposed location and that "we have enough licenses there."

After carefully considering the testimony and briefs filed herein, I conclude that appellant has shown a definite need for a licensed restaurant at the location to which it seeks to transfer its license. There appears to be ample area for parking at said location and there is a complete absence of evidence that appellant has improperly conducted its business at its present location. The attorney for objectors alleges in his brief that the persons whose names appeared in the petition did not appear to testify at the hearing herein because they received no notice of the date thereof. However, it appears from the record that no objectors, except Mr. Schipani, testified at the hearing held before the local Board. Under these circumstances, little weight can be given to the petition. For the reasons aforesaid, the action of the Board in failing to grant the application for transfer will be reversed. Cf. Aloha, Inc. v. Belmar, Bulletin 1100, Item 9.

Accordingly, it is, on this 5th day of April, 1956,

ORDERED that the action of the respondent be and the same is hereby reversed, and respondent is ordered to grant the transfer applied for, if and when the licensed premises are completed in accordance with the plans and specifications filed with respondent.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - THE FLORENCE METHODIST CHURCH ET ALS. v. FLORENCE AND CHRISTY (ORDER AMENDING AMENDED ORDER).

THE FLORENCE METHODIST CHURCH,)
 et als.,)
 Appellants,)
 -vs-)
 TOWNSHIP COMMITTEE OF THE)
 TOWNSHIP OF FLORENCE, and)
 GERTRUDE CHRISTY,)
 Respondents.)

ON ORDER TO SHOW CAUSE
ORDER FURTHER AMENDING
AMENDED ORDER

 George Pellettieri, Esq., Attorney for Petitioner-Respondent,
 Gertrude Christy.
 Martin J. Queenan, Esq., Attorney for Respondent Township
 Committee.
 Dimon, Haines and Bunting, Esqs., by John E. Dimon, Esq.,
 Attorneys for Appellants.

BY THE DIRECTOR:

By amended order dated March 8, 1956, I amended the final paragraph of the original Conclusions and Order herein to read as follows:

"ORDERED that said License No. C-7 be cancelled, effective 2:00 a.m. May 4, 1956, unless before said date said Township Committee shall, in its discretion, grant a transfer of said license to a qualified person for other premises, in which event said license shall be in full force and operation as soon as the transfer is endorsed on the face of the license certificate."

Mrs. Gertrude Christy has presented to me an affidavit, duly sworn to on April 2, 1956, wherein she alleges, among other things, that she has endeavored to obtain a prospective transferee of said license for other premises in accordance with the provisions of the original and amended orders herein, and that her efforts have been unavailing. She further alleges that she has entered into a contract with one Augustine Bonatz whereby he has offered to pay a substantial sum of money for the purchase of the premises known as 1 Front and Broad Streets, Florence, and the business formerly conducted at said address, provided that the license transfer be approved to said Augustine Bonatz for said premises. She further alleges that the prospective purchaser intends to use only the first floor of the premises for the sale and consumption of alcoholic beverages, and that the remaining floors will be used as rental units by carefully selected tenants. She requests that the orders heretofore entered herein be further amended to permit Augustine Bonatz to apply to the Township Committee for the transfer of the license to him for premises known as 1 Front and Broad Streets, Florence.

The principal intent of the original order herein was to prevent the further operation of the privileges of the license by Gertrude Christy, and that result was accomplished prior to February 3, 1956. The requirement that the permissible application must be "for other premises" was inserted to prevent the possibility that Gertrude Christy or her husband might continue to have an undisclosed interest in the license. If there is an outright sale of the property and business to a qualified person,

and the license is transferred to such person by the Township Committee, the possibility that a "front" situation might continue to exist would be eliminated. I have decided to grant the further relief requested by striking the words "for other premises" from the amended order and by changing the date "May 4, 1956" therein to "May 18, 1956" so that the Township Committee may have sufficient time to investigate the application for transfer. The person applying for transfer must, of course, comply with the provisions of R. S. 33:1-26 and State Regulations No. 6. Appellants herein and all other interested persons will have an opportunity to be heard by the Township Committee if they decide to file written objections with the Township Clerk to the application for transfer.

Accordingly, it is, on this 5th day of April, 1956,

ORDERED that the amended order entered herein on March 8, 1956 be further amended to read as follows:

"ORDERED that said License No. C-7 be cancelled, effective 2:00 a.m. May 18, 1956, unless before said date said Township Committee shall, in its discretion, grant a transfer of said license to a qualified person, in which event said license shall be in full force and operation as soon as the transfer is endorsed on the face of the license certificate."

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - MAURONE v. CINNAMINSON TOWNSHIP AND SHEA.

| | | |
|------------------------------|---|-----------------------|
| DOMENICK MAURONE, JR., |) | |
| Appellant, |) | |
| -vs- |) | ON APPEAL |
| |) | CONCLUSIONS AND ORDER |
| TOWNSHIP COMMITTEE OF THE |) | |
| TOWNSHIP OF CINNAMINSON, and |) | |
| JOHN N. SHEA, |) | |
| Respondents. |) | |

 Salvatore J. Avena, Esq. and Neil F. Deighan, Jr., Esq.,
 Attorneys for Appellant.
 Parker, McCay & Criscuolo, Esqs., by Robert W. Criscuolo, Esq.,
 Attorneys for Respondent Township Committee.
 Walter L. Smith, Jr., Esq., Attorney for Respondent Shea.

BY THE DIRECTOR:

This is an appeal from the action of respondent Township Committee whereby it granted a new plenary retail distribution license to respondent John N. Shea for premises to be constructed on the northwest side of State Highway No. 130 approximately 1709 feet from the intersection of said highway and Highland Avenue, Township of Cinnaminson.

The petition of appeal alleges, in substance, that the action of the Township Committee was erroneous because:

- (a) The application by respondent Shea is fatally defective because no right to possession of the property is indicated;

- (b) The application refers to plans and specifications filed with the Township Clerk but no specifications were in fact filed;
- (c) The Township Committee, in authorizing the issuance of the license to respondent Shea, abused its discretion.

It appears that on September 13, 1955, the Township Committee, which then consisted of three members (Mayor Brennan, Commissioner Durboraw and Commissioner Stover) adopted an ordinance authorizing the issuance of one plenary retail distribution license and that only one such license may presently be issued in the Township because of the provisions of R. S. 33:1-12.14.

During the months of September and October, 1955, applications for the license thus authorized were filed with the Township Committee by appellant, respondent Shea, Rocco Boratelli, Frank Schenk, and a Mr. Deshield who died before any action was taken on his application. Exercising commendable judgment, the three members of the Township Committee interviewed each of the first four applicants named above on November 28, 1955. At the opening of these interviews Mayor Brennan stated that it had been established that none of the applicants has a criminal record and, thereafter, each applicant was questioned as to the location of his premises, his arrangements for financing his business and his sole interest in the business. These interviews were taken stenographically and transcribed and the transcript has been introduced as an exhibit herein. At the hearing herein Commissioner Durboraw testified that two meetings concerning the qualifications of the applicants were arranged to be held on later dates but that he was unable to attend the meeting on December 5 and Mayor Brennan was unable to attend the meeting on December 12. The Township Committee took formal action upon the pending application at its regular meeting held on December 13.

A certified copy of the minutes of the regular meeting of the Township Committee held on December 13, 1955, discloses that the following action was taken as to the pending applications:

"Mr. Durboraw moved that the Deshields Estate be sent the check in full that was deposited with Mr. Deshield's application for a liquor license. Mr. Stover seconded the motion. So ordered unanimously. Mr. Brennan then moved that since Mr. Deshields was deceased, that Mr. John Shea be awarded with a liquor license. Mr. Stove seconded the motion as Mr. Shea has the best location of all the applicants. Mr. Durboraw objected on the grounds that the other proposals; also that the applications were never examined and discussed as the first meeting called was postponed and the second one Mr. Brennan was absent; and lastly, according to the solicitor's findings the application submitted by Mr. Shea is not in order in a legal sense. The vote was as follows: Mr. Stover-aye, Mr. Brennan-aye, Mr. Durboraw-Nay. So ordered. Mr. Brennan instructed the Clerk to notify the others that they were denied their applications because none were available."

As to (a) and (b): The application filed by respondent Shea disclosed that on the date the application was filed he did not own the premises to be licensed but that they were owned by Harry E. Shea and Mary T. Shea, his wife. Attached to

said application are complete "Plans for Cinnaminson Liquor Store to be constructed on U. S. Route #130" including thereon "General notes" which sufficiently set forth specifications for the building to be erected. At the interviews held on November 28, John N. Shea told the members of the Township Committee that he had a written agreement with his father and mother (Harry E. Shea and Mary T. Shea) to sell to him the parcel of land referred to in the application. Before the conclusions of the interviews he produced a written agreement, dated September 15, 1955, between said parties. At the hearing herein there was introduced into evidence a deed dated December 12, 1955, and duly recorded December 16, 1955, whereby Harry E. Shea and Mary T. Shea conveyed to John N. Shea a plot of ground being 100 feet wide on Highway 130 and 200 feet deep, which I am satisfied are the premises mentioned in the application.

It is well established that an applicant for a liquor license must have possession, a right to possession of, or interest in the premises sought to be licensed. Richwine v. Pennsauken, Bulletin 1045, Item 2. However, there is no requirement as to the quantum of such interest provided the applicant has a colorable claim to possession and control of the premises. Rittinger v. Bordentown et al., Bulletin 547, Item 10. This is especially true where the applicant has obtained the right to possession of the premises prior to the date on which an appeal is decided. Segal et al. v. Clifton et al., Bulletin 732, Item 3. Under the circumstances, I find that reasons (a) and (b) in the petition of appeal are without merit.

As to (c): In Giberti v. Franklin et al., Bulletin 150, Item 3, which was one of the earliest cases involving a selection between qualified applicants, Commissioner Burnett said that it was the duty of the issuing authority to consider both applications and to make its choice based on public, not on private, considerations. The same principle has been consistently applied in subsequent cases. Matweishyn et al. v. Hillside et al., Bulletin 783, Item 1; Kugler v. Lindenwold et al., Bulletin 784, Item 1; Sauer v. Readington et al., Bulletin 1069, Item 3. In the present case appellant's premises and Shea's premises are both on Highway 130 and the premises of the two other applicants are located elsewhere in the Township. Highway 130 runs from one end of the Township to the other end (a distance of about four miles) and is heavily traveled. There are three motels near the Maurone property, and a number of new housing developments not far from the Shea property. At the hearing Mayor Brennan testified that he felt that Shea's would be the "best spot" for the license, and Commissioner Stover testified that, in his opinion, the issuance of the license to Shea "would best serve public necessity and convenience in the township." Commissioner Durboraw testified that he felt the Committee had never gone over the qualifications of the applicants but, apparently, the other two members thought otherwise. On cross-examination Commissioner Durboraw stated that he did not think there was any substantial distinction between the Maurone and Shea properties so far as public convenience is concerned. Despite the fact that Mayor Brennan admitted that he had stated he would not vote in favor of the Maurone application "subject to pressure", I am satisfied that no member of the issuing authority was improperly motivated.

Although not specifically mentioned in the petition of appeal, evidence was introduced at the hearing to establish that the issuance of the license to respondent Shea would violate a local zoning ordinance. The property in question is located in a "specially restricted commercial district." Section 1002 of

the Zoning Ordinance provides that in such a district the area of the lot shall not be less than 60,000 square feet and the width of the lot not less than 200 feet at the building line. However, at a regular meeting held on March 27, 1956, the Township Committee (which now consists of five members) granted to John N. Shea a variance recommended by the Zoning Board of Adjustment for the erection of a building 20 feet by 40 feet on the property owned by him. It thus appears that at the present time no violation of the Zoning Ordinance is involved.

The burden of proof to establish that the action of the Township Committee was erroneous rests with appellant. Rule 6 of State Regulations No. 15. After considering the evidence herein and the briefs submitted, I conclude that appellant has not sustained the burden of proof herein. Hence I shall affirm the action of the Township Committee.

Accordingly, it is, on this 17th day of April, 1956,

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

WILLIAM HOWE DAVIS
Director.

5. STATE REGULATIONS NO. 34 - EXAMINATION BY WHOLESALERS OF PRICE "POST-OFFS".

Gallo Wine Sales of New Jersey, Inc.
Newark 5, N. J.

April 5, 1956.

Gentlemen:

This acknowledges your letter of April 2, 1956 in connection with the interpretation of revised State Regulations No. 34, new Rule 9, subdivision (b) providing for inspections of amended prices to retailers.

You state that it is your understanding that a wholesaler may examine price "post-offs" only of other wholesalers who sell the same brand of wine and that the opportunity for inspection is afforded so that the wholesaler may further amend his prices to meet price competition of another wholesaler selling the same brand. You state that you further understand that a wholesaler may not examine prices of another brand of wine being sold in the state during this "post-off" inspection period.

As I indicated in our recent conference, your understanding is correct. Since a wholesaler may amend or further amend his price listing to meet a higher or lower and competing price listing filed by another wholesaler with respect to alcoholic beverages of the same brand or trade name and of like age, quantity and unit container size, he may inspect only prices for products for which he is one of a number of listers. Since the inspection provision was designed for this limited purpose, it is obvious that inspection of prices of other brands or trade names is unnecessary for that purpose.

Very truly yours,
WILLIAM HOWE DAVIS
Director.

6. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTIONS TO ISSUANCE HELD TO BE MERITORIOUS - APPLICATION FOR ISSUANCE DENIED.

In the Matter of Objections to)
 the Issuance of a State Beverage)
 Distributor's License to)
 MICHAEL KOSTIC)
 t/a KOSTIC BEVERAGE CO.)
 Box 232, Black Horse Pike)
 Cecil)
 P. O. Williamstown, R.D. 1, N.J.)

CONCLUSIONS

 Michael Kostic, Applicant, Pro se.
 Leo J. Berg, Esq., Attorney for Objector, State Beverage Distributors' Association.
 Samuel Moskowitz, Esq., Attorney for Objectors, New Jersey Retail Liquor Stores Association and South Jersey Retail Liquor Stores Association.

BY THE DIRECTOR:

Written objections to the issuance of the license having been filed with me, a hearing was duly scheduled to be held. Rule 11 of State Regulations No. 1.

Several objectors appeared and testified that the area in which the applicant intended to distribute unchilled malt beverages is already well supplied with liquor outlets. Under the circumstances, it was their contention that there is no present need or necessity for the issuance of a state beverage distributor's license for the premises in question.

The applicant testified that he is engaged in the business of delivering soft drinks to customers who reside in various municipalities; that although none of the customers inquired about the particular brand of beer he intended to distribute "they said it was satisfactory with them if I would deliver it"; that he would sell both at wholesale and at retail; that the brand of beer he intended to handle could be sold at a price below that usually charged for premium beer; and that he was aware that at least twelve other distributors of beer service the area wherein he expected to distribute malt beverages.

The evidence presented herein on the part of the applicant is insufficient to convince me that a new state beverage distributor's license should be issued to him. I am satisfied that there are enough alcoholic beverage outlets of all types to adequately supply the needs of those who desire to purchase unchilled malt beverages in the area mentioned. Hence, the application filed herein for a state beverage distributor's license will be denied.

WILLIAM HOWE DAVIS
Director.

Dated: March 29, 1956.

7. STATE BEVERAGE DISTRIBUTOR'S LICENSE - OBJECTION TO ISSUANCE HELD TO BE MERITORIOUS - APPLICATION FOR ISSUANCE DENIED.

In the Matter of Objections to)
the Issuance of a State Beverage)
Distributor's License to)

THOMAS F. HEHIR)
t/a TOM'S BEVERAGE DISTRIBUTING)
SERVICE)
103, Libertyville Road)
Wantage Township, N. J.)

CONCLUSIONS

Thomas F. Hehir, Pro se.
Libertyville Church, Objector, by William Kvale, Pastor.
Samuel Moskowitz, Esq., Attorney for Objectors North Central
Counties Retail Liquor Stores Association and New Jersey
Retail Liquor Stores Association.
Leo J. Berg, Esq., Attorney for Objector State Beverage
Distributors' Association.
Edward F. Smith, Jr., Esq., Attorney for Objector Sussex
County Tavern Owners Association.
Sidney Simandl, Esq., Attorney for Objector United Tavern
Owners Association of New Jersey.

BY THE DIRECTOR:

Written objections to the issuance of the license having been filed with me, a hearing was duly scheduled to be held. Rule 11 of State Regulations No. 1.

At the hearing the objectors alleged that there are a number of liquor outlets in the area so that there is no public need or necessity for the issuance of a state beverage distributor's license for the premises in question.

The applicant testified that for approximately two and a half months he has owned a soft drink business and delivers to fifty or sixty customers; that he has made no arrangements for the supply of malt beverages to him; and that he is of the opinion that there is a need for another state beverage distributor's license in the area wherein he presently operates.

The evidence herein indicates that there are a number of liquor licensees who sell beer in the same area in which the applicant intends to conduct his business.

Under the circumstances, there appears to be no public need or necessity for the issuance of an additional state beverage distributor's license for the premises in question. Hence, the application will be denied.

WILLIAM HOWE DAVIS
Director.

Dated: April 2, 1956.

8. APPELLATE DECISIONS - L. B. COMPANY, INC. v. NEWARK.

L. B. COMPANY, INC.,)

Appellant,)

-vs-)

MUNICIPAL BOARD OF ALCOHOLIC)

BEVERAGE CONTROL OF THE CITY)

OF NEWARK,)

Respondent.)

ON APPEAL
CONCLUSIONS AND ORDER

-----)
Leo J. Berg, Esq., Attorney for Appellant.

Vincent P. Torppey, Esq., by James E. Abrams, Esq., Attorney
for Respondent.

Van Y. Clinton, Esq., Attorney for Objectors.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for transfer of the plenary retail distribution license held by it from premises 28 Park Place to a building to be constructed at 117 Watson Avenue, distant a mile or more from the Park Place location.

The parties hereto submitted in evidence the transcript of the proceedings before the local issuing authority pursuant to Rule 8 of State Regulations No. 15, and presented additional evidence at the hearing herein.

The petition of appeal alleges that the action of respondent was erroneous in that (a) no similar license is situated within 750 feet of the proposed licensed premises; (b) public need and convenience warranted the availability for residents of the proposed licensed area to purchase packaged liquor other than in an establishment operating under a plenary retail consumption license; (c) said action constituted an abuse of sound discretion.

The Chairman of the Board, at the conclusion of the hearing below, announced that the sole question involved in the case is whether a public benefit and welfare would be served by adding an additional license in that particular vicinity; that it was not a hardship case wherein the property is being taken over by the Public Housing Authority; and that, after carefully considering all the evidence in the case, the Board concluded that the applicant had not sustained the burden of proof in so far as public necessity and public convenience are concerned and that, therefore, the application is denied.

The respondent in its answer alleges that the grounds upon which the issuing authority made its decision were based upon the factual testimony before the Board.

The evidence presented establishes that Watson Avenue extends a distance of 2,300 feet and is mostly a business area. A tavern with the privilege of selling package goods in a portion of the licensed premises other than the public barroom, otherwise designated as having a "broad package privilege", is located at 53 Watson Avenue, about 790 feet east of, and another tavern is located at 159 Watson Avenue, about 575 feet west of, such proposed premises. In the area of what is described as six blocks there are three taverns and a licensed

package store located at various points on Hawthorne Avenue which parallels Watson Avenue at a distance of about 1,000 feet, and there are four taverns at various points on Bergen Street which intersects Watson Avenue about 750 feet from the proposed premises.

A petition in favor of the transfer (signed by eight property owners and eighty-three tenants), a petition opposing such transfer (signed by approximately 115 persons) and many letters opposing transfer were presented. An officer of the corporation and one witness appeared in person to testify in favor of the granting of the transfer. Four witnesses testified in objection to the transfer. Three tenants, all residing in one apartment house, were present and were represented as available to testify on behalf of appellant. Twenty-four property owners and sixteen tenants were present and were represented as available to testify in opposition to such transfer.

A member of the City Council, not a resident of the area, in objection to the transfer testified that he is well acquainted with the neighborhood and is much concerned because, in his opinion, the area is well supplied with liquor licenses; that another license would be detrimental to the plan for improving the neighborhood.

Reference was made before the issuing authority to the fact that appellant had made application for a transfer of its license to 121 Watson Avenue some three months previous and that such application had been denied. The secretary-treasurer of the corporate licensee was asked to explain why it persisted in again seeking transfer to practically the same location, and upon what grounds this witness based his opinion that public need and necessity would be served by the present application in face of the previous strenuous opposition by objectors. In other words, what reasons had he to believe that such persons would patronize the premises if the transfer was granted. His reply was that, while he did not believe that they would be good customers, he would influence them to do business with them.

At the hearing on appeal the secretary-treasurer merely added that he had surveyed other locations in the City of Newark and was unable to find any other location wherein the nearest package store was as far removed as here.

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. The transfer of a license in a municipality from one section to another section containing other licenses may result in unsatisfactory conditions sufficient to warrant denial of the transfer. Herbert H. Levine, Inc. v. Harrison, Bulletin 1032, Item 1, and cases cited therein.

In determining whether a plenary retail distribution license should be transferred to a particular location, a local issuing authority may properly take into consideration the number of plenary retail consumption licenses existing in the vicinity. Moschera v. Plumsted, Bulletin 1075, Item 8.

The weight to be accorded to petitions for or against a transfer of a license is entirely within the discretion of the issuing authority. Rothman v. Hamilton, Bulletin 1091, Item 1.

In the instant case the local issuing authority concluded for the second time in the space of a few months that appellant had not established that the public need and convenience would be served by the transfer of the license to the area in question. It is to be noted that no appeal was taken by appellant from the first denial. The ten existing licenses in the area and the considerable number of objections by residents of the neighborhood appear to furnish a substantial basis for that conclusion. The fact that the proposed location would be more than 750 feet from the nearest similar license -- a requirement of the pertinent municipal ordinance -- does not automatically entitle appellant to the transfer nor does it per se create an inference that there is a public need or necessity for a liquor license at such location. Market Liquor Store Corp. v. Newark, Bulletin 1005, Item 2.

In an appeal to the Director the burden of proof to establish that the action of respondent Board was erroneous rests with appellant. Rule 6 of State Regulations No. 15.

I have considered the entire record and briefs of counsel and conclude therefrom that appellant has failed to sustain the burden of proof to establish that the action of the Board was arbitrary or constituted an abuse of its discretionary power. I shall, therefore, affirm the action of the respondent Board.

Accordingly, it is, on this 17th day of April, 1956,

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

WILLIAM HOWE DAVIS
Director.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Paruta Wine Co., Inc.

51 Market St., Paterson, N.J.

Application filed May 3, 1956 for transfer of Plenary Winery License V-20 from Dominick M. Paruta, t/a Paruta Wine Co., 51 Market St., Paterson, N.J.

Rahway Valley Company, Lessee

Entire railroad from Aldene & Roselle Park, N.J. to Summit & Maplewood, N.J. with freight stations at Kenilworth, N.J.

Principal office: Boulevard & Market St., Kenilworth, N.J.

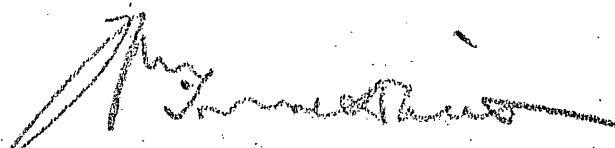
Application filed May 4, 1956 for Transportation License.

Stanley Ashmen, Albert Wasilauski & Albert Till

t/a Beverage Delivery Service

W/S of Delsea Drive opposite Hillside Ave., Westville, N.J.

Application filed May 4, 1956 for Transportation License.



William Howe Davis
Director.