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STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1910 June 12, 1970

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1910 June 12, 1970

1. APPELLATE DECISIONS - CITY HALL BAR & GRILL (A CORP.) v. NEWARK.

City Hall Bar & Grill (a corp.), Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark, Respondent.	)	

A. William Sala, Jr., Esq., Attorney for Appellant.
Ronald Owens, 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 respondent Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter Board) which by resolution dated October 8, 1969 suspended appellant's plenary retail consumption license for premises 882 Broad Street, Newark, for sixty days effective October 20, 1969, after finding appellant guilty in disciplinary proceedings of possessing or allowing, permitting and suffering the possession of lottery slips on its licensed premises in violation of Rule 7 of State Regulation No. 20.

Appellant in its petition of appeal alleges that the action of the Board was erroneous because it was based on insufficient evidence, against the weight of the evidence, and "based upon bias and prejudice."

The answer of the Board admits the jurisdictional facts and denies the substantive allegations of the petition. It defends that its decision was based upon the factual testimony from which it "in its sound discretion, concluded that the penalty imposed substantiated such action."

Upon the filing of this appeal an order was entered by the Director on October 17, 1969 staying the Board's order of suspension until the entry of a further order herein.

This matter was presented on appeal solely upon the stenographic transcript of the proceedings held before the Board, pursuant to Rule 8 of State Regulation No. 15.

The record reflects the following: Pursuant to an investigation of a complaint of alleged gambling and bookmaking at the subject premises, Detective Louis P. Maiorano, fortified

with a search warrant and accompanied by two other detectives of the local Police Department, made a search of the premises on March 17, 1969 at about 12:15 p.m. At the extreme end of the bar, between the bar and a brace on the service side of the bar, he found five slips of paper which he identified as horse race betting slips totaling the sum of $108. Nicholas Stokes (president of the corporate appellant) was then engaged as a bartender and was the only bartender performing such duties at that time. The officer informed Stokes of the fact that these slips were found behind the bar near some empty beer bottles. Stokes denied any knowledge of the said slips.

Nicholas Stokes (president of the corporate appellant) gave his version of what happened as follows: He had arrived on this occasion at the licensed premises about five minutes prior to the entry of the police officers and had relieved his son who had been theretofore tending bar. There were about thirty or thirty-five patrons, and at the time of the arrival of the police he was the only one tending bar. When the police officers found the slips they searched him and took $65.60 which he had in his possession. He insisted that he had no knowledge of any horse race slips on the premises, "I don't bet myself, and I am no bookmaker." He feels that this raid resulted from a grudge that somebody must have had against him. On cross examination he admitted that he has been suspended in disciplinary proceedings on two prior occasions -- one for an "after-hours" violation and the second on a charge of permitting gambling on the licensed premises.

Emil Pettronella (the landlord of the property where the premises are located) testified that in his opinion Stokes has a good reputation.

In the consideration of this matter the Board had an opportunity to observe the demeanor of the witnesses as they testified and were apparently convinced that the licensee permitted and suffered the custody or possession of horse race bet slips on the licensed premises.

From my evaluation of the testimony I am satisfied that the Board could reasonably have reached the conclusion that it did, after assessing the credible evidence presented. The burden of establishing that the Board acted erroneously and in abuse of its discretion is upon the appellant. The ultimate test in these matters is one of reasonableness on the part of the Board. Or, to put it another way, could the members of the Board, as reasonable men, acting reasonably, have come to their determination based upon the evidence presented. The Director should not reverse unless he finds that "... the act of the board was clearly against the logic and effect of the presented facts." Hudson Bergen, &c., Assn v. Hoboken, 135 N.J.L. 502, 511; cf. Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957).

Appellant argues that the charge was instituted because of a grudge which somebody held against the licensee. However, there is not the slightest scintilla of evidence to sustain that allegation, nor is there any evidence that manifests any bias or prejudice on the part of the members of the Board. The fact is that these slips were found behind the bar and the Board reasonably felt that they were in the possession or custody of Stokes or some other agent or

employee of the appellant. It is unreasonable to believe, under all of the circumstances, that some patron hid those slips behind the bar.

My examination of the facts and the applicable law generates no doubt that this charge was established by a preponderance of the credible evidence. I conclude that the appellant has failed to sustain the burden of establishing that the Board's action was erroneous and against the weight of the evidence, as required by Rule 6 of State Regulation No. 15.

It is therefore further recommended that an order be entered affirming the Board's action, dismissing the appeal, and fixing the effective dates for the suspension of the license imposed by the Board.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 10th day of April 1970,

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

ORDERED that Plenary Retail Consumption License C-505, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to City Hall Bar & Grill (a corp.), for premises 882 Broad Street, Newark, be and the same is hereby suspended for sixty (60) days, commencing at 2 a.m. Thursday, April 23, 1970, and terminating at 2 a.m. Monday, June 22, 1970.

RICHARD C. McDONOUGH
DIRECTOR

2. APPELLATE DECISIONS - GOREE v. HOBOKEN.

Ann Goree, Appellant,	)	
v.	)	On Appeal
Municipal Board of Alcoholic Beverage Control of the City of Hoboken, Respondent.	)	CONCLUSIONS and ORDER

John D. McAlevy, Esq., Attorney for Appellant.
E. Norman Wilson, Esq., by William J. Miller, 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 respondent Municipal Board of Alcoholic Beverage Control of the City of Hoboken (hereinafter Board) which by unanimous resolution adopted June 18, 1969 denied appellant's application for a place-to-place transfer of her plenary retail consumption license from premises 201 Hudson Street to premises 1126 Hudson Street, Hoboken, for the period expiring June 30, 1970.

The resolution states the reasons for its action as follows:

> "Because of the character of the neighborhood and the objections filed by a number of residents and the lack of proof for need of a tavern at this location and, furthermore, of the vagueness of this application; namely, no plans, no specifications, no measured distance, lack of approval by Fire Department, lack of approval by Building Inspector and lack of approval by Board of Health, this Board has no alternative except to deny the application."

In her petition (inartistically drawn by the appellant, without benefit of counsel) she sets forth that she filed the application for the said transfer because her present licensed premises "had been torn down". She then proceeds to set forth purported answers to the reasons expressed in the resolution. She admits that there are inadequate parking facilities; that the proposed new premises do not meet the requirements set forth by the Fire, Health and Police Departments, and that her license was suspended in disciplinary proceedings for serving a person who was apparently intoxicated, in violation of Rule 1 of State Regulation No. 20. She denies, however, that the proposed new premises are in a residential area and asserts that the same are located in an industrial area.

The answer generally denies the allegations of the petition and sets forth eight separate defenses which in

effect restate and supplement the reasons set forth in the subject resolution. In addition, the Board asserts that the appeal was filed out of time since it was filed more than thirty days after the action complained of. It further defends that the transfer was denied because it was in violation of the pertinent city ordinance. Finally it asserts that the application was opposed by two hundred sixty-six residents of the neighborhood who were signatories to a petition and some of whom testified at the hearing before the Board.

This appeal was based upon the transcript of the proceedings before the Board, in accordance with Rule 8 of State Regulation No. 15, and an opportunity was afforded the parties herein to present additional testimony at this plenary de novo hearing.

I

The separate defense of the Board which asserts that the appeal herein was filed beyond the time permitted for such filing is in my judgment a complete and dispositive defense to this action. The record shows that the appellant first served a copy of the notice and petition of appeal on the Board on July 23, 1969 and filed the said notice of appeal on that date with this Division. Rule 3 of State Regulation No. 15 requires that appeals from the denial of a transfer must be taken within thirty days after the service of notice by the municipal issuing authority of the action appealed from. Rule 2 of State Regulation No. 15 states that the appellant shall first serve a copy of the notice and petition of appeal upon the respondent issuing authority and the notice and petition of appeal, together with an acknowledgment or affidavit of service, shall then be filed with the Director forthwith. To the same effect, see R.S. 33:1-26. Since the appellant was served with the said notice on June 18, 1969, her filing of the appeal more than thirty days after the date of said service upon her takes the appeal out of time.

In Hess Oil & Chem. Corp. v. Doremus Sport Club, 80 N.J. Super. 393, 396, the court stated:

> "...Enlargement of statutory time for appeal to a state administrative agency lies solely within the power of the Legislature, Borough of Park Ridge v. Salimone, 21 N.J. 28, 47 (1956), affirming 36 N.J. Super. 485 (App. Div. 1955), and not with the agency or the courts, Scrudato v. Mascot S. & L. Assn., 50 N.J. Super. 264, 270 (App. Div. 1958)."

Concluded the court in that case:

> "Since the appeal was untimely, the Division acted properly in refusing to hear it. Indeed, the Division had no jurisdiction to accept the appeal [citing cases]."

I therefore conclude that the appeal herein was taken out of time and that the Director is without jurisdiction to consider the same. Handon and Coward v. Newark et al., Bulletin 1764, Item 1.

II

Notwithstanding the above finding, supplemental testimony was taken with respect to the substantive merits. I find from an examination of the totality of the evidence, including the transcript of testimony before the Board, the transcript of the testimony at this de novo hearing, and the exhibits, that the action of the Board was a reasonable and proper exercise of its discretion. The city's ordinance adopted May 5, 1966, commonly known as the "500 Ft. Ordinance", authorizes the Board in its discretion to grant the transfer of such license to premises within a distance of five hundred feet from other premises. However, the Board determined that, because the proposed new premises consisted of a vacant store which had theretofore been used as a storage facility and did not comply with the requirements of the Health, Police and Fire Departments, it did not choose to approve the said application for transfer. Furthermore, the Board was satisfied on the basis of testimony that the proposed new location was in a strictly residential zone in which were located multi-family apartment houses harboring many children; that there were no parking facilities (Zelko v. Hillside et al., Bulletin 1315, Item 1), and that such transfer would have unduly increased the number of taverns in that area. Dew Drop Inn v. Hopewell Township, Bulletin 1335, Item 1.

Furthermore, no plans and specifications were submitted by the appellant with the Board for the proposed uncompleted building. Rules 2 and 4 of State Regulation No. 6; Memorial Presbyterian Church v. Vineland et al., Bulletin 1336, Item 2. Finally the Board noted with deep concern the objections of neighbors who testified at the hearing before it to the said transfer and of petition signed by some two hundred sixty-six residents of the neighborhood objecting to the transfer for the substantial reasons set forth therein. Local sentiment in opposition to such transfer is a compelling consideration and the Board, which may be assumed to have a more intimate awareness of the needs and interests of the neighborhood in relation to a projected increase in liquor traffic, found that the paramount equities favoring the objectors were reasonably grounded. See Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (Sup. Ct. 1970).

The Director's function on appeal 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 view. Lekas & Paroby v. Newark, Bulletin 1802, Item 2.

After carefully considering the totality of the evidence and the exhibits, I conclude that the Board acted circumspectly and in the best interests of the community in denying appellant's application for a place-to-place transfer. It is therefore recommended that an order be entered affirming the action of respondent Board and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein

and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of April 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

3. APPELLATE DECISIONS - MESS ET ALS. v. KEANSBURG AND LIGHTHOUSE BEACH, INC.

Philip Mess et als., Appellants, v. Municipal Council of the Borough of Keansburg, and Lighthouse Beach, Inc., Respondents.	On Appeal CONCLUSIONS and ORDER

Benjamin Gruber, Esq., Attorney for Appellants
Howard A. Roberts, Esq., Attorney for Respondent Municipal Council
DeMaio & Yacker, Esqs., by Stanley Yacker, Esq., Attorneys for Respondent Lighthouse Beach, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Municipal Council of the Borough of Keansburg (hereinafter Council) whereby it granted a person-to-person and place-to-place transfer of a plenary retail consumption license from Ruth Mazzeo to Lighthouse Beach, Inc. (hereinafter licensee) and from premises Beachway and Pineview Avenue to premises located on Shore Boulevard, Keansburg. Two of the three members of the Council (one being absent from the meeting) voted to grant the application for transfer.

Appellants allege in their petition of appeal that the action of the Council was erroneous for the following reasons:

1. The premises are located in a residential zone known as R-1, which is the highest residential area in the Borough of Keansburg.

2. The licensee does not have a Certificate of Occupancy for the building to which it sought the transfer.

3. The Zoning Ordinance prohibits the operation of a tavern in the R-1 residential zone.

4. The transfer of said license will create a hazardous condition and will be a threat to the safety of the residents of the area.

5. The Municipal Council abused its discretion and acted unreasonably.

The Council in its answer admits the allegations in paragraphs 2 and 3 and denies the allegations in the remainder of the paragraphs aforesaid. It asserts that the licensee's application was approved "subject to a variance being obtained" and contends that its action was not arbitrary, capricious or unreasonable.

Licensee's answer is substantially similar to the answer of the Council but, with reference to paragraph 2 above, it denies the allegation therein contained.

On June 4, 1969, the Council adopted the following resolution:

> "WHEREAS, Lighthouse Beach, Inc., a corporation of the State of New Jersey has heretofore on April 28, 1969, filed an application for a transfer of a Plenary Retail Consumption License previously held by Ruth Mazzeo, to said corporation and has furthermore applied for a transfer of said license from premises located at Beachway and Pineview Avenues to premises known as Lighthouse Beach, Keansburg, New Jersey, and Shore Boulevard, and
>
> "WHEREAS, the application form for said transfer is in the proper form and the proper certified check has been received by the Borough Clerk, and
>
> "WHEREAS, publication of said proposed transfer was made in the Long Branch Daily Record on April 28, 1969, and May 5, 1969, and
>
> "WHEREAS, an investigation of the applicant and the principals of the corporation has been made by the Department of Police of the Borough of Keansburg, which Department has reported to the Borough Clerk that the application is in order, and
>
> "WHEREAS, the Borough Council held a public meeting on May 7, 1969, at which time the Municipal Council acknowledged that objections to the said transfer had been received and accordingly scheduled a public hearing on the proposed transfer for May 21, 1969, and
>
> "WHEREAS, on the said date of May 21, 1969, objectors represented by Benjamin Gruber voiced objection to the proposed transfer on the basis that a variance had not yet been granted for the use of the premises for the sale of alcoholic beverages, and

"WHEREAS, on the said public hearing date Stanley Yacker, attorney for the applicant indicated that a license was a natural adjunct to a beach club and that (1) the applicant did not need a variance and (2) if a variance was necessary, a variance would be required from the local Board of Adjustment,

"NOW THEREFORE, be it resolved by the Borough Council of the Borough of Keansburg that the Borough Council reviewed the application, heard the arguments, pro and con, for the proposed transfer as expressed at the public hearing, and has further reviewed and considered all the facts and circumstances surrounding the proposed transfer and does, therefore, make the following findings of fact:

"1. The license is presently in the name of Ruth Mazzeo at premises known as Beachway and Pineview Avenues and the license has not been operated for several years inasmuch as there is no building located at that site.

"2. The applicant proposes to use the license in conjunction with the operation of a pool and beach club together with snack bar.

"3. The Borough Council has reviewed the plans submitted in conjunction with the application and finds the location of the bar to be acceptable and desirable with regard to the uses to be made of the license in conjunction with the beach club.

"4. The Borough Council finds as a fact that the use of the liquor license at the premises is a natural adjunct to a swimming club and beach club together with snack bar and restaurant and finds that it will be of service to the patrons of said beach club.

"5. The Borough Council finds that as a fact the license in this area will not work an economic hardship on other licenses in the area.

"6. Borough Council further finds that the location of the license in this area will not increase the traffic from what it will be with the beach club and snack bar heretofore previously approved by the Zoning Board of Adjustment and will not be detrimental to the public safety.

"7. Borough Council further finds that the use of the license at the premises will not be detrimental to the public welfare and will not change the atmosphere of the surrounding properties from that which will exist once the beach club is constructed,

"BE IT FURTHER RESOLVED by the Borough Council of the Borough of Keansburg that for the reasons above stated the application for the transfer of the license presently owned by Ruth Mazzeo for premises at Beachway and Pineview Avenue to Lighthouse Beach, Inc. and to premises at Shore Boulevard wherein the

swimming pool and beach club is proposed be and it is hereby approved subject to the applicant obtaining a variance for operation of same and to the construction of the building for the housing said license in accordance with the plans and specifications annexed hereto and a Certificate of Occupancy being issued for the premises by the Building Inspector of the Borough of Keansburg, and the Borough Clerk is hereby directed not to issue the license until such time as such Certificate of Occupancy has been issued."

On June 30, 1969, the Council adopted the following resolution:

"WHEREAS, on June 4, 1969, the Mayor and Council of the Borough of Keansburg transferred Plenary Retail Consumption License C-18 to Lighthouse Beach, Inc., conditioned upon a building being constructed and a variance obtained, and

"WHEREAS, the building has not yet been completed or a variance obtained, but it is the desire of the Council to renew said license for the year 1969-1970,

"NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Borough of Keansburg that Plenary Retail Consumption License No. C-18 be and it is hereby issued for the year 1968-1969 solely for the purposes of renewing same."

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, at which time the attorneys for the respective parties had the opportunity to produce testimony and cross-examine witnesses.

Philip Mess, an appellant, testified that his home at 151 Shore Boulevard is located immediately next to the licensee's parking lot and is in a residential zone. He stated that when people drink liquor away from their homes, they "tend to raise a little more Cain when they're in this condition; that right under my bedroom this parking lot has become the scene of brawls that started in the saloon, the usual things that happen in parking lots of this type which I have seen in many, many occasions." In his opinion, "the traffic problem would be atrocious" and when a car is driven across the parking lot "it sounds like a railroad train in my bedroom." Mr. Mess also testified that "the language that's used is atrocious."

On cross examination, in response to a question whether a drunken brawl had occurred since the licensee has been conducting the business at the present site, the witness stated that at approximately 1:00 a.m. he heard "a drunk hollering and was put out there and left to hollering, at my expense, not theirs. They didn't care. They're used to that."

Further on cross examination, Mr. Mess admitted that before any facilities were erected by the licensee, he engaged in conversation with David Keelan, an officer of the corporate licensee, telling Keelan that he did not object to the

swimming pool but contemplated joining the swimming club. However, Mess said that one of the reasons he did not become a member was because of a regulation that children using the pool must be accompanied by an adult, which "would involve my wife coming out of the house every time she wanted the child to go to the swimming pool, and I have seven grandchildren who visit me consistently and this would require her presence and the presence of my daughter at the swimming pool, and this is the objection that I had."

Elizabeth Ward, daughter of Philip Mess, who also resides at 151 Shore Boulevard, testified that her objections to the transfer of the license were similar to those expressed by her father because "it would increase the traffic in our area. It would bring undesirable people into our area. That there are about two hundred children within two hundred feet of this bar and I objected on the grounds that I stated before, I do not want to live next to a bar."

Angelina Boden, an appellant, residing at 171 Shore Boulevard, testified that she lives next door to the licensee's premises on the opposite side of the premises from where Mr. Mess and Mrs. Ward reside. She objected to the transfer of the liquor license for reasons similar to those voiced by Mr. Mess and, in addition, "that when we bought our house, we bought it in a residential area. And I do have children, I have five children, four of which are girls, and I don't think it's an atmosphere or a place for children to be brought up in."

David F. Keelan, secretary-treasurer of the licensee corporation, testified that he purchased the property on which the licensed premises are located to operate a swimming club and, after the original building was destroyed by fire, the premises were rebuilt; that transfer of the license to the licensee was granted subject to its obtaining a variance of the zoning ordinance. (It appears that the variance was obtained but an appeal from said grant is pending before the court.)

The matter of an apparent violation of a zoning ordinance was considered in Lubliner v. Paterson, 59 N.J. Super. 419 (1960), wherein the court stated that although a liquor licensee must comply with all applicable statutes and ordinances, it is not necessary, where a variance of a zoning ordinance may be required, that it be obtained previous to a grant of a transfer of a liquor license to a proposed site. Thus, it is unnecessary in the instant case to consider the ground alleged by appellants that the Council failed to comply with a municipal zoning ordinance. The variance has been obtained although it was stated by appellants' attorney that an appeal from the municipal action is pending.

With reference to conditions existing at the licensee's premises, as alleged by appellants, Mr. Keelan testified that the parking lot can accommodate 68 cars and that no complaints were made to him or anyone employed by him concerning the manner in which the licensee's establishment has been operated.

Mr. Keelan described the vicinity where the licensed premises are located, testifying that on Shore Boulevard there is a grocery store a block distant, a florist business at a distance of a block and a half, a swim club which holds a club liquor license, and another liquor outlet four or five blocks away.

Harry Graham, Mayor of Keansburg, who voted in favor of the transfer, testified that in his opinion the present site of the licensed premises was a better location and would be a convenience for those who used the swimming pool; that there are off-street parking facilities and that, rather than people bringing their own liquor, he believed that if the place were licensed, "there would be more stringent controls over the consumption of alcoholic beverages." Mayor Graham heard no complaints concerning the officers of the licensee corporation. He reviewed the objections raised to the transfer of the license but considered "the general welfare of the town."

Appellants charge that the Council abused its discretion and acted unreasonably in granting the said transfer in view of the objections that had been made.

The burden of establishing that the action of a local issuing authority was erroneous and should be reversed rests with the objectors. Rule 6 of State Regulation No. 15. No one has a right to issuance or transfer of a license to sell alcoholic beverages. Zicherman v. Driscoll, 133 N.J.L. 586 (1946); Biscamp v. Teaneck, 5 N.J. Super. 172 (App. Div. 1949).

The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen et als., Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for .... license or the transfer thereof, the municipality's action is broadly subject to appeal to the Director of the Division of Alcoholic Beverage Control. The Director conducts a de novo hearing of the appeal and makes the necessary factual and legal determinations on the record before him... Under his settled practice, the Director abides by the municipality's grant or denial of the application so long as its exercise of judgment and discretion was reasonable."

And further, in evaluating the action of the Council herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the following general principle (at p. 23):

> "Local officials who are thoroughly familiar with their community's characteristics and interests and are the proper representatives of its people, are undoubtedly the best equipped to pass initially on such applications for variance.

> And their determinations should not be approached with a general feeling of suspicion, for as Justice Holmes has properly admonished: 'Universal distrust creates universal incompetence.' Graham v. United States, 231 U.S. 474, 480, 34 S. Ct. 148, 151, 58 L. Ed. 319, 324 (1913)."

The complaints with reference to brawls and noise created by patrons of the licensee's establishment are not too clear. It is understandable that neighbors may be annoyed and it is necessary, if such a condition exists, that the licensee do everything in its power to alleviate this condition. Thus, if the licensee operates its business in a law-abiding manner, appellants have nothing to fear. On the other hand, if the licensee's business is conducted in violation of the law or municipal ordinances, the license will, of course, be subject to possible suspension or revocation. Cf. Monmouth County Retail Liquor Stores Assn. et als. v. Middletown et al., Bulletin 1572, Item 1.

In conclusion it may be stated that in matters involving transfer of liquor licenses, the responsibility of the municipal issuing authority is "high", its discretion "wide", and its guide the public interest. Lubliner v. Paterson, supra. As indicated hereinabove, the Director is governed by the principle that where reasonable men, acting reasonably, may have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (1947); cf. Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960).

The Council has, in my opinion, understood its full responsibility and has acted circumspectly and with a reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit and thus conclude that appellants have failed to sustain the burden of establishing that the action of the Council was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Council and dismissing the appeal.

Conclusions and Order

No exceptions to the Hearer's report were filed pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 9th day of April 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE ENTERTAINERS TO ACCEPT DRINKS FROM PATRONS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

Thomas Bucci, Jr.
t/a The Penguin Club
933 Atlantic Avenue
Atlantic City, N. J.

Holder of Plenary Retail Consumption License C-187, issued by the Board of Commissioners of the City of Atlantic City.

CONCLUSIONS and ORDER

Edwin H. Helfant, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 20-21, 1969 he permitted a female entertainer to accept drinks at the expense of a male patron, in violation of Rule 22 of State Regulation No. 20.

Reports of investigation disclose that on the occasion in question a female entertainer drank at the expense of a male patron splits (6.4 ounces) of a domestic champagne, retailing for approximately 69¢, at a charge of $7.50 each.

Licensee has a previous record of suspension of license by the Director for fifteen days effective November 26, 1968, for permitting hostess activity on the licensed premises. Re Bucci, Bulletin 1832, Item 8.

Deeming the violation aggravated on the facts and, further, considering the prior record of suspension of license for similar violation occurring within the past five years, the license will be suspended for sixty days (Re Saulen, Inc., Bulletin 1900, Item 5), with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Accordingly, it is, on this 16th day of April 1970,

ORDERED that Plenary Retail Consumption License C-187, issued by the Board of Commissioners of the City of Atlantic City to Thomas Bucci, Jr., t/a The Penguin Club, for premises 933 Atlantic Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, commencing at 7 a.m. Tuesday, May 5, 1970, and terminating at 7 a.m. Monday, June 29, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against

Michael J. Barrett
1325 Kennedy Blvd.
Bayonne, N. J.

Holder of Plenary Retail Consumption License C-38, issued by the Municipal Council of the City of Bayonne.

AMENDED ORDER

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Licensee, Pro se.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

On April 6, 1970 I entered an order herein suspending the license for twenty days commencing April 21, 1970 and terminating May 11, 1970. Re Barrett, Bulletin 1905, Item 7.

Licensee has now requested that the suspension commence on Tuesday, May 19, 1970, instead of Tuesday, April 21, 1970. Good reason appearing, I shall grant the request.

Accordingly, it is, on this 15th day of April 1970,

ORDERED that Plenary Retail Consumption License C-38, issued by the Municipal Council of the City of Bayonne to Michael J. Barrett, for premises 1325 Kennedy Blvd., Bayonne, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Tuesday, May 19, 1970 and terminating at 2:00 a.m. Monday, June 8, 1970.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - GAMBLING ("GUESS THE NUMBER OF COINS" GAME) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)	
John Edward Zink and Robert Neil Zink t/a Zink's Bar & Grill 16 Prospect Street Bloomfield, N. J.	)	CONCLUSIONS and ORDER
Holders of Plenary Retail Consumption License C-16 issued by the Town Council of the Town of Bloomfield.	)	

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James J. Sheeran, Esq., Attorney for Licensees
Edward F. Ambrose, Esq., Appearing for Division

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on January 3, 1970, they permitted the playing of a "guess the number of coins" game for money stakes, in violation of Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Cf. Re Belann Tavern, Inc., Bulletin 1510, Item 8.

Accordingly, it is, on this 17th day of April 1970,

ORDERED that Plenary Retail Consumption License C-16, issued by the Town Council of the Town of Bloomfield to John Edward Zink and Robert Neil Zink, t/a Zink's Bar & Grill, for premises 16 Prospect Street, Bloomfield, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, May 4, 1970 and terminating at 2:00 a.m. Thursday, May 14, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. STATE LICENSES - NEW APPLICATION FILED.

Party-Tyme Products, Inc.
Glass Street
Bridgeton, New Jersey

Application filed May 29, 1970 for plenary wholesale license for the 1970-71 fiscal year.

Richard C. McDonough
Director