

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 2366

September 8, 1980

TABLE OF CONTENTS

ITEM

1. NOTICE TO LICENSING AUTHORITIES RELATIVE TO DUTIES, POWERS AND REGULATIONS CONCERNING LICENSE ISSUANCE, TRANSFER AND RENEWAL.
2. APPELLATE DECISIONS - STEMMEYER CORPORATION, INC. v. ASBURY PARK.
3. NOTICE OF FINES ASSESSED IN COMPROMISE, IN LIEU OF SUSPENSIONS AGAINST 13 DISTILLED SPIRIT AND WINE SUPPLIERS AFTER ENTRY OF NON-VULT PLEA TO CHARGES OF PROVIDING CASH, FREE MERCHANDISE, REBATES, ETC. TO WHOLESALERS.

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September 8, 1980

1. NOTICE TO LICENSING AUTHORITIES RELATIVE TO DUTIES, POWERS AND REGULATIONS CONCERNING LICENSE ISSUANCE, TRANSFER AND RENEWAL.

NOTICE TO LICENSING ISSUING AUTHORITIES:

Re: Duties, Powers and Regulations concerning retail
license issuance, transfer and renewal

The license renewal period is an appropriate time to review various provisions of the alcoholic beverage laws and compare your system of license control with the summary of various principles and requirements hereinafter set forth.

I. ISSUING AUTHORITIES' DUTIES, OBLIGATIONS and POWERS

The governing body of a municipality, or its duly delegated municipal board, has the duty to administer the issuance, transfer and renewal of all retail licenses. N.J.S.A. 33:1-19.

The only exceptions in the "retail" category are those which are within the sole jurisdiction of the Director, Division of ABC, namely, Plenary Retail Transit licensees (N.J.S.A. 33:1-18); and those instances where a member of the local governing body has an interest, directly or indirectly in a retail license (except club licenses) whereupon the Director assumes jurisdiction in the issuance, renewal or transfer thereof N.J.S.A. 33:1-20.

Some of the specific obligations include:

- (1) acceptance and processing of applications;
- (2) investigation of all applicants;
- (3) inspection of premises sought to be licensed;
- (4) conduct of appropriate public hearings;
- (5) maintenance of proper records and minutes; and
- (6) enforcement of the ABC law and regulations (N.J.S.A. 33:1-24).

To facilitate the above, the issuing authority is empowered by N.J.S.A. 33:1-35 to:

- (a) inspect and search licensed premises, premises sought to be licensed, and the books, records, documents and papers of licensees referable to the licensed business;
- (b) require licensees or applicants for license to exhibit any of the afore-said documentation, and be questioned under oath;

- (c) issue subpoenas and inspect without search warrant; and
- (d) penalize the hindering of any such investigation, inspection or search through a disciplinary proceeding pursuant to N.J.S.A. 33:1-31.

II. FACTORS TO CONSIDER IN LICENSE ISSUANCE, RENEWAL OR TRANSFER

The issuing authority must insure that the individuals exercising the beneficial interest in a liquor license are qualified, that the premises licensed are appropriate, that applicable regulations are observed, and that application forms are properly completed.

A. Qualifications for Licensure

There are seven basic requirements for licensure:

1. A person must be 18 years of age or older;
2. Not convicted of a crime involving moral turpitude (both N.J.S.A. 33:1-25);
3. Be a reputable person who would operate the licensed business in a reputable manner. Narducci & Testa v. Atlantic City, Bulletin 2305, Item 3; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946);
4. Absent exceptions may not have an interest in more than a total of two (2) retail licenses (N.J.S.A. 33:1-12.31);
5. Have no interest in any other non-retail class of liquor license (N.J.S.A. 33:1-43);
6. Not be ineligible for licensure for 2 years or more in consequence of prior revocation(s) of license (N.J.S.A. 33:1-31); and
7. Not be a regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage law (N.J.A.C. 13:2-23.31).

B. Review of Licensed Premises

The following basic concepts are applicable:

1. A license is required for each specific place of business, and the operation and effect of every license is confined to the licensed premises (N.J.S.A. 33:1-26);
2. The licensee must have a possessory interest in the licensed premises, (Hershorn v. Estelle Manor, Bulletin 1326, Item 1);
3. Absent "grandfather" provisions or waiver, no license can be located within 200 feet of any church, public school or private school conducted not for profit. N.J.S.A. 33:1-76. The 200 feet is measured in the normal way a pedestrian would lawfully walk from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed. See Karam v. West Orange ABC, 102 N.J. Super. 291 (App. Div. 1968); Presbyterian Church of Livingston v. Div. of ABC, 53 N.J. Super. 271 (App. Div. 1958);

4. No premises can be licensed in contravention of a municipal ordinance. Petrangeli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954). A transfer of license can be approved subject to ultimate compliance with, or variance from, local building or zoning ordinances. Holiday Inn v. Paramus, Bulletin 2315, Item 3; and
5. All local distance-between-premises ordinances must be satisfied, or the license may thereafter be subject to cancellation proceedings in consequence of an improvident transfer. Re City Hall Sandwich Shop, Inc., Bulletin 2334, Item 1.

C. Applicable Statutes and Regulations

1. New license issuance - when permissible, the procedure is governed by N.J.S.A. 33:1-19.1 and 19.2 and N.J.A.C. 13:2-2.1 et seq. Review of the holdings in W.C. Three, Inc. v. Washington Tp., 142 N.J. Super. 291 (App. Div. 1976) and Blanck v. Borough of Magnolia, 38 N.J. 484 (1962) would be of assistance in such situation.
2. Renewal of licenses - defined in N.J.S.A. 33:1-12.26 and must be issued for immediately following license term, covering the same premises and issued to same holder of expiring license. The issuing authority has the power to renew licenses until July 30th of any given year. Thereafter, any late renewal (technically considered a new license) can only be authorized after petition to the Director before September 29th of such year, pursuant to N.J.S.A. 33:1-12.18. Absent timely renewal or Director's authorization, that license lapses.

An inactive license, i.e., a license not in substantial full-time operation in connection with a licensed premises for the two immediately preceding license terms, cannot be renewed unless authorization is received by the licensee from the Director, Division of Alcoholic Beverage Control after a hearing, and for good cause shown, N.J.S.A. 33:1-12.39.

Attention must be made to N.J.A.C. 13:2-2.1 and the various objection; hearing and decision making provisions and timetables covering renewal applications. Specific note is directed to revisions of N.J.A.C. 13:2-2.9 which add the following requirements.

No application can be approved unless the issuing authority affirmatively finds and reduces to resolution (emphasis added) that:

- (i) the submitted application form is complete in all respects;
- (ii) the applicant is qualified to be licensed according to all statutory, regulatory and local governmental ABC laws and regulations; and
- (iii) the applicant has disclosed and the issuing authority has reviewed the source of all funds used in the

purchase of the license and the licensed business (new license issuance or transfer situations) and/or any additional financing obtained in the previous license term for use in the licensed business (renewal situations).

With respect to club licenses, N.J.A.C. 13:2-8.6 was revised to require the above stated affirmative finding reduced to resolution that:

- (i) the submitted application is complete in all respects, including submission of the club member list;
- (ii) the officers and directors of the club are qualified according to all statutory, regulatory and local governmental ABC laws and regulations; and
- (iii) the club maintains all records required by N.J.A.C. 13:2-8.8 (special events open to non-club members) and N.J.A.C. 13:2-8.12 (true books of account for receipts and disbursements).

3. Transfer of licenses - the procedure is governed by N.J.S.A. 33:1-26 and N.J.A.C. 13:2-7.1 et seq. Review the regulation for publication, objection, hearing, and decision-making provisions and timetables covering transfer applications.

N.J.A.C. 13:2-7.7 has been revised and provides the identical affirmative finding reduced to resolution requirements previously set forth concerning renewals of licenses.

D. License Application Form

The requirement to truthfully and accurately complete the license application form is statutory. Knowing misstatement is a misdemeanor. Fraud, misrepresentation, false and misleading statements, or evasions and suppression of material facts are grounds for suspension or revocation of license. N.J.S.A. 33:1-25.

Careful review of the application form is required to determine if it is completely and accurately answered, and which should disclose various disqualifying situations. Independent review should be made of facts and information contained therein in order to ascertain whether false, evasive or misleading statements are made.

Lastly, when changes occur in any fact contained on a license application form during the course of the license term, amended pages of the application must be filed by the licensee with the local issuing authority and the Division within 10 days of the occurrence. N.J.S.A. 33:1-34 and N.J.A.C. 13:2-2.14. When the change involves corporate stockholdings, publication is also generally required. N.J.A.C. 13:2-2.15 and 2.16.

Joseph H. Lerner
Director

Dated: April 14, 1980

2. APPELLATE DECISIONS - STEMMEYER CORPORATION, INC. v. ASBURY PARK.

#4329

Stemeyer Corporation, Inc.,

Appellant,

vs.

City Council of the City of
Asbury Park,

Respondent.

CONCLUSIONS

AND

ORDER

 Patterson & Abrams, Esqs., by Robert A. Abrams, Esq.,
 Attorney for Appellant.
 Norman H. Mesnikoff, Esq., Attorney for Respondent.
 Shebell & Schibell, Esqs., by Pasquale Menna, Esq.,
 Attorney for Objector - Respondent.

Initial Decision Below

Hon. J. Roger Persichilli, Administrative Law Judge

Dated: October 2, 1979

Received: October 5, 1979

BY THE DIRECTOR:

This is an appeal from the denial of a place-to-place license transfer application by Resolution of the City Council of the City of Asbury Park adopted March 21, 1979. The matter was heard before an Administrative Law Judge on August 10, 1979. Written Exceptions to the Judge's Initial Decision were filed by the Appellant, pursuant to N.J.A.C. 13:2-17.14. Comments to the Exceptions were filed by the Objector-Respondent, Main Liquors.

Appellant's Exceptions reiterate arguments advanced before the Administrative Law Judge and take issue with his findings in paragraphs #12 and #14. I find them to be without merit and the findings supported directly or by inference in the record.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits, the Initial Decision Below, the written Exceptions of the Appellant and the written Answer submitted thereto, I concur in the findings and conclusions of the Administrative Law Judge and adopt them as my own herein. The record reasonably supports the action of the issuing authority. See, Margate Civic Assoc.

v Bd. of Comm'rs; Margate 132 NJ Super 58,63 (App. Div 1975).

Accordingly, it is, on this 31st day of December 1979,

ORDERED that the denial by the City Council of the City of Asbury Park of the application for a place-to-place transfer of the license of Stemeyer Corporation, Inc., from 224 Cookman Avenue, Asbury Park, to 1013 Main Street, Asbury Park, be and is hereby affirmed.

JOSEPH H. LERNER
DIRECTOR

Initial Decision Below

IN RE: STEMMEYER CORPORATION, INC.,	:	<u>INITIAL DECISION</u>
	:	
APPELLANT,	:	
	:	
V.	:	DKT. NO. ABC 1556-79
	:	
MAYOR AND CITY COUNCIL, CITY OF	:	
ASBURY PARK,	:	
	:	
RESPONDENT.	:	

APPEARANCES:

Donald J. Stegall, President of Stemeyer Corporation, Inc., Appellant

Robert A. Abrams, Esq., of Paterson & Abrahms, Esqs., attorney for the Appellant, Stemeyer Corporation, Inc.

Raymond Kramer, Mayor, City of Asbury Park, Respondent

Norman H. Mesnikoff, Esq., attorney for the Mayor and City Council, Asbury Park, Respondent

Joseph Cognazzo, Principal of Main Liquors, Objector-Respondent

Pasquale Menna, Esq., of Shebell & Schibell, Esqs., attorney for Main Liquors, also trading as Joseph Cognazzo, Objector-Respondent

Marion Brown Martin, witness, on behalf of Appellant, Stemeyer Corporation, Inc.

BEFORE THE HONORABLE J. ROGER PERSICHILLI, A.L.J.

· DKT. NO. ABC 1556-79

The matter sub judice concerns the appeal by Stemeyer Corporation, Inc., a New Jersey corporation, from the denial of its application for a place-to-place transfer of its Plenary Retail Consumption License by the City Council, City of Asbury Park by resolution adopted on March 21, 1979.

Notice of Appeal and a Petition of Appeal were served on April 19, 1979. An Answer was filed subsequently on behalf of the City Council and the matter was transmitted to the Office of Administrative Law for determination, as a contested case, pursuant to N.J.S.A. 52:14F-1 et seq. A hearing was conducted on August 10, 1979 at the Monmouth County Court House, Freehold, New Jersey. All parties were given the opportunity to be heard and to cross-examine witnesses. The hearing was concluded on August 24, 1979.

Participating counsel were in disagreement concerning the nature and scope of the de novo appeal, as provided by N.J.A.C. 13:2-17.6. Specifically, the issue posed was whether the Director (the court) should restrain from substituting his (its) judgment for that of the local issuing authority or refrain from reversing the ruling of the municipal authority if reasonable support for their action can be found on the record. Counsel for the objector submitted a letter memorandum on behalf of his client and the Mayor and City Council which substantiates their position. Counsel for the appellant also concurred, by letter dated August 20, 1979, that the issue before the court should be "whether or not the City Council had abused its discretion, notwithstanding testimony is taken de novo on review. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955)."

It is therefore clear that the general grant or denial of an alcoholic beverage license rests in the sound discretion of the local licensing authority in the first instance. In order to prevail in an appeal, of this nature, the appellant must show unreasonable action on the part of the local authority, constituting a clear abuse of their discretion. See Rajah Liquors, supra; Fanwood v. Rocco, 33 N.J. 404 (1960); and Lyons Farms Tavern v. Municipal Board of Alcoholic Beverage Control of Newark, 55 N.J. 292 (1970)

The City Council of Asbury Park denied appellant's application for a place-to-place transfer of Plenary Retail Consumption License No. 1303-33-053-001 from 224 Cookman Avenue, Asbury Park to 1013 Main Street, Asbury Park. The Resolution denying said application reads as follows:

"BE IT RESOLVED that the application of
STEMEYER CORP., INC., to transfer its
Plenary Retail Consumption License
No. 1303-33-053-001 from 224 COOKMAN
AVENUE, to premises at 1013 MAIN STREET
be and is hereby denied on the ground

'DKT.' NO. ABC 1556-79

that there are too many bars and liquor stores on Main Street at the present time, and there are 14 bars or liquor licenses on Main Street in a 15 block area along Main Street and there are three or four more liquor licenses or establishments within one or two block area east or west of Main Street proper."

Appellant contends that the action of the Board was erroneous in that : (a) the decision, as evidenced by the Resolution, was legally improper and is founded upon conclusionary statements legally insufficient to support its actions; (b) the enumeration of bars or liquor licenses set forth in the Resolution is not sufficient to show that the application should be denied; and (c) that said decision is based upon legally insufficient evidence and grounds and improperly discriminates against the appellant. The Board, in its Answer, denies the allegations of the appeal and relies upon the reasons set forth in the Resolution as contained in Paragraph Four of the Petition, hereinabove cited.

The respondent produced Raymond Kramer, Mayor of Asbury Park, as a witness. Mayor Kramer has resided in the community for more than 50 years, has served as a Councilman for four years and is presently in his seventh year as Mayor of Asbury Park. Mayor Kramer testified that he voted against the transfer because this area of Asbury Park has "too many licenses." He indicated that on Main Street alone, which is the main thoroughfare in Asbury Park, there are fourteen liquor licenses within fifteen blocks and one of those blocks consists of a park and another is occupied by the railroad station. Paralleling Main Street to the west, within one to one and one-half blocks, the Mayor testified that there are six more licenses and an additional three are located to the east, making a total of twenty-three licenses in a concentrated area. (Refer to A-1 in evidence for an actual plotting) The Mayor further testified that there are problems attendant to consumption licenses, particularly in this area, such as loitering in the streets and on parked automobiles, parking problems and general congestion. He testified that the City Council has shown an inclination to reduce the licenses in Asbury Park and during the past five years have made continuous efforts to minimize problems created by the spread of consumption licenses. Mayor Kramer felt that Main Street was experiencing a turn-around from the decline that many of the urban centers have experienced during this past decade. On cross-examination, it was established that Main Street occupies one of the major business zones in Asbury Park, a community encompassing a geographic area of 1.25 square miles and housing approximately 17,000 persons. The other major business zone is located along the shore which houses the

DKT. NO. ABC 1556-79

greatest concentration of liquor licenses in the municipality. It was estimated that this area accounts for nearly two-thirds of the licenses in Asbury Park (compared to one-third in the Main Street area). Mayor Kramer stated that the Cookman and Ocean Avenue area along the shore justified the great concentration because of the resort nature of the community.

The respondent also called the objector, Joseph Cognazzo, as its witness. Mr. Cognazzo is the owner-operator of Main Liquors, a package store located across the street from the proposed site. This gentleman's testimony, in principal part, identified the licenses located on Main Street and in the immediate area as they appear on R-1 in evidence. His basic objections to the transfer was candidly admitted during cross-examination. Mr. Cognazzo wants to retire and has been trying to sell his store for some time. He feels that he can get a better price and/or more readily sell his store with fewer licenses in the area. Mr. Cognazzo's motives in objecting appear less directed to the social good or public interest of the community. His objection to the transfer appears to be motivated more out of self-interest in the protection of his proprietary and pecuniary interests - a valid basis of objection - but entitled to less weight in the overall context of the evidence and testimony presented.

Mr. Cognazzo is the individual responsible for the circulation of the petition in opposition to the transfer, designated as R-2 in evidence.

The appellant produced Donald J. Stegall, President of Stemeyer Corporation, Inc. as its chief witness. Mr. Stegall testified that he sought to transfer his license for several reasons, as follows: (1) the area surrounding his present location is generally deteriorating; (2) his regular clientele are bothered by homosexuals who have begun to frequent his operation, the South Bound Inn; (3) the change in clientele has presented problems to his customers, employees, the landlord and himself; (4) there exists the prospect that the landlord will not renew a five year lease terms notwithstanding the fact that he has given proper notice of his intent and/or desire to renew; and (5) he intends to service the daytime business trade and provide a "nice, clean place" for evening patrons.

The emphasis of Mr. Stegall's testimony was directed to his actions which occurred subsequent to the denial of his transfer application on March 21, 1979. In April 1979, Mr. Stegall purchased the 1013 Main Street property and commenced extensive renovations. The testimony reflects: (1) that the property was not occupied by a business for approximately fifteen years; (2) that the former business was a bar known as the Park Lounge; (3) that a portion of the property, utilized as a residence, was vacant for approximately one year; (4) that 360 cubic yards of debris

DKT. NO. ABC 1556-79

was removed from the premises and the entire facade, roof and interior were renovated (photographs of same appears as A-2 in evidence); (5) the present facility occupies two floor levels separated by one or two steps, each level occupying an area of 25 feet x 30 feet, plus a small kitchen area; (6) the interior motif is English tudor which appellant described as a "pub" atmosphere; and (7) the appellant expended approximately \$20,000 to date.

Mr. Stegall intends to maintain hours of operation which will conform to the municipal ordinances. He plans a limited menu of seven items and has provided seating capacity for approximately fifty patrons. There will be no entertainment except for a juke box and a television. There is no off-street parking with the exception of a rear alleyway which can accomodate a maximum of five cars. The appellant suggest that there is ample on-stree parking after 7:00 p.m. Mr. Stegall also testified that he personally counted the number of stores on Main Street in Asbury Park in order to determine the number of vacancies. Of 125 stores, he reported that thirty were vacant. In light of the foregoing, he argues that the transfer will be of benefit to the area and the community on the whole.

On cross-examination, it was established that Mr. Stegall is a full-time employee with the Postal Service although he spends approximately thirty hours each week on his bar business (half of which is spent bartending). A general manager and two other employees are maintained. When questioned about a prior censure relating to lewd dancing permitted in his establishment, Mr. Stegall testified that he was in New York when his manager hired the dancer and permitted her presence. Upon learning of the incident, Mr. Stegall stated that he fired everyone on the spot.

Mr. Stegall was responsible for obtaining support, in the form of a petition (A-3 in evidence), for the proposed transfer of his license. He obtained this support by providing an open house to allow area residents and/or employees to inspect the renovated premises. He indicated that only one person declined to sign the petition. When questioned about his intentions, should he fail to prevail in this appeal, Mr. Stegall stated that he would operate the establishment as a restaurant.

Mrs. Marion Brown Martin also testified on behalf of the appellant. She was the previous property owner of 1013 Main Street and a former operator of the bar which occupied the premises. It was her recollection that the premises housed one of the first bar licenses in Asbury Park. Mrs. Martin was also the last resident of 1013 Main Street. Upon cross-examination, Mrs. Martin stated that she did not want a bar next to her when she was living there and therefore "put out" the other tavern operator who was leasing her building. Nevertheless, as a non-resident of 1013 Main Street, she would not mind the operation of the license in question.

DKT: NO. ABC 1556-79

It is additionally noted that the testimony also revealed the existence of a church, school and social club between Second and Third Avenues, although it does not appear of record that City Council gave these factors any special consideration.

Based upon my observation of the demeanor of the witnesses, the testimony adduced at the hearing and the exhibits received in evidence, together with the arguments of counsel and post-hearing submissions, I FIND:

1. The appellant, Stemeyer Corporation, Inc., is a corporation of the State of New Jersey, and is the holder of Plenary Retail Consumption License No. 1303-33-053-001, issued by the City of Asbury Park.
2. Said license is issued to a location at 224 Cookman Avenue, Asbury Park, New Jersey.
3. On March 21, 1979, the respondent, Mayor and City Council of Asbury Park, denied an application for a place-to-place transfer of said license to 1013 Main Street, Asbury Park, New Jersey.
4. Said denial was based upon the finding "that there are too many bars and liquor stores on Main Street at the present time."
5. There are approximately twenty-three liquor licenses within fifteen blocks along and parallel to Main Street.
6. The proposed site was formerly a tavern.
7. The proposed site was abandoned and was in a state of disrepair and had not been utilized for business purposes for approximately fifteen years.
8. The appellant seeks to relocate from his present quarters to the proposed site for several bone fide and compelling reasons.
9. The appellant has purchased the 1013 Main Street site subsequent to the denial for a place-to-place transfer and has expended approximately \$20,000.00 to rehabilitate the subject site.
10. Main Street is the principal thoroughfare in Asbury Park. It is zoned commercial and permits the intended use, as the Cookman and Ocean Avenues area of Asbury Park.
11. A church and a school are located within the immediate vicinity of the proposed site.

DKT. NO. ABC 1556-79

12. The concentration of liquor licenses on Main Street has caused loitering, parking problems and congestion in this area of the city.

13. One objector opposed the application.

14. The applicant proposed services and products that are presently available to area residents.

The burden of proof in establishing that the action of the governing body was erroneous rests entirely with the appellant. See Downie v. Sumerdale, 44 N.J. Super. 84 (App. Div. 1957); Nordco, Inc. v. State, 43 N.J. Super. 277 (App. Div. 1957). The decision of the governing body should not be reversed unless the court finds as a fact that there was a clear abuse of discretion, unwarranted finding of fact, or mistake of law. See Nordco, supra.

In the matter sub judice, the appellant has basically alleged that the decision of respondent was "legally improper," was based upon "legally insufficient evidence" and was "the result of improper discrimination against said appellant." The appellant has not established that the governing body was erroneous, abused their discretion, discriminated against the appellant or made a mistake of law. On the latter point, the Court distinguishes this matter from Township Committee of Lakewood Township v. Brandt, 38 N.J. Super. 462 (App. Div. 1955) wherein the proposed person-to-person and place-to-place transfer was denied primarily because there were too many licenses in the community and the application allowed them the opportunity to "eliminate a license." The testimony in that case supported the Director's finding that "the Township Committee was motivated primarily by a desire to have the license die," and caused the court to observe that the "desire of these committeemen to reduce the number of licenses, because too many were outstanding, is commendable. But this they should have attempted through some less arbitrary means than through destroying the transferability of outstanding licenses" (Lakewood Township, at p. 466). Such is not the state of the facts herein.

Mayor Kramer testified that too many licenses were present on Main Street, the principal street in the City of Asbury Park. He also indicated that the reason that he voted against the transfer was because of the loitering problems, parking problems and problems of congestion. He did not indicate a desire to eliminate a license nor is there evidence that City Council maintained such an interest. Rather, the facts establish that the Cookman-Ocean Avenue area contain nearly two-thirds of Asbury Park's outstanding licenses and properly so, opined the Mayor, as this community is resort oriented and Ocean and Cookman Avenues are located near the beach and close to the amusements. The denial was based upon the number of licenses in a limited section of the city, not upon the number of licenses that exist in the city itself. Thus, it cannot be said that the issuing authority was governed by improper motive or that licensee was the subject of improper discrimination.

• DKT. NO. ABC 1556-79

The appellant has proposed a "nice, clean operation." He has renovated an abandoned building which presents a myriad of positive blessings which have translated a dead use to a living use, a non-ratable to a ratable, etc., etc. But these factors are not the issue before this Court, albeit the Court is not insensitive to the improvements and the money expended by the appellant. His actions evidence a faith in Asbury Park which is indeed commendable. Mr. Stegall purchased the site and transformed it to its present state after he received denial of his application for transfer. He exercised a business judgment to proceed at his own risk. These factors should not serve to alter the initial determination of the Mayor and City Council, which determination of denial was based upon local convenience and interests affecting the proposed site, and of the interests of the community at large.

Thus, I CONCLUDE that the decision of the issuing authority was based upon legally sufficient and competent evidence and was, based thereupon, legally proper. I find no credible evidence of record to support a contrary conclusion, nor does the record evidence the result of improper discrimination against the appellant. The respondent acted in the circumspect and reasonable exercise of its discretionary authority when it refused to grant a place-to-place transfer to the appellant herein.

Accordingly, it is HEREBY ORDERED that the denial by the Mayor and City Council of the City of Asbury Park of the application for a place-to-place transfer of the license of Stemeyer Corporation, Inc. from 224 Cookman Avenue, Asbury Park, New Jersey to 1013 Main Street, Asbury Park, New Jersey be AFFIRMED.

This decision shall become final forty-five (45) days from the date of agency receipt of this order, unless the agency head acts to affirm, modify, or reverse during the forty-five (45) day period. N.J.S.A. 52:14B-10

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

3. NOTICE OF FINES ASSESSED IN COMPROMISE, IN LIEU OF SUSPENSIONS AGAINST 13 DISTILLED SPIRIT AND WINE SUPPLIERS AFTER ENTRY OF NON-VULT PLEA TO CHARGES OF PROVIDING CASH, FREE MERCHANDISE, REBATES, ETC. TO WHOLESALERS.

January 2, 1980

FOR RELEASE

DIRECTOR JOSEPH H. LERNER OF THE STATE DIVISION OF ALCOHOLIC BEVERAGE CONTROL TODAY ANNOUNCED THE IMPOSITION OF PENALTIES AMOUNTING TO \$370,800. IN FINES AGAINST 13 COMPANIES WHICH SUPPLY DISTILLED SPIRIT AND WINE ALCOHOLIC BEVERAGES TO NEW JERSEY WHOLESALERS. THE FINES WERE ACCEPTED BY THE DIRECTOR, IN COMPROMISE, IN LIEU OF LICENSE SUSPENSIONS AGAINST THE LICENSES OF THE SUPPLIERS. THIS ACTION REPRESENTS THE LARGEST AMOUNT OF FINES LEVIED BY THIS DIVISION IN A RELATED INVESTIGATION AND IS A CULMINATION OF THIS PHASE OF A TASK FORCE REPORT OF THE DIVISION OF CRIMINAL JUSTICE CONCERNING TRADE PRACTICES IN THE INDUSTRY.

THE NOVEMBER 20, 1979 COMPLAINT "SPECIFICATIONS" ALLEGED PROVISION OF \$121,300. IN CASH AND FREE MERCHANDISE AS ILLICIT SALES OF RETAILER INDUCEMENTS; PROVISION OF \$941,500. IN UNLAWFUL OR DISCRIMINATORY REBATES AND TRADE ALLOWANCES; PROHIBITED SALES CONTESTS AND RECORD-KEEPING VIOLATIONS. THE INVESTIGATION DISCLOSED THAT NONE OF THE MONIES IN SUPPLIER DISCOUNTS REFERRED TO IN THE CHARGES NOR ANY OF THE OTHER SUBSTANTIAL TRADE DISCOUNTS PERMITTED UNDER THE PRESENT REGULATORY SYSTEM WERE EVER PASSED ON TO CONSUMERS AS DISCOUNTS, REDUCED PRICES OR OTHER SAVINGS.

THE INVESTIGATION FURTHER DISCLOSED THAT THE PRACTICES FREQUENTLY WERE CONCEALED THROUGH FALSE, INCOMPLETE OR INACCURATELY DESCRIBED DOCUMENTATION IN COMPANY RECORDS OR FACILITATED BY THE USE OF NON-LICENSED ENTITIES TO PROVIDE FREE SERVICES, REIMBURSEMENT OR ADDITIONAL DECEPTIVE

DOCUMENTATION. 13 OF THE 14 LICENSEES INVOLVED PLEADED NON VULT TO THE CHARGES. THEY ARE IDENTIFIED AS FOLLOWS:

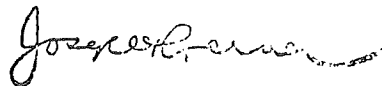
	<u>SANCTION</u>
AUSTIN NICHOLS & CO., INC. (LIGGETT GROUP, INC.)	\$ 1,800.00
BUCKINGHAM CORPORATION (NORTHWEST INDUSTRIES, INC.)	31,000.00
CARILLON IMPORTERS, LTD. (LIGGETT GROUP, INC.)	500.00
CHARLES JACQUIN ET CIE	15,000.00
JOSEPH E. SEAGRAM & SONS, INC.	75,000.00
LESTER S. ABELSON, OSCAR GETZ (BARTON BRANDS LTD.) and BARTON DISTILLING ASSOCIATES, INC.	5,000.00
MONSIEUR HENRI WINES, LTD. (FORMERLY PEPSICO, INC.)	25,000.00
NATIONAL DISTILLERS AND CHEMICAL CORPORATION	40,000.00
PARK, BENZIGER & CO., INC.	13,500.00
RENFIELD CORPORATION	13,500.00
SCHENLEY AFFILIATED BRANDS CORP. (RAPID-AMERICAN CORP.)	75,000.00
"21" BRANDS, INC. (FOREMOST-MC KESSON, INC.)	75,000.00
WILLIAM GRANT & SONS, INC.	500.00

ONE LICENSEE, SCHIEFFELIN & CO., CHARGED WITH PROVIDING \$150,000. IN ILLEGAL REBATES, HAS ENTERED A PLEA OF 'NOT GUILTY.' THAT CASE WILL BE RESOLVED THROUGH THE NORMAL ADMINISTRATIVE PROCESS.

IN MOST RESPECTS, THE COMPLAINTS AGAINST THE SUPPLIERS ARE SOMEWHAT EXPANDED COUNTERPART TO THOSE PREVIOUSLY FILED AGAINST THE WHOLESALE LEVEL OF THE INDUSTRY.

ON JANUARY 2, 1979 ABC CHARGES WERE FILED AGAINST 11 WHOLESALERS GROUPS RELATING TO APPROXIMATELY \$680,000. IN THE LEGAL TRADE PRACTICES. THOSE CHARGES WERE NOT CONTESTED. THE WHOLESALERS WERE FINED A TOTAL OF \$210,000. IN LIEU OF LICENSE SUSPENSIONS.

COPIES OF ORIGINAL SPECIFICATIONS ATTACHED.

A handwritten signature in cursive script, appearing to read "Joseph H. Lerner".

Joseph H. Lerner
Director