STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2189 July 15, 1975

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ITEM

STATE OF NEW JERSEY
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1. APPELLATE DECISIONS - SOVAT, INC. v. ATLANTIC CITY ET AL.

Sovat, Inc., Appellant,	)	
v.	)	On Appeal
Board of Commissioners of the City of Atlantic City, and Adam and Dolores Thomas, t/a Thomas Liquors, Respondents.	)	CONCLUSIONS and ORDER

Samuel Epstein, Esq., Attorney for Appellant
Murray Fredericks, Esq., by Bertram M. Saxe, Esq., Attorney for Respondent Atlantic City
Elias G. Naame, Esq., Attorney for Respondents Thomas

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Board of Commissioners of the City of Atlantic City (hereinafter Board) which, on August 22, 1974 granted a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-149, from Cakert Enterprises, Inc., to Adam and Dolores Thomas and from 4101-05 Atlantic Avenue to 1214 Atlantic Avenue, Atlantic City.

The petition of appeal contends that: (1) the transfer was violative of the statute relating to transfers of licensed premises within two hundred feet of a school (N.J.S.A. 33:1-76; (2) although objection to such proposed transfer was duly made, no hearing on the objections was granted; (3) the special condition imposed on the grant of transfer, that respondents, Adam and Dolores Thomas, should not permit on-premises consumption within the licensed premises, results in a change in the character of the license from a "consumption" to a "distribution" license, hence was violative of the applicable statute (N.J.S.A. 33:1-12); and (4) respondent's application indicates that a bicycle rental business is being conducted on the licensed premises, which is impermissible and violative of the statute.

In their answers, the respondents denied each of the contentions advanced by the appellant and affirmatively pleaded that:

(a) The "school" referred to in the petition was not a school as contemplated by the statute (N.J.S.A. 33:1-76).

(b) Even if the "school" came within the statutory contemplation, the distance prohibition of two-hundred feet is not violated.

(c) Even if the "school" is such as contemplated by the statute, the protection of that statute was waived by the school authorities, as permitted by said statute.

(d) Appellant holds a plenary retail consumption license with a "Broad Package Privilege" which permits the engaging in a liquor distribution business; hence only the respondent affected by the condition has a right to complain of the imposition of the condition prohibiting on-premises consumption of alcoholic beverages.

(e) The bicycle business to which petition refers is a business conducted on the otherwise vacant lot to which the license has been transferred; before the licensed business can be opened for operation a building need be erected and the bicycle business will be replaced.

(f) A hearing was held on the application to which appellant had notice; neither the statute nor regulations of the Division of Alcoholic Beverage Control were violated.

A de novo appeal was held in this Division pursuant to Rule 6 of State Regulation No. 15, at which, the parties were given full opportunity to introduce evidence and cross-examine witnesses.

At or during the hearing certain exhibits were accepted into evidence as follows:

(a) Resolution of the Board adopted August 22, 1974, as attached to the answer.

(b) Distance survey prepared by Wood & Schilling, C.E.

(c) Application for transfer of license filed by respondents Thomas.

(d) 8" x 10" photograph of "The Children's Seashore House".

(e) Nine Polaroid snapshots of varied views of and within the subject "Children's Seashore House.

(f) Copy of letter to Board objecting to subject transfer.

(g) Copy of letter of Administrator of Children's Seashore House.

(h) Copy of letter by appellant's counsel to Director of Revenue and Finance of the City.

(i) Original of letter of Administrator of Children's Seashore House to City Solicitor.

Catherine Dunleavy, the secretary-treasurer of the corporate appellant identified photographs introduced into evidence, as listed above. However, she was only able to describe generally the "Children's Seashore House", and had no knowledge of school activity within.

The supervisor for alcoholic beverage licenses of the City, Hammond A. Daniels, testified that, in his opinion, the "Children's Seashore House" is a hospital, but he caused no investigation to be made relative to the school capabilities of that institution. He stated that there were no objectors present at a public hearing conducted respecting respondent's application for transfer.

Respondent Adam Thomas, testified that he, as partner with his wife, is the applicant for the transfer, and the place to which the transfer was granted is a vacant lot on which a seasonal bicycle rental business has been conducted. A new building facility would be required before the commencement of any liquor business on the premises. His daughter is employed at the "Children's Seashore House", and, at one time he endeavored to have another daughter admitted as a patient.

In his opinion, the hospital is not a school, has no classes nor faculty for such purposes. The children admitted are there solely for medical treatment, which is temporary in nature.

The exterior door of the "Children's Seashore House" located nearest to his premises is merely a fire door to which there is no access from the exterior. The main entrance and the proposed location for his license are far more than two-hundred feet apart. On cross examination, he admitted that he had never visited the third floor of the "Children's Seashore House", nor was he informed that there were not classrooms on the third floor.

The aforementioned testimony was of little help in arriving at a determination of the crucial issues involved here. The exhibits, however, offer some clarity with respect to the location of the proposed premises and the "school" to which it is near.

From these exhibits and a limited portion of the testimony which was uncontroverted, the following picture emerges:

There exists in Atlantic City a rather sizeable children's hospital called the "Children's Seashore House". It is located on a plot of land fronting on Atlantic Avenue for a full City block, or approximately three-hundred feet. Using the scale supplied on the plot plan of Wood & Schilling, C.E. it appears that the front door of respondents' proposed structure is in excess of two-hundred feet to the nearest doorway of the "Seashore House". From main doorway to main doorway of both establishments, the distance has been calculated at three-hundred and eighty-six feet.

A description of this "Seashore House" is carried on a sign erected in front of it which contains the following legend:

" THE
CHILDREN'S SEASHORE HOUSE
AT ATLANTIC CITY

Chartered 1873

A private non-profit hospital for short-term rehabilitation of chronically ill children through a coordinated program of medical care. Physical care, regular school and recreation. All children are eligible regardless of race, religion or ability to pay.

Affiliated with the University of Pennsylvania

VISITORS ARE WELCOME "

The words "regular school" on the above sign apparently gave rise to this appeal. These words and a one-line reference on a directory located in the lobby to "Education ..... Mr. Glassey", was the only substance to the allegation that there, in fact, was a school within the hospital.

The statute applicable to the restriction of licensed premises within two-hundred feet from a church or school (N.J.S.A. 33:1-76) describes the method of measurement thusly:

> "Said two hundred feet shall be measured in the normal way that a pedestrian would properly walk from the nearest entrance of said church or school to the nearest entrance of the premises sought to be licensed."

The schematic drawing of the engineers introduced into the record includes measurements from and to the respective doorways of the buildings involved and this measurement is not within the limitation of the statute for:

> "...the practical construction by the Division for many years of the term 'nearest entrance' as recognized by us in the case just cited, the measurement should be 'between points on the sidewalk intersecting (sic) any walk which a person would use in entering the properties in question.'" Karam et al v. Alcoholic Bev. Control, et al, 102 N.J. Super. 291, 293 (App. Div. 1968).

The drawing above referred to carries upon it a scale, from which it can be determined that the distance from a point on the sidewalk opposite the main doorways of the respective premises would be a minimum distance of two hundred twenty-four feet.

Using an existing side doorway of the "Seashore House" as a point of measurement, the distances would then be reduced to one hundred-eighty feet, under the minimum requirement. However, that doorway is not an entranceway in the usual sense, since it carries the admonition "Residence, Private - Enter Hospital on Richmond Avenue". That doorway has a conspicuous sign attached to its interior which adds: "Door always locked - Use Richmond or Annapolis Ave. Entrances. Ring bell thereto after 6:00 P.M."

In a similar situation where an exit door was urged as a proper point of measurement, the court held that:

> "The argument of the Church is based upon the contention that a door on the northwest side of the Temple building should be considered an entrance to that building. The proof is clear, however, that the door in question is only a fire exit. There is no outside handle on it, and it is not intended to afford ingress from the outside...." Presbyterian Church v. Div. of Alcoholic Beverage Control, 53 N.J. Super. 271, 281 (App. Div. 1958).

I, therefore, find that the proposed location and the premises of the "Seashore House" are not within the proscribed distances and the statute has not been violated.

However, as the resolution adopted by the Board is silent respecting the proximity of the proposed location to a school, it is urged that the Board, being unmindful of such proximity or uninformed as to such school, its action in granting the transfer was erroneous particularly in view of their denial of counsel's request for an adjournment of the matter until he had sufficient time to address the question.

The Board has responded, however, to this contention that there was no consideration given that the "Seashore House" was in fact a school at all. In any event, in the absence of proof to the contrary, it is presumed that an issuing authority took into consideration all of the facts and circumstances surrounding an application for a transfer, including investigation or inspection of the proposed site. Such inspection, even a limited one, would have resulted in a conclusion that the "Seashore House" was a hospital, not a school.

Other than the sign indicated, which refers to the words "regular school", passing inspection of the building would not give rise to the belief that the building was in fact, a school-building. Counsel's letter requesting an adjournment of the hearing is silent as to the reasons for the objection; nothing was contained in the letter which would lead to the belief that a challenge would be interposed because of the alleged existence of a nearby "school". The Board elected to determine the matter at its next regular meeting, and did so. There is no legal requirement that the Board delay its action, particularly in the absence of any specificity in the objection.

The respondent's contention that the distance limitation of the statute was not in issue as "the protection of this action may be waived at the issuance of the license and at each renewal thereafter, by the duly authorized governing body on authority of such church or school, such waiver to be effective until the date of the next renewal of the license..." (N.J.S.A. 33:1-76). There was such waiver.

The proofs, however, do not disclose a waiver by the "duly authorized governing body on authority of such church or school" as a letter of the hospital Administrator, Morgan Raughley of the "Children's Seashore House" indicating no objection to the transfer was later modified by another letter in which the Administrator made his position clear, i.e., that the absence of objection was by him individually and not by the Board of the House. He did indicate that "I am reasonably sure that my Board would take no action regarding this application." Such assurance is not a substitute for a "waiver" as contemplated by the above statute. However, it may be inferred that the Administrator was not directed to <u>oppose</u> the transfer.

In any event, in view of my recommended finding <u>infra</u> that this facility is not a "school", this contention is irrelevant and lacks substance.

I have considered the other objections raised in the petition of appeal and find that they are without merit.

At a subsequent hearing, proofs were introduced respecting the existence of school facilities within the "Children's Seashore House". From the testimony of Hospital Director Morgan Raughley and Longport Superintendent of Schools, William Stewart, proof was supplied that the "Children's Seashore House" has children patients whose average length of stay is sixty days. Independent of the "Seashore House", but in space supplied by it, five classrooms are provided for a curriculem that extends from the first grade through High School. The education program follows the general requirements of the New Jersey State Board of Education for handicapped children, and if pupils complete an academic year while still confined as patients, suitable certificates or diplomas are awarded. The faculty, under his direction, is made up of qualified teachers. He admitted, on cross examination, that the "Children's Seashore House" is primarily a hospital.

That section of the Alcoholic Beverage Law related to "schools" (N.J.S.A. 33:1-76) carries no definition of "school" nor of "schoolhouse". The definition of both as contained in Webster's Third New International Dictionary - 1961, defines "school" as "an organized body of scholars and teachers associated for the pursuit and dissemination of knowledge"; and "schoolhouse" as "a building used as a school, especially as an elementary school".

It must be noted that the word "school" in N.J.S.A. 33:1-76 is thereafter followed by the word "schoolhouse" in apparent clarification.

In a similar situation, the court was called upon to determine the extent of the definition of "college" in relation to the statute that affords a tax exemption to schools and colleges. (N.J.S.A. 54:4-3.6) The Academy of Medicine (Bloomfield v. Academy of Medicine of N.J.,87 N.J. Super. 595, 600 (App. Div. 1965); revsd. on other grounds, 47 N.J. 358), sought an exemption on the ground that it was a "college"; it was a non-profit teaching establishment conducting educational classes and housing a library for the benefit of physicians, dentists and members of the public. The court held that, notwithstanding the extensive educational aspects of the Academy, it was not a college within the intendment of the statute; and it added the following:

> "...however, we did not intend to assert that all institutions having some connection with the broad concept of education are deemed 'colleges' in the sense intended by the legislature...The inquiry must be directed to the facts of each case...."

Earlier the court held "we do not understand 'college' to be a word of art which, by universal understanding, has acquired a definite, unchanging significance in the field of education, fixed forever in its meaning like a bug in amber." Princeton Twp. v. Institute for Advanced Study, 59 N.J. Super. 46 (App. Div. 1960).

Hence, as the word "college" is in flux and must be defined in relation to a given situation, so too, presumably, must the word "school" be applied to a given situation. Turning then to the applicable statute, N.J.S.A. 33:1-76, it is noted that this section of the entire Act is part of the legislative scheme to reduce the evils concomitant with the sale of alcohol. Keeping children en route to or from school away from dispensaries of alcohol is the apparent purpose of the statute. Thus, the limitation of distances within the statute.

In Carling v. Jersey City, 71 N.J.L. 154 (1904) the phrase "for school purposes" was held to relate to "schools" or "school-houses" interchangeably.

In an analogous decision, Newark Athletic Club v. Newark, 7 N.J. Misc. 55 (Sup. Ct. 1929), the court determined that the Trinity Parish House, in which Sunday School, prayer reading and hymn singing were conducted for deaf mutes, was not a "church" within the meaning of an ordinance proscription for variance.

Counsel for respondents has cited American Nat'l Red Cross v. Shotmeyer Brothers, Inc., 70 N.J. Super. 436, 444 (App. Div. 1961) which holds:

> "Giving instruction to individuals or groups in a building used principally for other purposes

> does not make [that building] a school, and here it is plain that the classes conducted and lectures given have not been the primary use to which the building has been put."

I find that, factually, that if "Children's Seashore House" were a school, is not within the two hundred foot limitation of the statute (N.J.S.A. 33:1-76); and secondly, whatever educational facilities are provided are ancillary to its primary purpose of being a hospital. Its educational program is almost entirely tutorial in nature, and although it enjoys accreditation by the State Department of Education, it is not the kind of "school" contemplated in the above statute. Lastly, the "Children's Seashore House", despite the sign on the exterior, describing the educational advantages is in no sense a "school house" within the intendment of the above statute.

The "Children's Seashore House" is a hospital. Its patients, although being afforded continuing educational opportunity, live within the confines of the hospital and in no sense go "to or from the schoolhouse" as would healthy, unconfined children. Therefore, the inherent dangers, apprehended by the Legislature, of having children exposed to taverns, pubs or liquor stores while passing to or from school are totally absent here. Accordingly, I find that the statute restriction was not intended to be applied to this situation.

I, therefore, conclude that the appellant has failed to establish that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

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

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by appellant, and written answers to the said exceptions, with supportive argument, were filed by respondents Thomas, pursuant to Rule 14 of State Regulation No. 15.

Appellant contends, in its exception No. 1, that it was not afforded a hearing before the Board. The evidence discloses that the Board did conduct a hearing on the said application on August 22, 1974, after lawful notice thereof was given.

The appellant sought a postponement of the meeting, which was denied by the Board, apparently because it did consider the basis for the said request insubstantial,and hence unwarranted. Such action was discretionary with the Board, and absent proof that it acted capriciously or unreasonably, it should not be disturbed by the Director. I find that the Board acted within the fair limits of its lawful discretion. Cf. Blanck v. Magnolia, 38 N.J.

484 (1962); Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292 (1970).

In any event, appellant was afforded a full opportunity to be heard at this appeal de novo hearing in this Division. Thus, this contention lacks substance.

In its other exceptions, appellant takes issue with the Hearer's recommended finding that the "Children's Seashore House" is, in fact, a hospital, and is not a school. From my evaluation of the record herein, I find that it convincingly established that this facility is a "private non-profit hospital for short-term rehabilitation of chronically ill children through a coordinated program of medical care." It is abundantly evident that this facility is a hospital, with its primary function the medical treatment of children on a temporary basis; it is not a "school" within the definition of the applicable statute. Cf. American Nat'l Red Cross v. Shotmeyer Brothers, Inc., 70 N.J. Super. 436, 444 (App. Div. 1961).

In view of my finding with respect thereto, the issue relating to proximity of the proposed licensed premises to a school, as limited by the Alcoholic Beverage Law, 33:1-76, is irrelevant. Appellant's application of Fanwood v. Rocco, (33 N.J. 40), to the facts herein is misplaced. However, Fanwood does emphasize the well-established principle that the Director should not substitute his opinion for that of the local issuing authority, but should merely determine whether reasonable cause exists for the local decision, and, if so, should affirm, regardless of his personal view. See also Lyons Farms Tavern, Inc. v. Newark, supra, N.J.S.A. 33:1-24, 26.

I, therefore, find that these exceptions have no legal or factual foundation.

Thus, having carefully considered all of the exceptions, I find that they have either been correctly resolved in the Hearer's report, or are lacking in merit.

Furthermore, the request by appellant for oral argument before me is unwarranted, and, is accordingly, denied.

Having carefully considered the entire record herein, including the transcripts of testimony, the exhibits, the Hearer's report, the exceptions filed thereto, and the answers to the said exceptions, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 15th day of May 1975,

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

Leonard D. Ronco
Director

2. APPELLATE DECISIONS - 160 OCEAN AVENUE CORPORATION v. LONG BRANCH.

160 Ocean Avenue Corporation, t/a Fountains Motel,

Appellant,

v.

City Council of the City of Long Branch,

Respondent.

On Appeal

CONCLUSIONS AND ORDER

Bernard F. Boglioli, Esq., Attorney for Appellant
No appearance by Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Subsequent to the filing of a Hearer's report herein and after hearing oral argument, the Director determined that a supplemental hearing is required in order to afford the minors (who were not present at the hearing) an opportunity to testify relative to what drinks, if any, they had purchased and consumed in the licensed premises on the date charged herein. Accordingly, the minors were subpoenaed to testify as Division witnesses. The parties hereto were invited to produce such supplemental testimony which may aid in the determination of this matter.

At the outset of the hearing, appellant objected to the holding of a supplemental hearing on the ground that it would be prejudiced thereby. Appellant argues that the charge levelled against it was dated December 21, 1973, a period of five months subsequent to the date of the alleged offense, i.e., July 20, 1973; that the hearing thereof was not completed by the Council until April 23, 1974, and that the supplemental hearing on appeal was not scheduled until December 23, 1974, a period of a year and five months subsequent to the date alleged in the charge.

Appellant further argued that the holding of a supplemental hearing would, in effect, result in a bifurcated trial of the issues and that, if all of the witnesses had been produced at one hearing, its cross-examination of witnesses may have been different.

Although charges should be prepared and served upon a licensee by a local issuing authority as expeditiously as possible upon the discovery of an alleged violation, I do not find such an inordinate delay in this matter as would prejudice appellant herein. See Rules 1, 2 and 3 of State Regulation No. 16.

Moreover, upon the scheduling of the supplemental hearing, all parties were informed that they may produce such other supplemental (not cumulative) relevant testimony which would aid in a determination of this matter. In any event, I do not feel that appellant has been prejudiced by the holding of the subject supplemental hearing.

In sum, I perceive no merit to appellant's argument against the holding of a supplemental hearing herein.

The ages of the minors was not in dispute. In any event, there was adequate proof offered that both minors were seventeen years of age on July 20, 1973, the date mentioned in the charge.

Elizabeth R-- testified that, accompanied by Pamela E--, she entered the appellant's licensed premises on July 20, 1973, at 10 p.m. or 11 p.m.

The first stop was at a bar "to the right" where both females ordered, were served and consumed a beer. Thereafter they proceeded to the other bar. Elizabeth ordered a Tom Collins from a bartender, whom she identified as Mr. Drukas. After she consumed a part thereof, the drink was seized from her.

Upon further questioning, the female testified that she had consumed beer and a Tom Collins prior to the subject date and that, in her opinion, both drinks were the beverages that she had ordered.

Both females were questioned by an employee concerning their age upon entering into the foyer. The employee was informed that the females had left their proof of age at home and that they had traveled from New Shrewsbury. Elizabeth recalled being asked "to write something" on a blank piece of paper. The witness conceded that she wrote a name on the sheet of paper other than her own. Additionally, Elizabeth conceded

that she wrongfully asserted that she was acquainted with Doctor Villane (a principal of the corporate appellant).

The witness described the glass wherein the Tom Collins was served as a frosted round glass from the bottom up and approximately ten inches tall.

Pamela testified in general corroboration of the testimony offered by her companion, Elizabeth, relative to the ordering, sale and service of first, a beer, and then a Tom Collins. She, too, testified that she had consumed beer and Tom Collins prior to July 20, 1973. She identified the bartender who served her the Tom Collins as Mr. Drukas. She had not been acquainted with Drukas prior to the subject night. She identified Drukas when he was brought into the office.

Both females were aware that they were not of legal age on the date that they ordered alcoholic beverages in these premises.

The attorney for the appellant made a proffer of proof that Dr. Anthony Villane, one of the principals of appellant corporation, if called to testify, would testify that he is thoroughly familiar with the operation of the licensed premises and of its inventory, and that its inventory did not include the glasses such as described by one of the minors. In arriving at my ultimate determination herein, I am accepting the proffer as evidence along with the other evidence adduced herein.

In my Hearer's report, previously filed herein, I recommended that the action of the Council be reversed and the charge herein be dismissed. My recommendation was based primarily upon the fact that the minors did not testify at the hearing before the Council, and that the record was devoid of testimony disclosing whether the minors had, in fact, ordered, were served and consumed alcoholic beverages. Further, it was my view that the evidence was insubstantial concerning the chain of possession of the beverages seized by the local police officers; and there was some doubt as to whether the seized liquid was alcoholic, in content, within the purview of the statute.

In order to arrive at a fair determination and resolution of the issues herein it should be noted that appellant was served with the following charge:

> "On July 20, 1973, you sold, served and delivered an alcoholic beverage to Pamela E--, age 17, and Elizabeth R--, age 17, persons under the age of eighteen years, and allowed, permitted and

so offered the consumption of such beverage by said Pamela E-- and Elizabeth R--, in or upon your licensed premises; in violation of Rule 1, State Regulation 20."

At the present posture of the controversy, I find and determine that the presence of the minors in appellant's premises has been established beyond doubt. Reference is made to the testimony of Police Officer Hennelly and Lieutenant Irene of the local police department (set forth in the original Hearer's report filed herein) who testified that they observed the minors in the establishment holding glasses containing a liquid. Remaining in issue for resolution, therefore, is whether there was a sale, service and delivery of alcoholic beverages to the minors by the appellant and whether the appellant permitted and suffered the consumption thereof by these minors.

I find that the testimony of the local police officers clearly establishes the fact that each minor was holding in her hands a glass containing a liquid therein. Additionally, Lieutenant Irene testified that he observed the females consuming some of the liquid.

At the supplemental hearing, each minor testified that she ordered, was served and then consumed a beer, and thereafter ordered, was served and partly consumed a Tom Collins.

Upon considering the totality of the evidence, I conclude that the testimony of the minors represents a true and factual account of what transpired on the date alleged in the charge. I am satisfied that the minors did not compound their confessed ill-advised misadventure by committing perjury at the hearing.

In my Hearer's report, I also expressed doubt that the Council had met the burden of establishing that the minors were served and consumed an alcoholic beverage. In view of the testimony received at this hearing from the minors concerning the identity of the beverages which they had ordered, and which was delivered to and consumed by them, I now find that such doubt has been entirely dissipated. In this connection it is also noteworthy that, even if no sample of the beverage served or sold was available for chemical analysis, testimony by the purchaser or any other person that the purchaser ordered an alcoholic beverage by name (e.g., beer, whiskey, Tom Collins, etc.) and that a drink, bottle or other container, was sold or served pursuant to that order creates the permissible inference that the beverage ordered was actually served. It further warrants judicial notice of the fact that such beverage had an alcoholic content

of more than one-half of one percent by volume and hence constitutes an "alcoholic beverage" within the purview of N.J.S.A. 33:1-1 (b).

In State v. Marks, 65 N.J.L. 84 (Sup. Ct. 1900), it was held that proof that a vendor, in compliance with the request of a vendee for a half-pint of whiskey, sold to him a half-pint of liquor and received payment for it as whiskey will, in the absence of proof to the contrary, justify the conclusion that the liquor sold was in fact whiskey.

In Holmes v. Cavicchia, 29 N.J. Super. 434, 436 (App. Div. 1954), wherein minors testified that they had ordered beer by the glass, the court held that there is an implication that a purchaser received that which he has ordered and paid for, citing State v. Marks, supra; Lewinsohn v. U.S., 278 F. 421, 426; 48 C.J.S. Intoxicating Liquors, sec. 371(a), p. 548 and sec. 371(c), p. 549. The cases in this Division are myriad wherein this principle has been followed.

From the evidence adduced at the supplemental hearing, I find that each of the minors ordered and was served a beer and a Tom Collins, and that such drinks are alcoholic beverages within the purview of N.J.S.A. 33:1-1(b).

In N.J.S.A. 33:1-77 the statute contains the following proviso:

> "...that the establishment of all of the following facts by a person making any such sale shall constitute a defense to any prosecution therefor: (a) that the minor falsely represented in writing that he or she was twenty-one (21) years of age or over, and (b) that the appearance of the minor was such that an ordinary prudent person would believe him or her to be twenty-one (21) years of age or over, and (c) that the sale was made in good faith relying upon such written representation and appearance and in the reasonable belief that the minor was actually twenty-one (21) years of age or over." (Emphasis ours)(Age now reduced to eighteen (18) years)

It is abundantly clear that, at no time were these minors requested or required to make a written representation by the appellant's agent. The sole writing requested by the licensee bartender herein was a signature on a blank piece of paper. This does not constitute a proper written representation with the purview of the statute; thus, an essential element of a defense was lacking. The prevention of sales of intoxicating liquor to minors not only justifies but necessitates the most rigid control. Hudson Bergen County Retail Liquor Stores Ass'n.

v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); In re Schneider, 12 N.J. Super. 449 (App. Div. 1951); Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 (1956).

I am satisified that the Council has proved its case by a fair preponderance of the credible evidence, indeed by substantial evidence. Thus, appellant has failed to meet the burden of establishing that the action of the Council herein was erroneous. Rule 6 of State Regulation No. 15.

Accordingly, it is recommended that an order be entered affirming the Council's action, dismissing the appeal and fixing the effective date of the suspension which was stayed by the Director pending the entry of further order herein.

Conclusions and Order

Written exceptions to the Supplemental Hearer's report with supportive argument were filed by appellant herein pursuant to Rule 14 of State Regulation No. 15. No answer to the said exceptions was filed by the respondent.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the Original and Supplemental Hearer's reports, and the exceptions to the Supplemental Hearer's report which I find have either been correctly resolved in this report, or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 9th day of May 1975,

ORDERED that the action of the Council in finding appellant guilty of the charge herein be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated May 24, 1974, staying the Council's action pending the determination of this appeal, be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-66, issued by the City Council of the City of Long Branch to 160 Ocean Avenue Corporation, t/a Fountains Motel, for premises 160 Ocean Avenue, Long Branch, be and the same is hereby suspended for fifteen (15) days, commencing at 3:00 a.m. on Thursday, May 22, 1975, and terminating at 3:00 a.m. on Friday, June 6, 1975.

Leonard D. Ronco
Director

3. STATE LICENSES - NEW APPLICATIONS FILED.

Devon Chemicals, Inc.
157 Broad Street
Red Bank, New Jersey
Application filed June 30, 1975
for plenary wholesale license.

Charles H. Bensel
t/a Thrifty Beer & Soda Mart
184 Green Avenue
Woodbury, New Jersey
Application filed July 1, 1975
for place-to-place transfer of
State Beverage Distributor's
License SBD-39 from 666 Mantua
Avenue, Woodbury, New Jersey

Sicula Wines Distributing Corp.
68-74 Gaston Avenue
Garfield, New Jersey
Application filed July 2, 1975
for additional warehouse license
for premises 85 Sherman Place,
Garfield, New Jersey, operated
under Limited Wholesale License
WL-60.

Velardi & Son Wine Imports, Inc.
40 Whelan Road
East Rutherford, New Jersey
Application filed July 2, 1975
for limited wholesale license.

Gross' Highland Winery
212 Jim Leeds Road
Absecon, New Jersey
Application filed July 10, 1975
for additional premises under
Plenary Winery License W-41 at
2516 Route 35, Manasquan, New Jersey.

Admiral Wine & Liquor Co.
t/a Admiral Wine Merchants
590 Belleville Turnpike
Kearny, New Jersey
Application filed July 14, 1975
for place-to-place transfer of
Plenary Wholesale License W-38
from 805 Lehigh Avenue, Union,
New Jersey.

The Paddington Corporation
630 Fifth Avenue
New York, New York
Application filed July 15, 1975
for plenary wholesale license.

Leonard D. Ronco
Director