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

BULLETIN 1851 April 29, 1969

TABLE OF CONTENTS

ITEM

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

BULLETIN 1851 April 29, 1969

1. COURT DECISIONS - LYON'S FARMS TAVERN, INC. v. NEWARK AND NEWARK BETH ISRAEL HOSPITAL - DIRECTOR AFFIRMED.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-293-68

LYONS FARMS TAVERN, INC.

plaintiff-respondent,

vs.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK and DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

defendants-respondents,

and

NEWARK BETH ISRAEL HOSPITAL,

objector-appellant.

- - - - - - - - - - - - - - - - - - - -

Argued March 10, 1969 -- Decided March 18, 1969.

Before Judges Goldmann, Kolovsky and Carton.

On appeal from the Division of Alcoholic Beverage Control, Department of Law and Public Safety.

Mr. Alan J. Gutterman argued the cause for appellant (Messrs. Cummis, Kent & Radin, attorneys).

Mr. Sam Weiss, Assistant Corporation Counsel, argued the cause for the City of Newark (Mr. Philip E. Gordon, Corporation Counsel of the City of Newark, attorney).

Mr. Rocco F. Senna argued the cause for respondent Lyons Farms Tavern, Inc.

PER CURIAM

(Appeal from decision in Lyon's Farms Tavern, Inc. v. Newark, Bulletin 1815, Item 1. Director affirmed. Opinion not approved for publication by the Court committee on opinions.)

2. APPELLATE DECISIONS - WEST MILFORD BAR AND LIQUORS, INC. v. WEST MILFORD.

West Milford Bar and Liquors, Inc., t/a West Milford Bar and Liquors, Inc.,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS AND ORDER
Township Committee of the Township of West Milford,	)	
Respondent.	)	

William F. Johnson, Esq., Attorney for Appellant
Wallisch & Wallisch, Esqs., by Louis Wallisch, Jr., Esq., Attorneys for Respondent Township
James F. McGovern, Jr., Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This appeal addresses itself to the propriety of the determination of the Township Committee of the Township of West Milford (hereinafter Committee) whereby on May 12, 1967, it denied appellant's application for a place-to-place transfer of a plenary retail consumption license from premises located at Warwick Turnpike to a shopping center to be constructed on Marshall Hill Road, West Milford.

The action of the Committee was unanimous and, as reflected in the minutes of the meeting and the transcript of the proceedings before the Committee, both of which were admitted into evidence at this hearing, was taken after a full hearing at which witnesses for both the appellant and the objectors were heard, petitions both pro and con were introduced and considered, and arguments of counsel presented.

The members of the Committee set forth reasons for their individual votes, and these will be discussed infra.

In its petition of appeal appellant contends that the action of the Committee was erroneous for reasons which may be briefly summarized as follows:

(a) The transfer would be "from a more congested location to a less congested location",

(b) The transfer is within the same area considering the size of the entire township,

(c) The Committee's action was contrary "to its decision" in the matter of Aiello v. West Milford, "which case is exactly the same as the Appellants",

(d) Committeeman McFarland was prejudiced because her son has an interest in a liquor license, and Committeeman Gola was prejudiced because he maintains a grocery store across the street from the shopping center to which the said license is sought to be transferred,

(e) The Committee acted unreasonably, arbitrarily and against the logic of the presented facts.

The answer of the Committee admits the jurisdictional allegations of the petition, and generally denies the substantive charges. It further sets forth the statement of the grounds upon which the Committee based its determination as follows:

(1) No additional licenses are needed in the proposed area and no proof of such need has been presented,

(2) The transfer would not be to the same geographical area and would contribute to the present imbalance of licenses located in a one-third area of the Township,

(3) The Committee was concerned for the safety of young people who would patronize the shopping center,

(4) The Committee has established a policy requiring greater distances between the locations of licensed premises where transfers are sought.

The hearing on appeal was de novo, pursuant to Rule 6 of State Regulation No. 15, in addition to the transcript of the proceedings before the Committee. Further testimony was presented by all parties in accordance with Rules 6 and 8 of State Regulation No. 15.

The transcript of the proceedings below discloses that a number of witnesses appeared both for and against the said application and were vigorously cross-examined. In addition, a petition containing 491 names was presented by the appellant in favor of its application, and two counter petitions containing a total of 160 names were presented on behalf of the objectors to the said license.

The Township of West Milford consists of a rather large geographical area of approximately eighty square miles, has a total population of approximately 14,000 people, and has thirty-five retail liquor licenses. Nineteen of the thirty-five licenses are located in the area of Greenwood Lake and a small portion of West Milford and Hewitt (in which the proposed shopping center is to be constructed), which covers less than one-third of the township; and the balance of sixteen licenses are located in the other two-thirds of the township. Appellant's license is one of the sixteen. The appellant has not actively operated under its license at these premises for the past two years.

Theodore Lappas, testifying on behalf of the appellant, stated that he is a developer of shopping centers, and is in the process of setting up the shopping center on the proposed

site to which this license is sought to be transferred. The site will consist of a Shop-Rite supermarket, plus fifteen sattelite stores and a bank. He has developed numerous other shopping centers in the State of New Jersey, and in his opinion there is a need for this facility at this center. He estimates that about eighteen to twenty thousand persons will be attracted to the shopping center weekly within a reasonable period after operations are commenced.

On cross examination he admitted that a number of the shopping centers that he had developed do not have package liquor stores or taverns. He also asserted that in those shopping centers where they do have such facilities there was no traffic problem or any particular hazard to patrons because of on-premises drinking. He noted particularly that, in his experience with a shopping center in Waldwick which contains a tavern "which is actually a package store with a bar there", there was no trouble created by children patronizing the center. He admitted that, with reference to this application, he made no survey to determine whether the two taverns located within the immediate vicinity of this proposed site satisfied the needs of the area.

Daniel W. Inserra (the lessee of the Shop-Rite which will be constructed at this shopping center) felt that there was a need for a liquor store at the proposed site because "a new tavern will have many modern conveniences which will be a drawing, in my own opinion." However, he admitted that he had no knowledge of the amount of business presently handled by the two neighboring taverns, nor whether they adequately service the needs of the area.

Edward L. Cyr (a consulting traffic engineer with an impressive professional background) testified that in his opinion there was no particular traffic hazard in locating a tavern in the shopping center. He drew his primary experience in the City of Newark where he served as a traffic engineer for many years. He admitted that, of course, driving and drinking is a hazardous combination, but he did not feel that the women and children patronizing the shopping center would encounter any serious hazards engendered by the presence of a tavern thereon. Finally he admitted that he could not testify as to whether or not there was a need and necessity for the tavern at this proposed site.

John Teevan (a tavern owner and a former official of a State tavern owners association) thought that there would be a future need for a tavern because business at the proposed site would be generated "within six months after this thing is established" and that "there will be sufficient business for everyone." He noted that, while there was obviously no need for this tavern at the present time because the shopping center has not been built, there would be a need for this facility in the future and "it's not going to hurt the taverns that are already there."

Marian Hirsch testified substantially to the same effect at this hearing as she did at the hearing

before the Committee. The burden of her testimony was that the transfer at the proposed shopping center would provide a one-stop convenience for her and for other housewives to whom she has spoken and that, therefore, she feels that there is a need for the said transfer. On cross examination she recalled testifying that "there are children running loose every day in both our shopping centers now" and that the hazards are not necessarily related to the presence of a tavern. However, she agreed that patrons of the tavern who drive their cars upon leaving the said tavern might very well be a hazard to children.

It was stipulated that the testimony of the other witnesses present at the hearing herein would be similar to the testimony given before the Committee and would be corroborative, in effect, of that of Mrs. Hirsch as hereinabove summarized.

Committeewoman Mary McFarland stated that the reason she voted against the proposed transfer was that such transfer would create a greater concentration of licenses in that area; that in less than "one-third of the Township there were nineteen licenses." She also felt that the two taverns located in the immediate vicinity and a third outlet ("Carpignano's on Morsetown Road") adequately serve the needs of this area. She emphatically denied that the fact that her son owns a tavern which is located about three miles from the proposed shopping center influenced her judgment; she gave an honest, fair decision based upon the facts as she evaluated them.

Committeeman Edward Gola testified that he too voted to deny the said transfer for the reason that he felt there were enough licenses in that particular area. He was questioned about his relationship with the other tavern owners and stated that he operates a supermarket, and the other tavern owners are his customers, but that this did not influence his judgment with respect to the proposed transfer. He further asserted that the transfer would also create a traffic problem, and this entered into his final determination to vote against the said transfer.

Mayor Robert Little testified that his reasons for voting to deny the transfer were the same as those expressed by Committeewoman McFarland. He was questioned closely about his vote on the application for transfer of Pellegrino which had been heretofore granted by the Committee. He stated that he had not been on the Township Committee at that time and, therefore, had no part in the vote. However, he felt that in that matter the transfer was to a location within a few hundred feet from its prior location. Finally he repeated the statement made at the time of the hearing as follows:

> "... the Township Committee has gone on record -- in fact, we passed an ordinance recently, although it was our intention and the town has been working on this ordinance since last September, whereby we have established under this ordinance the minimum distance between taverns is 2500 feet."

This ordinance was introduced on February 3 and adopted on February 17, 1967.

Anthony Latino (president of the corporate appellant) testified that he presently operates a Shop-Rite supermarket which does not have a tavern located on or adjacent to its premises. He stated that he had filed this application for transfer before the present ordinance was introduced which restricted such transfer.

Committeeman Gilbert Terhune, Jr. testified substantially to the same effect as that of the other committeemen in expressing his reasons for voting against the said transfer.

In evaluating the entire testimony, including the transcript of the proceedings before the Committee and the record in this hearing, I am persuaded that the Committee's actions were not inconsonant with the needs of this municipality.

The decisive issue in my view was whether the area to which this license was proposed to be transferred was sufficiently serviced by existing liquor outlets and whether there was a need for the said transfer. The number of licenses which may be permitted in any particular area and the determination as to whether or not a license will be transferred to a particular location are matters confided to the sound discretion of the issuing authority, and its action will not be disturbed in the absence of a clear abuse of discretion. Blanck v. Magnolia, 38 N.J. 484; Rajah Liquors v. Div. of Alcoholic Beverage Control, 33 N.J. Super. 598. The Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether proper cause exists for its determination and, if so, to affirm irrespective of his personal views. Rothman v. Hamilton, Bulletin 1091, Item 1; Food Fair Stores of New Jersey, Inc. v. Union, Bulletin 1129, Item 1; The Grand Union Co. v. West Orange, Bulletin 1155, Item 3.

It has been consistently held by this Division and the courts that the transfer of a liquor license is not an inherent or automatic right. The issuing authority may grant or deny a transfer in the exercise of reasonable discretion. If denied on reasonable grounds, such action will be affirmed. Andrew C. Kless Enterprises, Inc. v. East Orange, Bulletin 1588, Item 2. See also Biscamp v. Twp. Committee of the Township of Teaneck, 5 N.J. Super. 172 (App. Div. 1949), where the issuing authority was upheld in denying a transfer of a liquor license because it was of the opinion that no need existed for a liquor license in that location of the municipality. In Fanwood v. Rocco, 59 N.J. Super. 306, 321 (App. Div. 1960), Judge Gaulkin, speaking for the court, stated:

> "The Legislature has entrusted to the municipal issuing authority the right and charged it with the duty to issue licenses (R.S. 33:1-24) and place-to-place transfers thereof '[O]n application made therefor setting forth the same matters and things with reference to the premises to which a transfer of license is sought as are required to be set forth in connection with an original

> application for license, as to said premises.' N.J.S.A. 33:1-26."

The court further stated in Fanwood, p. 320:

> "No person is entitled to either (transfer of a license) as a matter of law .... If the motive of the governing body is pure, its reasons, whether based on morals, economics or aesthetics, are immaterial."

Pertinent to the present inquiry, there is the language in Ward v. Scott, 16 N.J. 16 (1954):

> "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 .... 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 Committee has apparently long felt that the concentration of nineteen licenses in the area of Greenwood Lake and a small portion of West Milford and Hewitt, which take up less than one-third of the township, was a disproportionate concentration compared with the remaining fourteen licenses which serviced the remaining two-thirds area of the said township.

Since September of 1966 a series of discussions took place among the Committee members which culminated in the formulation of a municipal policy which was translated into the ordinance adopted on February 17, 1967. This ordinance provided that no transfer should be granted for premises within a distance of 2,500 feet from any other premises then covered by a plenary retail consumption license, except that the Committee may in its discretion grant a place-to-place transfer of an existing license to premises within 1,500 feet notwithstanding that the premises to which the license is so transferred is within 2,500 feet of an existing plenary retail consumption licensed premises. The ordinance specifically provided that it shall not apply to any transfer where the application for such transfer was filed with the Township Clerk before the effective date of that ordinance.

However, there is nothing in this ordinance that mandates the Committee to approve such transfer where it, in its sound discretion, determines that such transfer would be inimical to the best interests of the community. Thus, while the appellant filed its application prior to the effective date of the ordinance and came within Section 2 of the said ordinance, the Committee was not required to approve the said application. Cf. Tara Bay Club v. Upper, Bulletin 1627, Item 1.

Counsel for the appellant argues, however, that in Aiello v. West Milford et al., Bulletin 1741, Item 2, the

Committee approved a similar transfer and the said transfer was affirmed on appeal to this Division. He asks: "How in good conscience and good judgment could it grant a transfer in the Aiello case and deny in this case?" The short answer to this is, of course, that, whereas the transfer in Aiello was from a site within approximately 1,000 feet from the proposed new site and in the same geographical area, the present application for transfer is for one outside the geographical area and would, therefore, add another license to an already congested area. It is pertinent to point out that in Aiello the Director stated:

> "... The transfer of a liquor license to a shopping center is based on the same applicable principles as a transfer to any other section of the community.
>
> "The number of licensed premises to be permitted in a particular area, and the determination as to whether a shopping center is a suitable location for such facility have been held to be matters confided to the sound discretion of the local issuing authority..."

See Brass Castle Tavern v. Washington, Bulletin 1694, Item 3.

In this connection the appellant seems to raise contradictory arguments in its petition of appeal. In paragraph 4 of its petition the appellant contends that the "action of the respondent was erroneous in that... b. Transfer to be from a more congested location to a less congested location (and) c. The transfer is within the same area considering the size of the entire Township." The fact, as clearly established in this record, is that the transfer of this license to the proposed site would be from another geographical area to the proposed site in the one-third area delineated by the members of the Committee. Milan v. Hoboken, Bulletin 1720, Item 1.

Counsel for the appellant cites a recent decision by the Director in Heven, Inc. v. Jackson, Bulletin 1775, Item 3, which he contends presents an almost identical factual complex. In that case the Director reversed the denial of a place-to-place transfer by the local issuing authority to a shopping center. However, the facts in that case cannot be equated with those in the matter sub judice because in Heven the nearest plenary retail consumption license was about four miles distant from the proposed site to which the license was to be transferred, and the nearest plenary retail distribution license was located about one and one-half miles distant. In this case one tavern is located directly across the road, and another is located a short distance from the proposed site. Furthermore, in Heven the local issuing authority failed to state any reasons for denying the said application for transfer, failed to consider the needs of the community, and the concensus of the residents was clearly in favor of such transfer. In the instant matter the Committee articulated its reasons which appear to be both reasonable and sound.

It is noted that the burden of the testimony of witnesses appearing on behalf of the appellant was that the location of a tavern and package liquor store right in the shopping center would serve as a greater convenience; they would not be required to cross the road to purchase alcoholic beverages from the other liquor stores located nearby. Although a convenience in a proper case may be the reason for the granting of a liquor license, that in itself is rarely, if ever, a valid basis upon which the Director can compel a municipality to do so. Fanwood v. Rocco, supra. Shop-Rite of Monmouth, Inc. v. Middletown, Bulletin 1728, Item 1.

Significantly, another consideration which influenced the Committee was the potential hazard to women and children patronizing the shopping center if this facility were to operate at this shopping center. Cf. No. Central Counties Retail Liquor etc. v. Edison Tp. et als., 68 N.J. Super. 351, at. p. 361.

Finally, the appellant argues that a more substantial number of residents have signed the petition favoring the said transfer as compared to those who joined in the opposing petitions. Petitions are always influential as a medium of presenting the views of a group. However, the mere counting of noses, or the expressions in the marketplace, cannot serve as a substitute for the considered determination of the local issuing authority in fulfilling its obligation and responsibility in its designated capacity. Petitions are given weight after proper discount for self-interest, and the often irresponsible way in which they are signed as friendly accommodation without considered thought of the contents or of arguments on the other side. The weight to be given a petition must, in large measure, depend on what it states, who signs it, and how it accords with the policy and common sense of the officials responsible for the administration of the law and whose duty and privilege it is to hear both sides. Dunster v. Bernards, Bulletin 99, Item 1.

I am convinced that the petitions were fully considered by the Committee both qualitively and quantatively, and its judgment was the product of its reasonable and fair consideration of the totality of all the evidence.

I have considered the other matters raised in the petition of appeal, particularly those which contend that there was some prejudice on the part of several of the Committee members because of certain influential factors. These arguments are rejected as being without merit. I am persuaded that there is no evidence to establish that the Committee members were improperly motivated or influenced in arriving at their determination.

In order to meet the burden required under Rule 6 of State Regulation No. 15, the appellant must show manifest error and that indeed such logic was clearly against the weight of the presented facts. That burden was not met herein. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511.

After considering all of the evidence herein and the memoranda submitted in summation by counsel for the respective parties, I conclude that the appellant has failed to sustain the burden of establishing that the action of the

Committee was arbitrary, unreasonable or constituted an abuse of its discretionary power. Hence I recommend that an order be entered affirming the action of the Committee and dismissing the appeal.

Conclusions and Order

Exceptions to the Hearer's report and argument thereto were filed with me by the appellant. Answering argument was filed by respondent Committee. Additionally, oral argument was held before me.

The underlying premise of appellant's exceptions and argument is the contention that appellant's application should have been granted because it involves a transfer within the same geographical area of the Township and from a location with a greater concentration of licenses to one with a lesser concentration of licenses. Reliance for reversal of the denial is placed upon Bivona v. Hock, 5 N.J. Super. 118 (App. Div. 1949) and Township Committee of Lakewood Township v. Brandt, 38 N.J. Super. 462 (App. Div. 1955), two cases in which the municipal issuing authorities were reversed in their denials of place-to-place transfer applications.

I have carefully considered the entire record herein and, as a result, find that the proposed licensed premises, being distant more than a mile from the existing licensed premises, are in fact in a different geographical area so far as the question of immediate concentration of licensed premises is concerned. I further find that both locations nevertheless are in the same "one-third of the Township" in which the respondent Committee has determined, on an overall basis, there is more than a sufficient number of licenses.

It is the Committee's intention that future place-to-place license transfers should be channeled into the other two-thirds of the municipality, in which licensed premises are presently dispersed and in which the future growth of Township population is anticipated. I find this not unreasonable.

Further, the Committee has unmistakenly adopted a policy of attempting to prevent future license relocations exceeding 1500 feet if the new premises are located within 2500 feet of other licensed premises. The instant proposed transfer would conflict with this policy since the record discloses the existence of a licensed tavern about 400 feet from the proposed premises. If the distance-between-premises ordinance had not been adopted, the existence of this policy, in and of itself, would have been sufficient and reasonable basis for the Committee's action herein. Merely because many licensed premises (including appellant's, but which is not operating) presently are located less than 2500 feet from other such premises should not preclude the municipal issuing authority from attempting to prevent the perpetuation of such congested situation in the future. Cf. Rajah Liquors v. Division of Alcoholic Beverage Control, 33 N.J. Super. 598 (App. Div. 1955).

I have examined the Bivona and Lakewood cases and find neither precedential to mandate reversal of the

municipal action herein. The Bivona case held that a place-to-place transfer could not be denied merely upon the ground that the new premises would be more attractive and have added facilities, thereby resulting in greater patronage and greater sale of alcoholic beverages. The transfer in such case was to a location across the street from the old licensed premises.

The Lakewood case held that a place-to-place and person-to-person transfer could not be denied as a means of reducing an excessive number of licenses. The transfer involved proposed premises 2.5 miles away from the nearest tavern in Lakewood itself and 1.2 miles away from the nearest tavern in the adjacent municipality.

The distinguishing factor between these two cases and the instant case is that both municipalities therein grounded their actions upon impermissible reasons while here the bases for transfer denial are reasonable and permissible. See Fanwood v. Rocco, 33 N.J. 404, 414 (1960).

I have considered the other points raised by appellant. The contention of conflict of interest by two of the members of respondent Committee is not established since I find that the record does not reflect proof of sufficient benefit to one such member or to the son of the other if the transfer in question is denied. The alleged benefits are too speculative and remote to constitute a "potential for conflict." Griggs v. Princeton Borough, 33 N.J. 207, 219 (1960). The other points raised I find to be without merit.

Under the circumstances, I concur in the findings and conclusions of the Hearer and will accept his recommendation that the appeal be dismissed.

Accordingly, it is, on this 5th day of March, 1969,

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

JOSEPH M. KEEGAN
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - LICENSE SUSPENDED FOR 60 DAYS.

In the Matter of Disciplinary Proceedings against	)	
Finbar, A Corporation t/a Finbar Journal Square Terminal Jersey City, N. J.	)	CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-462 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)	

Robert H. Wall, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On November 11, 1967, you allowed, permitted and suffered gambling in and upon your licensed premises, viz., the making and accepting of bets in a lottery, commonly known as the 'numbers game'; in violation of Rule 7 of State Regulation No. 20.

"2. On November 11, 1967, you allowed, permitted and suffered tickets and participation rights in a lottery, commonly known as the 'numbers game' to be sold and offered for sale in and upon your licensed premises; in violation of Rule 6 of State Regulation No. 20."

After carefully considering the testimony adduced herein, it is my view that two numbers bets were accepted by a numbers writer on the licensed premises on the date alleged. However, I have serious doubts that the Division established that the licensee "allowed, permitted and suffered" the acceptance of bets as alleged. Since there appears to be a lack of the necessary preponderance of the evidence to find the licensee guilty of the charges, I recommend that the licensee be found not guilty and that the charges be dismissed.

Conclusions and Order

Exceptions to the Hearer's report were filed by the Prosecuting Attorney, pursuant to Rule 6 of State Regulation No. 16. Answering argument was filed by the licensee's attorney. On my own motion, oral argument was held before me.

The Division presented its case through the testimony of four of its investigative agents and documentary evidence consisting of a copy of the licensee's 1967-68 license application which discloses that the licensed premises consists of a corner of the concourse floor at the Journal Square Terminal, Jersey City.

ABC Agents G and Sy, each of whom was familiar with "numbers writing" type of gambling, testified that they visited the licensed premises on Saturday, November 11, 1967, at about 12:15 p.m., to investigate whether any gambling on "numbers" was taking place there. (The licensed premises contains a horseshoe-shaped bar in a room approximately 10' x 20' in size). Tending bar was a lone bartender, later identified as Joseph Zielinski. Standing at the bar were about ten patrons, including one known as James Beaver who was talking to a male patron. Beaver was observed writing on a small white pad and accepting from this patron money which he placed in his pocket. Directly across the bar about three feet away was Zielinski, who was looking in the director of Beaver.

The agents took positions next to Beaver at the bar, Zielinski remaining at his position behind the bar facing Beaver and the agents. Agent G said to Beaver that he wanted to "put some number bets in" and Beaver replied, "Sure. What do you want?" Agent G then said he wanted to play "318 for a dollar" and Agent Sy said he wanted "189 for a dollar". Beaver then wrote "318 - $1" and "189 - $1" on the aforementioned pad, which recorded the agents' bets of $1.00 each on their respective number being the winning number. Each agent handed Beaver a dollar bill, which he placed in his pocket. Beaver then left the premises. Throughout this incident, which took place openly without attempt at concealment, Zielinski remained at the same position behind the bar, opposite Beaver and the agents and looking at the three men at the bar, but remaining silent. The agents then departed from the barroom.

ABC Agents Sa and R testified that about 1:00 p.m. the same day, they entered the licensed premises and took positions at the bar still being tended by Zielinski. Each agent ordered and was served a drink by Zielinski. Agent Sa asked Zielinski, "Where's Jimmy Beaver? We want to get our number bets in." Zielinski answered, "You just missed him. He just left," whereupon Agent Sa reached across the bar with a dollar in his hand and asked Zielinski if he would "give our numbers bets" to Beaver when he returned. The bartender replied, "Oh, no, not me. There's two bookies that come in here and I'm not going to get in the middle of it. I'm not going to show any partiality. You give your bets to Beaver when you see him."

Zielinski then left the barroom and proceeded to the nearby men's room. Agent G entered the barroom and joined the other two agents. At this time, Zielinski returned to the licensed premises and the three agents identified themselves to him. Agent Sa advised Zielinski that Agent G (pointing to him) and Agent Sy (not present) a little earlier that day had placed bets with Beaver in the barroom. Zielinski said, "I didn't take any bets, did I?" Agent Sa replied, "Nobody said you did. The agent bet with Beaver in front of you in your

bar before, is that right?" "That's right, with Beaver," answered Zielinski. Additionally, Zielinski stated to Agent Sa that Beaver takes bets from all the businesses in the Concourse area.

Cross examination of the four agents produced no substantial variance from their direct testimony.

The licensee offered material testimony by Zielinski and Frank Allen, a patron, in defense of the charge. Zielinski testified that he was on duty as bartender at the licensed premises between 6:00 a.m. and 2:00 p.m. on the day in question; that he observed neither Agent Sy nor Beaver, a customer whom he knew for four or five months, in the barroom at any time that day; and that he did not observe Agent G in the barroom that day until the other two agents identified themselves to him. He also testified that Agents Sa and R had advised him that they were looking for Beaver in order to place numbers bets with him, but that he refused their offer that he take the numbers bets instead.

Allen testified that he was employed by a broker; that he was a patron at the licensee's premises from about 8:30 a.m. to about 12:30 p.m. on November 11, 1967, but that he did not see Beaver or Agents G or Sy in the premises at any time that day, although he knew Beaver for seven or eight years and had previously heard that he was a "numbers man". During his stay at the tavern that day, Allen had been reading a paper and drinking beer. He claimed that he would have seen Beaver if he entered the tavern that morning, although he was not paying too much attention to persons who came into the place.

I have carefully considered the entire record herein. I find that on November 11, 1967, at about 12:15 p.m., Agents G and Sy placed numbers bets with Beaver directly in front of Zielinski in the licensee's barroom; that Zielinski was aware of this gambling activity but took no steps to prevent or stop it; and that such gambling involved the offering for sale and the sale of participation rights in a lottery commonly known as the "numbers game". I find that Zielinski admitted to the agents, after they identified themselves, that he knew that said bets had been placed -- "That's right, with Beaver."

Further, even if Zielinski were to be deemed not to have actually known of the betting in question, I find that he should have known of such activity, which was carried on openly, and his failure to prevent it constitutes "suffering" its occurrence. The licensee's contention that actual knowledge by a licensee or its agents of the prohibited conduct must be established is not supported by law. See Essex Holding Corp. v. Hock, 136 N.J.L. 28, 31 (Sup.Ct. 1947). The suspicious overt activity in which Beaver was engaged at the bar should have alerted Zielinski to take steps to prohibit the numbers writing. And, of course, the licensee is responsible in this proceeding for the violations of its agent. Rule 33 of State Regulation No. 20.

Under the circumstances, I conclude that the licensee's guilt of each of the two charges has been

established by more than a fair preponderance of the believable evidence. Since Division records show no previous disciplinary record against the licensee, I shall impose a penalty of sixty days license suspension. Re Ben's Place, Inc., Bulletin 1836, Item 3.

Accordingly, it is, on this 6th day of March, 1969,

ORDERED that Plenary Retail Consumption License C-462 issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Finbar, A Corporation, t/a Finbar, for premises in Journal Square Terminal, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Thursday, March 13, 1969, and terminating at 2:00 a.m., Monday, May 12, 1969.

JOSEPH M. KEEGAN
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against 35 North Arkansas Ave., Inc. t/a Augustine's 35-37 N. Arkansas Ave. Atlantic City, N. J. Holder of Plenary Retail Consumption License C-22 issued by the Board of Commissioners of the City of Atlantic City	CONCLUSIONS AND ORDER

Elias G. Naame, Esq., by Robert H. Davisson, Esq., Attorney for Licensee
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on December 19, 1968, it possessed alcoholic beverages in three bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty days, with remission of five days for the plea entered, leaving a net suspension of fifteen days. Re Cakerts Enterprises, Inc., Bulletin 1825, Item 10.

Accordingly, it is, on this 5th day of March, 1969,

ORDERED that Plenary Retail Consumption License C-22, issued by the Board of Commissioners of the City of Atlantic City to 35 North Arkansas Ave., Inc., t/a Augustine's, for premises 35-37 N. Arkansas Avenue, Atlantic City, be and the same is hereby suspended for fifteen (15) days, commencing at 7:00 a.m. Monday, March 10, 1969, and terminating at 7:00 a.m. Tuesday, March 25, 1969.

JOSEPH M. KEEGAN
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - ALCOHOLIC BEVERAGES NOT TRULY LABELED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

Ernest and William Putz t/a Hotel Clarendon)
109 Grand Avenue)
Hackettstown, N. J.) CONCLUSIONS AND ORDER

Holders of Plenary Retail Consumption License C-1 issued by the Common Council of the Town of Hackettstown)

- - - - - - - - - - - - - - - - - - - -

Licensees, by Ernest Putz, Pro se
Walter H. Cleaver, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Licensees plead non vult to a charge alleging that on December 4, 1968, they possessed alcoholic beverages in five bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Absent prior record, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re Toomer, Bulletin 1820, Item 9.

Accordingly, it is, on this 20th day of February, 1969,

ORDERED that Plenary Retail Consumption License C-1, issued by the Common Council of the Town of Hackettstown to Ernest and William Putz, t/a Hotel Clarendon, for premises 109 Grand Avenue, Hackettstown, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m. Thursday, February 27, 1969, and terminating at 2:00 a.m. Wednesday, March 19, 1969.

Joseph M. Keegan
Director