

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

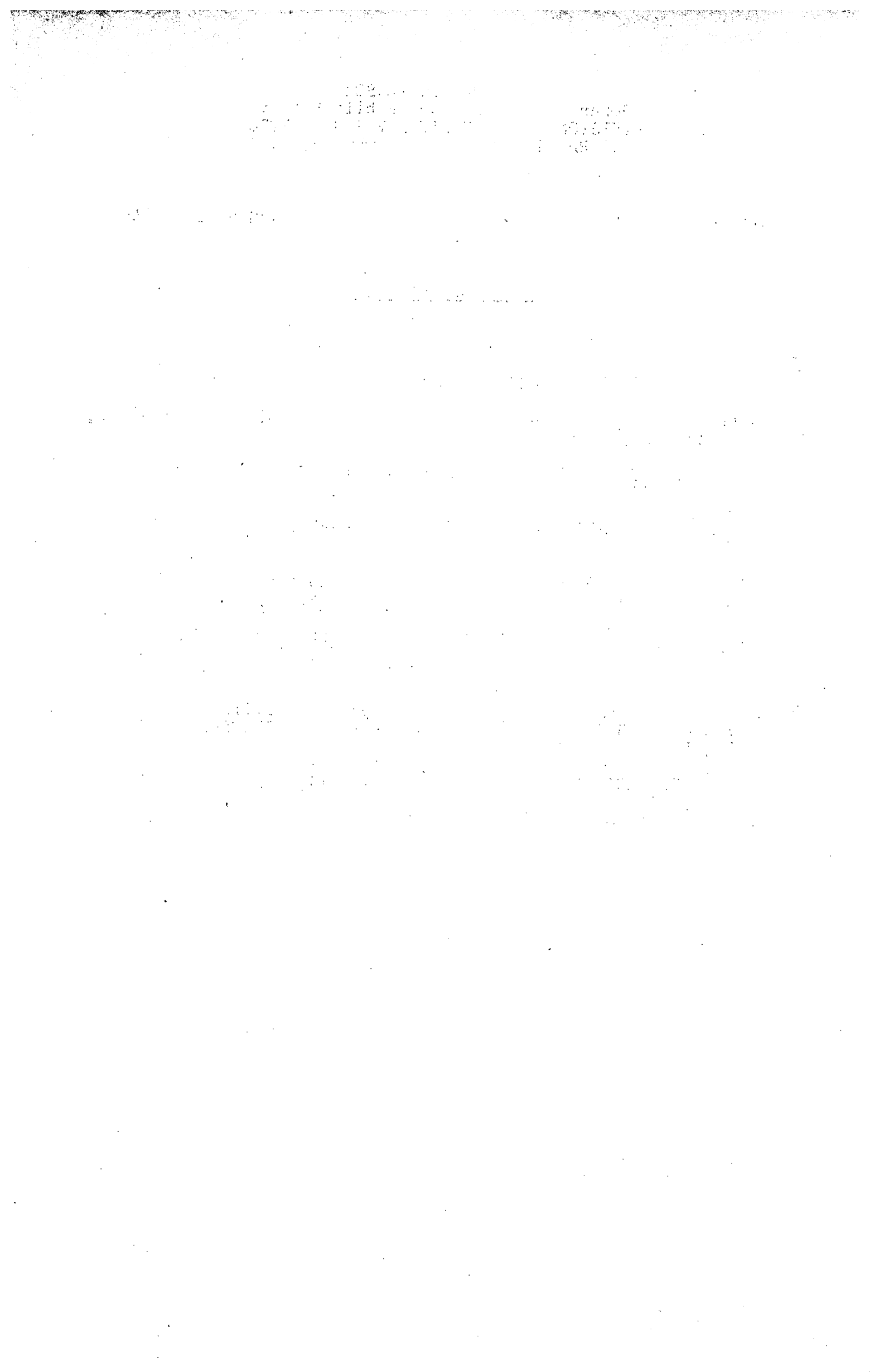
BULLETIN 852

AUGUST 29, 1949

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STATE OF NEW JERSEY  
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DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
1060 Broad Street Newark 2, N. J.

BULLETIN 852

AUGUST 29, 1949

1. APPELLATE DECISIONS - SZCZESNA v. WILDWOOD

Sophia Szczesna, trading as  
Hotel Macon, )  
Appellant, )  
v. ) On Appeal  
Board of Commissioners of the )  
City of Wildwood, ) CONCLUSIONS AND ORDER  
Respondent. )

George Pellettieri and A. J. Cafiero, Esqs., Attorneys for Appellant.  
Irving Shenberg, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This appeal is from the action of respondent Board of Commissioners of the City of Wildwood in denying appellant's application for a plenary retail consumption license.

Respondent's denial of the application was based upon the ground, among others, that issuance of the license applied for would be violative of the City's numerical limitation ordinance. Section 7 of Ordinance 462, adopted by the Board of Commissioners of the City of Wildwood on April 20, 1948, reads:

"Section 7. The number of Plenary Retail Consumption Licenses issued and outstanding in said City at the same time shall not exceed 30 ... PROVIDED HOWEVER, that this limitation shall not prevent the issuance of renewals of outstanding licenses to persons holding such licenses at the time this regulation was adopted, and FURTHER PROVIDED, that this limitation shall not prevent the transfer of licenses or the renewal thereof according to law ... No new Plenary Retail Consumption licenses shall be issued ... until the number outstanding shall be reduced by surrender, revocation, or for any other cause to less than 30."

When appellant's application was denied fifty-two (52) plenary retail consumption licenses were outstanding in the City of Wildwood, and fifty-two (52) such licenses are now outstanding there.

Appellant contends that her application should have been granted because her premises, sought to be licensed, constitute a bona fide hotel containing fifty or more sleeping rooms and, thus, that she comes within the "hotel" exception in Section 8 of the State Limitation Law (P.L. 1947, c. 94) which provides that:

"Nothing in this act shall prevent the issuance, in a municipality of a new license to a person who operates a hotel ... containing at least fifty sleeping rooms."

Appellant's contention, in this regard, is without merit. The State Limitation Law's "hotel" exception merely removes the operator of a fifty-room hotel from that law's limitation set forth in Section 2 thereof as follows:

"Except as otherwise provided in this act, no new plenary retail consumption ... license shall be issued in a municipality unless and until the ... number of such licenses existing in the municipality is fewer than one for each one thousand of its population as shown by the last then preceding Federal census ...."

Section 8 of the State Limitation Law does not mean that the operator of a fifty-room hotel is entitled to a license, nor does it mean that a license may be issued to the operator of a fifty-room hotel in violation of a municipality's numerical limitation ordinance. Section 9 of the State Limitation Law provides that:

"This act is in addition to and not in exclusion of municipal regulations limiting the number of licenses to sell alcoholic beverages at retail, duly adopted pursuant to the authority granted by section 33:1-40 of the Revised Statutes."

Wildwood's numerical limitation ordinance contains no exception in favor of the operator of a fifty-room hotel. As hereinabove stated, fifty-two (52) plenary retail consumption licenses were, and are, outstanding in the City and the ordinance provides that no new such license shall be issued unless and until the number outstanding is fewer than thirty (30). An ordinance, until repealed or set aside is binding upon the municipal governing body. In the face of the operative Wildwood ordinance, respondent Board had no jurisdiction to issue the license applied for. Re Suskowitz, Bulletin 534, Item 2 and cases cited therein. See Bachman v. Phillipsburg, 68 N.J.L. 552.

In Current v. Fredon, Bulletin 184, Item 1, the Commissioner stated:

"While hotels are distinguishable from ordinary drinking places and are not to be discriminated against in the issuance of licenses; see cases supra; also Retail Liquor Dealers Association v. Plainfield, Bulletin 70, Item 1 and Peck v. West Orange, Bulletin 147, Item 1; nevertheless it does not follow that a hotel is ipso facto entitled to a license just because it is a hotel. There is no 'must' in the Control Act which provides that all hotels are entitled as of right to a liquor license. The test is public necessity and convenience, not whether a given place is a hotel or not. In order to override a municipal limitation of licenses, that test must be met and passed."

The only evidence bearing upon public convenience and necessity in the instant appeal is found in the testimony of appellant - that she operates a family-type hotel and wishes to obtain the license privileges for the convenience of her hotel guests. The testimony falls far short of meeting the test of the Current case, supra. "The burden of proving that public convenience and necessity require the granting of a license rests with the appellant. The convenience of a comparatively few guests of a hotel such as that contemplated must be weighed and considered in the light of the general policy in the community." Garrett-William Hotel Co., Inc. v. Bass River Township, Bulletin 820, Item 3. (See, also, Lincoln Avenue Corporation v. Wildwood, Bulletin 540, Item 2; The Hotel Macon, Inc. v. Wildwood, Bulletin 573 Item 6; Berman v. Wildwood, Bulletin 642, Item 7; Adelphi Witte Hotel Co. v. Wildwood, Bulletin 685, Item 10.)

Appellant has not shown that the numerical limitation contained in the ordinance is unreasonable, either generally or as applied to her individual case. Having reached this conclusion it is unnecessary to consider any other reasons advanced for or against the denial of

the license. Respondent's action is affirmed.

Accordingly, it is, on this 16th day of August, 1949,

ORDERED that respondent's action denying appellant's application be and the same is hereby affirmed and the appeal herein be and the same is hereby dismissed.

ERWIN B. HOCK  
Director

2. APPELLATE DECISIONS - NICHOLS v. MANTUA AND HOLLY INN, INC.  
(CASES NOS. 1 and 2)

Cases Nos. 1 and 2, Harold C. Nichols, et al.,	)
Appellants,	
v.	)
Township Committee of the Township of Mantua, and Holly Inn, Inc.,	
Respondents.	)

On Appeal

CONCLUSIONS AND ORDER

Harold C. Nichols, Pro se, Appearing for Appellants.  
William B. Kramer, Esq., Attorney for Respondent Township Committee.  
Sidney Simandl, Esq., and Vernon H. Fisler, Jr., Esq., Attorneys for  
Respondent Holly Inn, Inc.

BY THE DIRECTOR:

These appeals are from the action of respondent Township Committee in approving a transfer of a plenary retail consumption license from Charles Orville Kersey for premises located on Pitman-Jefferson Road to Holly Inn, Inc., a corporation, for premises located at the northwest corner of Pitman-Jefferson Road (also known as Barnsboro Road) and Bethel-Richwood Road (also known as Lambs Road), Mantua Township.

An application for transfer of the license in question, originally filed in this matter, was approved by respondent Township Committee on December 29, 1948. An appeal from this action was filed and was heard on February 16, 1949. At said hearing it appeared that the published notices of application were defective, necessitating publication of corrected notices returnable before respondent Township Committee at a future date. It was agreed, however, that testimony be taken at said hearing which would become part of the record in the event of a subsequent appeal involving the same issues and parties.

On March 1, 1949, after re-advertising was completed, respondent Township Committee held a hearing and approved a person-to-person and place-to-place transfer, effective as of March 2, 1949. At the hearing on appeal from this action of respondent Township Committee it was stipulated by the parties hereto that the testimony presented before the local issuing authority on March 1, 1949, be considered as part of the evidence in the instant appeal. Nineteen objectors appeared at said hearing and requested that the transfer be denied. Their main objections were based upon the ground that the proposed licensed premises were situated too close to the Borough of Pitman. Twelve persons appeared at this hearing and contended that there was a need for and a convenience to be served by an establishment licensed

to sell alcoholic beverages at the location in question. Appellants Harold C. Nichols and William F. Egan, who reside in the Borough of Pitman, testified, in substance, that a licensed premises situated close to the Borough of Pitman, which has been known for many years as a center of religious activity, would be extremely detrimental to the interests of that municipality.

Petitions containing the names of more than 1,600 persons in favor of the transfer of the license were filed with the local issuing authority. It appears that previous to the first hearing by the respondent Township Committee, in this matter, petitions containing names of 700 persons objecting to the transfer of the license were presented. By stipulation of the parties hereto, a statement disclosing the fact that the respondent Holly Inn, Inc. did a substantial liquor business between March 2, 1949 and April 25, 1949, was marked as an exhibit in this case.

The record herein shows that respondent Holly Inn, Inc. operates a bona fide restaurant upon the licensed premises.

The members of the Township Committee voted unanimously to grant the person-to-person and place-to-place transfer applied for.

The question of public convenience and necessity as to whether a licensed premises should be permitted in a particular section of the community is a matter confided to the sound discretion of the issuing authority. On appeal, the burden of showing that the municipal issuing authority abused its discretion rests with the appellant. Segal et al. v. Clifton et al., Bulletin 732, Item 5.

The State Director's function on appeals of the type now before me is not to substitute his personal opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm. Rafalowski v. Trenton, Bulletin 155, Item 8; Curry v. Margate City, Bulletin 460, Item 9; Ashton v. Hopewell and Corcoran, Bulletin 782, Item 11.

After careful review and consideration of the full record before me I am unable to find that the action of respondent Township Committee in granting the person-to-person and place-to-place transfer was arbitrary or unreasonable or otherwise in abuse of its discretionary authority so as to warrant a reversal. Cf. Koos v. Ocean Township and Harvey, Bulletin 810, Item 4.

The action of respondent Township Committee, therefore, in granting the person-to-person and place-to-place transfer of license to respondent Holly Inn, Inc. is affirmed.

Accordingly, it is, on this 16th day of August, 1949,

ORDERED that the appeals herein be and the same are hereby dismissed.

ERWIN B. HOCK  
Director

3. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - LICENSE SUSPENDED FOR 15 DAYS.

In the Matter of Disciplinary Proceedings against

Mary Panetta, Executrix of the Estate of Antonio Panetta, t/a Big Horn Cafe, 336 Arch Street, Camden, New Jersey,

Holder of Plenary Retail Consumption License C-34 for the 1948-49 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden, and now held by

Mary Panetta, t/a Center Tavern, for the same premises.

CONCLUSIONS

and

ORDER

Carlton W. Rowand, Esq., Attorney for Defendant-licensee. Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control

BY THE DIRECTOR:

Defendant pleaded not guilty to charges alleging that on Monday night, January 31, 1949, and early Tuesday morning, February 1, 1949, she sold alcoholic beverages to, and permitted the consumption of alcoholic beverages by, two minors (Private Walter --- and Private Frank ---), in violation of R.S. 33:1-77 and Rule 1 of State Regulations No. 20.

The evidence herein shows that on the evening of January 31, 1949, two soldiers, namely, Private Walter --- (then 17 years of age) and Private Frank --- (then 19 years of age), left Fort Dix and traveled by bus to Camden, where they arrived about 9 p.m. On the bus they met another soldier, identified as "Chuck", who remained with them during the rest of the evening and until the early hours of the following morning. The three soldiers wore civilian clothing.

It is undisputed that shortly after 1 a.m. on the morning of February 1, 1949, Walter ---, who was then wearing neither an overcoat nor a jacket, and Frank ---, who was then wearing no overcoat, assaulted one Charles Thompson who was then on one of the public streets of Camden, about a block-and-a-half from defendant's premises. After Thompson had been attacked, he went to seek the aid of the Police and temporarily lost track of the two soldiers. Officers Morris and Watson, of the Camden Police force, in response to a call they received in their radio car at 1:11 a.m., picked up Charles Thompson and cruised around in their car in an attempt to find the two soldiers. Officer Morris testified that they stopped their radio car at defendant's premises because Thompson claimed the soldiers ran around Fourth Street and "we just used common knowledge that the first place open they ran into." When the Police officers and Thompson entered defendant's premises, they saw Walter, Frank and "Chuck" about four or five feet from a telephone booth, and placed Walter and Frank under arrest. It appears from the evidence that none of the soldiers had any drinks between the time they rushed into defendant's premises after the alleged assault on Thompson, and the time of the arrest. The evidence indicated the time to have been not more than three minutes.

However, both Walter and Frank testified that, earlier on the same evening, both they and "Chuck" had been in defendant's premises. They testified that after they arrived in Camden on the evening of January 31, 1949, at about 9 p.m., the three of them had something to eat in a diner, and thereafter walked the streets of Camden until approximately 11:30 p.m., when they entered defendant's premises. They both testified that, without stopping at the bar, the three of them entered the rear room and seated themselves at a table in the rear left-hand corner of the room. They said that an orchestra was playing at this time, and Frank's testimony indicates that he danced with a woman in the rear room. Both of these witnesses testified that, during the time the three soldiers were seated at the table, a waitress, whom they identified as Eleanor Erceg, served four rounds of beers which they paid for and consumed. The beer, they said, was served in bottles.

Both soldiers testified that shortly after midnight the three of them took their overcoats, which they had removed in the back room, and walked towards the barroom which is located in the front room of the licensed premises. Walter testified that on his way to the barroom he removed a cardigan jacket and hung the jacket underneath his overcoat on a rack near the telephone booth. Both Walter and Frank testified that they purchased four rounds of alcoholic beverages at the bar from the bartender, Joseph Smith, whom they identified. Walter and Frank testified that "Chuck" remained in the barroom after they had left to take a walk, during the course of which the incident with Thompson occurred, but stated that, after the fight, they met "Chuck" on the street near the licensed premises and that he then had their overcoats with him. Walter testified that they returned to the licensed premises because "Chuck" had neglected to bring the cardigan jacket which had been hanging under Walter's overcoat.

On behalf of defendant, Anthony Panetta, a son of Mary Panetta, testified that he is manager of the licensed premises. Joseph Smith, a son-in-law of Mary Panetta, testified that he is a bartender in defendant's premises. Both of these witnesses testified that they were in the licensed premises at all times between 11:30 p.m. on January 31 and 1:30 a.m. on February 1; that they were in a position to observe any persons who entered the premises, and that none of the three soldiers had been there prior to the time they rushed in a few minutes before they were arrested. Eleanor Erceg testified that she is a waitress and was on duty in the back room during all of the evening in question, and that she did not see any of the three soldiers prior to the time they rushed in a few minutes before they were arrested. Of course, if the evidence of defendant's witnesses is to be believed, it is apparent that no alcoholic beverages were sold to, or consumed by, either of the minors in defendant's premises on the evening in question.

After considering all the testimony, I have concluded that I must believe the testimony given by the two soldiers rather than the testimony given by defendant's witnesses. Walter was subjected to a very lengthy cross-examination, including a comparison between some of his testimony given at the hearing herein and testimony which he gave in a Police Court. There were minor discrepancies between his testimony and the testimony given by Frank as to the manner in which each round of drinks was paid for, and a discrepancy in his testimony herein and that given in the Police Court as to whether this was his first or second visit to Camden. There was also a discrepancy as to whether the tables in the rear room were square or round, but, considering his testimony in its entirety, it has the ring of truth. Admittedly, a small orchestra was playing on the licensed premises on the evening in question, there was a dance floor, and three women were present. One may have danced with Frank. Further, Thompson stated that Walter was not wearing a coat when he was attacked. "All he had on was a shirt," Thompson said. It would be strange, indeed, if these three soldiers, strangers in Camden, just happened to rush into

defendant's premises after the fight unless, as Walter said, they were returning to get his cardigan jacket which "Chuck" had neglected to bring out with the overcoats. If they were returning for that purpose, then it is quite evident that they had been present on the licensed premises earlier on the same evening. I conclude that defendant is guilty as charged.

Defendant has no prior record. However, the fact that one of the minors in this case was only seventeen years of age is an aggravating circumstance. Re Sirvent, Bulletin 684, Item 9; Re Raywood, Bulletin 742, Item 5; Re Drucker, Bulletin 801, Item 5. I shall suspend the license in this proceeding for a period of fifteen days.

Although this proceeding was instituted during the 1948-49 licensing period, it does not abate but remains fully effective against the renewal license for the fiscal year 1949-50. State Regulations No. 16.

Accordingly, it is, on this 17th day of August, 1949,

ORDERED that Plenary Retail Consumption License C-34, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Mary Panetta, Executrix of the Estate of Antonio Panetta, t/a Big Horn Cafe, for premises 336 Arch Street, Camden, and now held by Mary Panetta, t/a Center Tavern, for the same premises, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 2:00 a.m. August 24, 1949, and terminating at 2:00 a.m. September 8, 1949.

ERWIN B. HOCK  
Director.

4. APPELLATE DECISIONS - ST. MORITZ RESTAURANT, INC. v. SPARTA TOWNSHIP

ST. MORITZ RESTAURANT, INC., )  
Appellant, )

-vs-

TOWNSHIP COMMITTEE OF THE )  
TOWNSHIP OF SPARTA, )  
Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

Sidney Simandl, Esq., Attorney for Appellant.

Dolan and Dolan, Esqs., by Francis E. Bright, Esq., Attorneys for Respondent.

BY THE DIRECTOR:

This is an appeal from the action of respondent whereby it suspended appellant's plenary retail consumption license for a period of five days after it had found appellant guilty of four charges in disciplinary proceedings.

The charges of which appellant was found guilty are as follows:

- "1. On July 4, 1949, between the hours of 3:00 and 3:30 a.m., Eastern Daylight Saving Time, you, through your agents, servants or employees, sold alcoholic beverages, and kept your premises open in violation of Section 3 of an Ordinance Relating to Alcoholic Beverages adopted by the Township Committee of the Township of Sparta on June 10, 1947.

- "2. On July 4, 1949, between the hours of 3:00 and 3:30 a.m., Eastern Daylight Saving Time, you, through your agents, servants, or employees, served and delivered alcoholic beverages in violation of Section 3 of 'An Ordinance Relating to Alcoholic Beverages' adopted by the Township Committee of the Township of Sparta on June 10, 1947.
- "3. On July 4, 1949, between the hours of 3:00 and 3:30 a.m., Eastern Daylight Saving Time, you, through your agents, servants, or employees, permitted the consumption of alcoholic beverages on the licensed premises in violation of Section 3 of 'An Ordinance Relating to Alcoholic Beverages', adopted by the Township Committee of the Township of Sparta, on June 10, 1947.  
\*\*\*\*\*
- "5. On July 4, 1949, between the hours of 2:30 and 3:30 a.m., Eastern Daylight Saving Time, you, through your agents, servants or employees, permitted, allowed or suffered in or upon the licensed premises, disturbances and unnecessary noises, and conducted the licensed premises in such manner as to become a nuisance, all in violation of State Regulations 20, Rule 5."

Section 3 of the Township ordinance adopted on June 10, 1947 provides:

- "3. No licensee shall sell, serve, deliver or allow, permit or suffer the sale, service or delivery of any alcoholic beverage, or permit, the consumption of any alcoholic beverage on the licensed premises on New Year's Day when it is a weekday, between the hours of 5:00 a.m. and 7:00 a.m.; on New Year's Day when it is a Sunday between the hours of 5:00 a.m. and noon; on other weekdays, between the hours of 2:00 a.m. and 7:00 a.m., on other Sundays, between the hours of 2:00 a.m. and noon.

"During the hours that sales are prohibited, the entire licensed premises shall be also closed, but this closing of premises requirement shall not apply to hotels, or restaurants, as defined in Revised Statutes of New Jersey, Title 33:1-11 or to clubs as set forth in paragraph 5 of Revised Statutes of New Jersey, Title 33:1-12."

The evidence herein indicates that Radio Patrolman Kithcart entered appellant's premises on the morning of July 4, 1949, shortly after 3:00 a.m. Eastern Daylight Saving Time. He testified that he observed approximately sixteen people seated at the bar with glasses in front of them and that he requested the patrons to leave, but almost a half-hour elapsed before the last patron left the licensed premises. One of the patrons testified that he was seated, with five of his friends, at the bar when the Radio Patrolman entered the licensed premises. This witness testified that a Tom Collins had been served by the bartender to himself and to each of his friends immediately prior to the entrance of the police officer, and that these drinks were not paid for until shortly after the policeman left the licensed premises. Since this witness is employed as a bartender in another state, I am quite certain that the President of appellant corporation, who was acting as bartender, did not serve, as he testified, lemonade in place of the Tom Collins drinks which were ordered by this witness. All the other witnesses produced by appellant testified that they had left the premises before 3:00 a.m. or that they were not paying any particular attention to what other patrons were doing.

It may well be, as appellant contends, that it conducts a restaurant and that it is not required to close between 2:00 a.m. and 7:00 a.m. on weekdays. However, Section 3 of the ordinance in question prohibits all licensees from selling, serving, delivering or permitting the consumption of any alcoholic beverages on the licensed premises between 2:00 a.m. and 7:00 a.m. on weekdays. The section is not vague and uncertain, as appellant contends. On the evidence presented, I shall affirm the finding of guilt as to Charge 1 with respect to the sale of alcoholic beverages, and Charges 2 and 3.

The evidence as to Charge 5 concerns only the playing of a juke box which was shut off at the police officer's request when he entered the licensed premises. The evidence is vague and uncertain on this charge. I shall, therefore, reverse the finding of guilt as to Charge 5.

This leaves for consideration the question as to whether the period of suspension was excessive under the circumstances of the case. The suspension imposed in local disciplinary proceedings rests, in the first instance, in the sound discretion of the local issuing authority, and the Director will reduce the suspension on appeal only in those cases where the period of suspension is manifestly unreasonable. Dzieman v. Paterson, Bulletin 233, Item 10. In the instant case the minimum period of suspension recommended by the Division on a finding of guilt for selling during prohibited hours is fifteen days. Under the circumstances, and considering the reversal on Charge 5, I do not find that the five days' suspension imposed by the local issuing authority was unreasonable. The decision of the respondent, whereby appellant's license was suspended for a period of five days, will be affirmed.

Accordingly, it is, on this 17th day of August, 1949,

ORDERED that the five-day suspension by the respondent of appellant's Plenary Retail Consumption License No. C-5, for premises at White Deer Plaza, Sparta (which suspension was held in abeyance pending disposition of the instant appeal), be and the same is hereby restored to commence at 2:00 a.m. August 29, 1949, and to terminate at 2:00 a.m. September 3, 1949.

ERWIN B. HOCK  
Director.

5. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAPS - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

JOHN CALDWELL and JOHN WALLACE )  
T/a OAK GROVE INN. )  
Stanger Avenue )  
Glassboro, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7 issued by the Borough Council of the Borough of Glassboro. )  
----- )

John Caldwell and John Wallace, Defendant-licensees, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded guilty to a charge alleging that on July 29, 1949, they possessed two barrels of "Esslinger" beer, the contents of which were drawn through two taps labeled "Ortlieb", and possessed one barrel of "Ortlieb" beer, the contents of which were drawn through a tap labeled "Esslinger", in violation of Rule 1 of State Regulations No. 22.

Since the defendants have no previous record, I shall impose the usual three-day penalty, less one day for the plea, leaving a net suspension of two days. See Bulletin 822, Item 2.

Accordingly, it is, on this 18th day of August, 1949,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Glassboro to John Caldwell and John Wallace, t/a Oak Grove Inn, for premises on Stanger Avenue, Glassboro, be and the same is hereby suspended for two (2) days, commencing at 6:00 a.m. August 29, 1949, and terminating at 6:00 a.m. August 31, 1949.

ERWIN B. HOCK  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - PRIOR RECORD - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MORRIS BRICK & ESTHER BRICK )  
207 Water Street )  
Paterson 4, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-59, issued by the Board of Alcoholic Beverage Control of the City of Paterson. )

-----  
Peter P. Zangara, Esq., Attorney for defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that they sold alcoholic beverages for off-premises consumption during prohibited hours, in violation of Rule 1 of State Regulations No. 38.

On Tuesday, July 12, at about 11:30 p.m., an agent of the Division of Alcoholic Beverage Control, after advising one of the licensees that he wanted some wine to take out, purchased from an employee of defendant-licensees a pint bottle of Vincove Port Wine.

Rule 1 of State Regulations No. 38 prohibits sales in original containers for off-premises consumption after 10:00 p.m. on weekdays.

Defendant has a prior record. In 1944, the license, then held by Esther Brick individually, was suspended for ten days, effective February 14, 1944, by the local issuing authority after a finding of guilt on charges of sales after hours. Adding five days for the prior violation to the fifteen-day minimum penalty for violations of Rule 1 of State Regulations No. 38 (Re Blue Ribbon Cafe, Inc., Bulletin 831, Item 8) will result in a suspension of twenty days in the instant case. Remitting five days for the plea will leave a net suspension of fifteen days.

Accordingly, it is, on this 18th day of August, 1949,

ORDERED that Plenary Retail Consumption License C-59, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Morris Brick & Esther Brick for premises 207 Water Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 3:00 a.m. August 29, 1949, and terminating at 3:00 a.m. September 13, 1949.

ERWIN B. HOCK  
Director.

7. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE IMPERSONATORS ON LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

P. A. COLORED DEMOCRATIC CLUB )  
246 New Brunswick Avenue )  
Perth Amboy, N. J., )

CONCLUSIONS AND ORDER

Holder of Club License CB-10, issued by the Board of Commissioners of the City of Perth Amboy. )  
----- )

Robert S. Hartgrove, Esq., Attorney for Defendant-licensee.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded non vult to a charge alleging that on June 13, 1949, and June 20, 1949, it allowed, permitted and suffered known female impersonators upon its licensed premises, in violation of Rule 4 of State Regulations No. 20.

The file in the instant case discloses that, on the night in question, two male performers, speaking in high-pitched voices, attired in female dress and having female facial make-up, danced and sang on defendant's licensed premises.

Harold Lincoln, president of defendant club, admitted that, from the performers' effeminate mannerisms, he knew they were perverts. Mr. Lincoln further stated that, although he had arranged for the persons in question to entertain at the club, he was not aware that female impersonators were prohibited on licensed premises. Ignorance of the law or regulations is no excuse. Re Broodwinner, Bulletin 477, Item 3.

Defendant has no previous adjudicated record. In the absence of aggravating circumstances, I shall suspend defendant's license for a period of thirty days. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 19th day of August, 1949,

ORDERED that Club License CB-10, issued by the Board of Commissioners of the City of Perth Amboy to P. A. Colored Democratic Club, 246 New Brunswick Avenue, Perth Amboy, be and the same is hereby suspended for twenty-five (25) days, commencing at 2:00 a.m. August 29, 1949, and terminating at 2:00 a.m. September 23, 1949.

ERWIN B. HOCK  
Director.

8. APPELLATE DECISIONS - TUMMINELLO v. PHILLIPSBURG AND AHART.

NICHOLAS A. TUMMINELLO, )  
Appellant, )

-vs-

BOARD OF COMMISSIONERS OF THE )  
TOWN OF PHILLIPSBURG, and )  
FRANK L. AHART, )  
Respondents. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----)  
Alfred W. Seiss, Esq., Attorney for Appellant.  
Frank J. Kingfield, Esq., Attorney for Respondent Board of  
Commissioners.  
Francis L. Thompson, Esq., Attorney for Respondent Frank L. Ahart.

BY THE DIRECTOR:

This is an appeal from the action of respondent Board of Commissioners in granting a renewal license for the licensing period ending June 30, 1950, to Frank L. Ahart. A 1947-48 license was transferred in June 1948 by respondent Board, from appellant and another person to respondent Ahart who obtained a renewal of said license for the 1948-49 fiscal year. As indicated above, the appeal is from the subsequent renewal of the license for the current licensing year.

Appellant's ground for a reversal of respondent Board's action, as set out in his objections filed below and the petition of appeal herein, are:

- "(a) That the above respondent, Frank L. Ahart, was not a bona fide purchaser for value of the lands, premises, goods and chattels situate at 62-66 Sitgreaves Street, Phillipsburg, New Jersey, as provided in a certain resolution adopted by the Board of Commissioners of the Town of Phillipsburg on March 10, 1948.
- "(b) That Frank L. Ahart, the above respondent, did defraud Nicholas A. Tumminello of a sum of money to be paid as part of the consideration for the transfer of the aforesaid license and property, and did also make false representations and fraudulently induce Nicholas A. Tumminello to transfer the aforesaid license."

These allegations might be bases for a cause of action between appellant Tumminello and respondent Ahart. However, neither the Board of Commissioners nor the State Director has any jurisdiction to consider or determine such matters as hereinabove presented. Apparently the license was duly transferred in accordance with the provisions of the Alcoholic Beverage Law. Appellant's relief, if any, in these matters must be sought in our courts. See Re Rhodes, Bulletin 176, Item 5.

Appellant advances, as additional grounds for reversal:

- "(c) That Frank L. Ahart, the above respondent, did falsely swear to certain statements in his application for a license knowing the same to be untrue.

"(d) That the said Frank L. Ahart, the respondent, is now conducting or transacting business contrary to the statute in such case made and provided."

As to (c): To Question 8 in the license application which asks: "Does applicant own premises to be licensed?", respondent Ahart answered "No". To Question 8A: "If not, from whom are the premises leased or rented", he answered: "Being purchased under mortgage." Obviously, both these answers could not be technically true. The fact is that Ahart purchased the premises from appellant and wife by deed dated May 26, 1948, subject to two unpaid mortgages. When the discrepancy in the application was called to the attention of respondent Ahart, he wrote a letter to the license issuing authority asking that body to change his application to show that he is the record owner of the premises.

No one, least of all appellant, was misled by the discrepancy in the application. In any event, the error was corrected. Further, the error, apparently, was not considered by respondent Board to be sufficient reason for denial of the application. I agree that it was not. Cf. Poppolardo v. Massimino and Newark, Bulletin 286, Item 4.

As to (d): When the license was renewed, respondent Ahart had not registered the trade name "Duke's Circle Bar", under which name he conducts the business. I cannot find that respondent Ahart's failure in this regard is a sufficient cause for reversal of respondent Board's action particularly where, as here, it is my understanding that the situation has been corrected by a proper registration of the trade name in the manner set forth in Revised Statutes, 56:1-2. See Re Sykes, Bulletin 252, Item 5, and Re Chessman, Bulletin 200, Item 10.

For the reasons aforesaid, the appeal will be dismissed.

Accordingly, it is, on this 22nd day of August, 1949,

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

ERWIN B. HOCK  
Director.

## 9. STATE LICENSES - NEW APPLICATIONS FILED.

Gabriel Phillips  
T/a Phillips Distributing Co.  
915 Eighteenth Ave.  
Wall Township, West Belmar, N. J.  
Application for State Beverage Distributor's License filed  
August 17, 1949.

Charles L. Owens  
38 Health St.  
Dansville, N. Y.  
Application for Transportation License filed August 18, 1949.

Jeremiah Driscoll  
2111 Beekman Place  
Brooklyn, New York.  
Steamer "M. V. Manhattan", Marine Base & Shipyard, Brooklyn, N. Y.  
Application for Plenary Retail Transit License filed August 18,  
1949.

Monte Carlo Wine Industries, Ltd.  
337-343-345-347 (Rear) Delavan St.  
New Brunswick, N. J.  
Application for Plenary Winery License filed August 23, 1949.

*Erwin B. Hoop*

Director.

