STATE OF NEW JERSEY
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
25 Commerce Dr. Cranford, N.J. 07016

BULLETIN 2091 March 13, 1973

TABLE OF CONTENTS

ITEM

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

BULLETIN 2091 March 13, 1973

1. DISCIPLINARY PROCEEDINGS - SUMMARY REPORT OF UNCONTESTED PROCEEDINGS.

In the Matters of Disciplinary Proceedings against the following licensees: CONCLUSIONS AND ORDERS

A. J.T.Peanut Bar of Cliffside Park t/a The Peanut Bar — S-9307
690 Anderson Avenue, Cliffside Park — Lic: C-10
Charge: Sale to 2 minors, both 19 - License suspended 10 days- Fine of $400 in lieu of suspension permitted by amended order- Order: January 23, 1973, Amended Order: January 31, 1973.

B. Carmen Guzman t/a Habana San Juan — S-9403
6201 Hudson Ave., West New York — Lic: C-53
Charge: 'Hours' Regulation- Fine of $400 in lieu of 10 day suspension - Order: January 23, 1973.

C. Joseph Sensale — S-9171
80 Dater St. North Haledon — Lic: Sol'rs
Charge: Holder of unlimited Solicitor's Permit employed by retail licensee, in violation of Rule 7 of Reg. 14. Permit suspended 5 days. Order: January 23, 1973. — Permit-1417

D. Washington Delicatessen of Pompton Lakes, Inc. — S-9165
119 Wanaque Ave, Pompton Lakes. — Lic: D-1
Supplemental Order imposing suspension of 15 days - Application for imposition of fine abandoned - Suspension effective Feb. 1, 1973 - Order: Jan. 24, 1973. Re application for fine in lieu of suspension accepted - Payment of $840 fine - Order: January 31, 1973.

E. Fpps Lounge — S-9450
506 Market St. Newark — Lic: C-31
Charge: Mislabeling 2 bottles- Suspension of 10 days net - Suspension effective Feb. 6, 1973 - Order: January 24, 1973.

F. Pawlowski Tavern, Inc. t/a Pawlowski's Bar & Grill — S-9444
245 Monmouth St., Jersey City. — Lic: C-466
Charge: 'Hours' Regulation - Application for fine in lieu of 15 day suspension denied - prior record similar offense within 10 years- net suspension effective February 6, 1973 - Order: January 24, 1973.

G. Murray H. Post t/a Capitol Hotel — S-9464
325 Seventh St. Lakewood — Lic: C-28
Charge: (1) bottling without permit violating N.J.S.A.33:1-78- (2) False statement in application Prior dissimilar record- 10 day suspension on each charge and 5 days for prior record - net suspension 20 days effectiveFebruary 6, 1973- Order:Jan. 24, 1973

H. Al-Vin, Inc t/a Camelot Lounge — S-9364
789 Chambers St. Trenton — Lic: C-61
Charges: (1) Purchase from unauthorized source
(2) Failed to keep copy of application on premises
(3) Stored beverages in unauthorized place violating Rule 25, Reg.20. - Fine of $400 in lieu of 10 day net suspension - Order: January 26, 1973.

I. Gentlemen IV, Inc. — S-9311
91 Whitehead Ave., South River — Lic: C-12
Charge: Failure to keep list of employees on premises violating Rule 16(c) of Reg. 20 - Two prior dissimilar offenses within 5 years- 15 day net suspension - suspension effective Feb. 7, 1973- Order: Jan. 26, 1973.

J. Williams Bar & Grill, Inc. t/a Austin's Lounge — S-9349
579 Perry St., Trenton. — Lic: C-58
Charge: Failed to keep list of employees on premises violating Rule 16(c), Reg. 20- Prior dissimilar record within 5 years- Net suspension 10 days effective February 6, 1973- Order: January 30, 1973.

K. L & E Lounge Corporation — S-9361
187 First St., Elizabeth — Lic: C-51
Charge: 'Hours' Regulation - 10 day net suspension effective February 6, 1973 - Order: January 30, 1973.

L. Eunice C. Ferrari t/a Eunice's Bar and Grill — S-9453
Hw'y #35, Melrose, Sayreville Boro, PO South Amboy — Lic: C-23
Charge: 'Hours' Regulation- Fine of $400 in lieu of 10 day net suspension- Order: January 31, 1973.

M. Raymond J. Buratti t/a East End Tavern — S-9379
97 E. Blackwell St. Dover — Lic: C-8
Charge: Sale to minor, 19- Fine of $400 in lieu of net suspension of 10 days- Order: January 31, 1973.

N. Billy Duke Enterprises, Inc. — S-9415
Rt.#73, Maple Shade — Lic: C-7
Charge: Failing to keep list of employees on premises violating Rule 16(c), Reg. 20 - Fine of $200 in lieu of 5 day suspension - Order: January 31, 1973.

O. Twin A Corporation t/a Double "A" Bar — S-9429
1051 Bond St., Elizabeth — Lic: C-38
Charge: Gambling (numbers) - Prior dissimilar record - Net suspension of 76 days effective February 15, 1973. Order: February 1, 1973.

P. Michael Prendergast & Jerry Buccafusco t/a Karova — S-9422
7 Bleeker St., Jersey City — Lic: C-152
Charge: 'Hours' Regulation - Net suspension of 10 days effective February 20, 1973- Order: February 1, 1973.

Q. American Legion, Monmouth Post #54, Inc. — S-9474
62 West Main Street, Freehold Borough — Lic: CB-4
Charge: Sale to non-members by club licensee. License suspended for 10 days net- effective February 20, 1973- Order: February 1, 1973.

ROBERT E. BOWER
DIRECTOR

2. APPELLATE DECISIONS - L & B MARLATT, INC. v. RIVERDALE.

L & B Marlatt, Inc., t/a B-J's Pub, Appellant, v. Borough Council of the Borough of Riverdale, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Isenberg, Isenberg & Reiss, Esqs., by Lawrence T. Isenberg, Esq., Attorneys for Appellant
Slingland, Bernstein & van Hartogh, Esqs., by George W. Slingland, Esq., Attorneys for Respondent

BY THE DIRECTOR:

This matter came on for hearing on appeal from the action of respondent Borough Council of the Borough of Riverdale which on November 21, 1972 found appellant guilty of serving four minors, in violation of Rule 1 of State Regulation No. 20. It appears that counsel to the respective parties have stipulated at the said hearing that the determination of respondent be affirmed provided that the penalty assessed be modified in accordance with precedent penalties heretofore assessed by the Director for similar offenses.

It further appears that precedent penalty for offenses charged herein is a forty-days suspension, not fifty days as imposed, and appellant has further applied for the imposition of a fine in lieu of suspension in accordance with Chapter 9 of the Laws of 1971. Considering the facts and circumstances herein, I shall dismiss the appeal and stay respondent's order pending my consideration of appellant's application for the payment of a fine in lieu of suspension.

Accordingly, it is, on this 26th day of January 1973,

ORDERED that, pursuant to the stipulation entered, the appeal be and the same is hereby dismissed; and it is further

ORDERED that action against appellant herein with respect to the imposition of the suspension be and the same is hereby stayed pending consideration of appellant's application to pay a fine in lieu of suspension and until the entry of a further order herein.

Robert E. Bower,
Director.

3. APPELLATE DECISIONS - GOMES v. NEWARK.

Manuel G. Gomes t/a Cantanhede International Bar & Restaurant,	)	
Appellant,	)	On Appeal
v.	)	CONCLUSIONS and ORDER
Municipal Board of Alcoholic Beverage Control of the City of Newark,	)	
Respondent.	)	

Irvin L. Solondz, Esq., Attorney for Appellant
William H. Walls, Esq., by Beth M. Jaffe, Esq., Attorney for Respondent

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant, the holder of Plenary Retail Consumption License C-367 for premises 195 Ferry Street, Newark, appeals from the action of the respondent Municipal Board of Alcoholic Beverage Control (hereinafter Board) which, on June 30, 1972 found appellant guilty of violating the municipal code of the City of Newark (Title 4:1-4), whereupon it suspended appellant's license for a period of fifteen days. Upon appeal filed, the effective date of the suspension was stayed by the Director by order dated July 12, 1972, until the determination of this appeal.

Both counsel stipulated that the matter should be submitted on appeal solely upon a transcript of proceedings before the Board, pursuant to Rule 8 of State Regulation No. 15.

The petition of appeal challenges the action of the Board as arbitrary and not based upon the testimony before it. He alleged that the testimony was inadmissible because it did not relate to the dates set forth in the charge. In addition it was further contended that the applicable ordinance (Title 4:1-4) is unconstitutional in that the statute applicable has not conferred upon the Board such powers encompassed by the ordinance. Lastly, the contention is advanced that the determination of the Board was not based upon any facts or testimony upon which any conclusions could be made, and that a full hearing had been denied appellant. The Board, in its answer, generally denied these contentions.

An examination of the applicable ordinance reveals that the offending section (Title 4:1-4) is as follows:

> "Before any alterations or repairs are made creating a change or addition on the licensed premises, whether of the interior or the exterior of such premises, a plan or sketch setting forth the proposed change or addition must be first submitted to the local issuing authority and its approval endorsed thereon." (R.O. 1951 § 3.2)

The subject charge alleges that the licensee appellant did in or about the months of December 1971 and January 1972, "allowed...your licensed premises to be altered...without first submitting a sketch setting forth the proposed changes...." (in violation of the ordinance).

In support of the charge, Newark police officer Clifford Minor, assigned to the Board testified that, in March 1972 (no date was specified) he made a routine inspection of appellant's premises which revealed an extension to the existing building. His search of the Board's records failed to reveal the existence of any sketch or plans for the addition. No further testimony was offered in support of the charge.

At the conclusion of the testimony of the police officer, appellant's attorney vigorously moved to quash the charge, contending that no proof had been offered that the addition created any change or addition to the "licensed" premises; that without such proof, the said charge was not sustained. The motion was denied. In due course the Board made its determination, which is the subject of this appeal.

While no specifics were supplied relative to the location or size of the addition, appellant's counsel volunteered that:

> "That structure still remains as is, with a new separate building, a masonry building, constructed directly behind the licensed premises, and there has been no change whatsoever in the licensed premises."

The Board has statutory authority upon which the applicable ordinance is based. N.J.S.A. 33:1-40 provides, inter alia, that the governing body of each municipality "may...regulate the conduct of any business licensed to sell alcoholic beverages at retail and the nature and condition of the premises upon which any such business is to be conducted...." (underscore added). This statute together with others and attendant regulations relating to the dominion over licensed premises have been judicially approved, and the validity of ordinances can only be determined by a plenary court of competent jurisdiction. Klein and Tucker v. Fairlawn et al., Bulletin 1175, Item 3.

Nevertheless, no proof was adduced before the Board either on its behalf or on behalf of the appellant that would indicate what alterations or additions were made and whether such would in turn be a part of, or enlargement of the licensed premises, if, indeed, the new building was in fact an enlargement of the licensed premises. In short, the record is so barren that no proper determination could have been made by the Board, nor could it be made on this appeal.

It is, accordingly, recommended that the matter be remanded to the Board for the purpose of supplementing the record with respect to the said charge; and that a prompt hearing be held with full opportunity afforded the parties hereto to present evidence and cross-examine witnesses. It is further recommended that the Director retain jurisdiction; and that the Director's order staying the effective date of suspension to be continued until further order.

Conclusions and Order

Written exceptions, with supportive argument, were filed by the appellant, and written answers, with supportive argument, to the said exceptions were filed on behalf of the Board pursuant to Rule 14 of State Regulation No. 15.

In his exceptions the attorney for the appellant argues that the City merely proved that a separate building was constructed as a restaurant to the rear of the licensed premises and that they did not establish that such new structure was, in fact, an enlargement of or an addition to the licensed premises.

In its answer to the said exceptions the Board contends that it has established a prima facie case and has established that the said new building was, in fact, an enlargement of the said premises.

After carefully considering the Hearer's report, the exceptions filed with respect thereto and the answer to the exceptions, I agree with the Hearer that there was insufficient proof adduced before the Board which would indicate what enlargements or additions were made and whether such would in turn be a part of, or enlargement of the licensed premises, if, indeed, the new building was in fact an enlargement of the licensed premises.

I find, as did the Hearer, that the present record is so substantially inadequate that no proper determination could reasonably have been made by the Board nor could it be made in the present posture, on this appeal. Fairness to both parties mandates that a supplemental hearing be held by the Board so that a more complete record may be developed to assure a fair determination herein. I therefore, concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 31st day of January 1973,

ORDERED that this matter be remanded to the Board for the purpose of supplementing the record with respect to the said charge; and it is further

ORDERED that a prompt hearing be held with full opportunity afforded the parties hereto to present additional evidence and cross-examine witnesses; and it is further

ORDERED that the record herein become part of the record on remand; and it is further

ORDERED that jurisdiction be and the same is hereby retained by this Division, and the Board is hereby directed to file its supplemental determination with me forthwith upon the completion of the said hearing and its determination; and it is further

ORDERED that my order entered on July 12, 1972 staying the effective dates of suspension be and the same is hereby continued until the entry of a further order herein.

Robert E. Bower
Director

4. APPELLATE DECISIONS - EMSTON CORPORATION v. BRIGANTINE.

Emston Corporation, Appellant, v. Board of Commissioners of the City of Brigantine, Respondent.	)	On Appeal CONCLUSIONS and ORDER

Goldsmith & Land, Esqs., by Michael M. Land, Esq., Attorneys for Appellant
Lloyd, Megargee & Steedle, Esqs., by Henry P. Magargee, Jr., Esq., Attorneys for Respondent
Leonard A. Spector, Esq., Attorney for Objectors

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Appellant challenges the action of respondent Board of Commissioners of the City of Brigantine (hereinafter Board) whereby on August 2, 1972 it denied appellant's application for a plenary retail consumption license for the motel it operates at 5100 Brigantine Avenue, Brigantine.

The Board's determination was made after a public hearing held on July 19, 1972, after which a resolution was adopted, the pertinent part of which reads as follows:

> "WHEREAS, THE GOVERNING BODY OF THE CITY OF BRIGANTINE FINDS AS FOLLOWS:
>
> (A) The Emston Corporation is the owner and operator of the Sandpiper Motel situate at 5100 Brigantine Avenue, Brigantine, New Jersey. Sandpiper Motel consists of 51 motel units. Each of these units consists of 3 rooms; a bedroom containing, among other things, two beds, a dresser and a night stand; a bathroom containing a bath, a sink, a toilet; and a cooking unit; and a third room designated in the promotional literature of the applicant as a 'living room.' The living room contains, inter alia, a mirror, a dresser and a television set and a day bed or sofa bed, which can be converted into a double sleeping bed, and a dining table with chairs.
>
> N.J.S.A. 33:1-12.20 provides as follows:
>
> 'Nothing in this act shall prevent the issuance, in a municipality, of a new license to a person who operates a hotel or motel containing 100 guest sleeping rooms or who may hereafter construct and establish a new hotel or motel containing at least 100 guest sleeping rooms.'
>
> The Act does not define a 'guest sleeping room.' It is the position of the applicant that the so-called 'living room' falls within the statutory meaning of a 'guest sleeping room' and that it therefore has sufficient guest sleeping rooms to meet or exceed the statutory minimum. Objectors had two primary objections -- first that the living rooms are not guest sleeping rooms within the intendment of the Statute -- second that even if they are found to be so, there are already sufficient establishments serving liquor within the City of Brigantine

to satisfy the needs of both the permanent and seasonal residents of the City and that to permit any enlargement of the number of liquor licenses or motels or otherwise would be inimicable to the welfare of the residents and taxpayers of the City.

With respect to the issue as to whether or not there is statutory compliance, it was testified to by the owners that each unit was rented as a unit and that although additional charges would be made for persons who might occupy the living room as sleeping quarters, the living room would not be rented separately from the bedroom. It is clear that while the living room can be converted for sleeping purposes, such room is not primarily designed as a sleeping room or bedroom and such use is only incidental. Had the legislature intended that its definition include rooms which could be used as sleeping rooms, it would or should have so stated and presumably if it was the legislative intent that a sleeping room was to include a room which could be converted for sleeping quarters, any room could qualify merely by the insertion of cots or beds. We do not believe that this was the legislative intent and find that the applicant has only 51 'guest sleeping rooms.'

(B) A number of objections were made, both written and verbal, by numerous objectors who included representatives of the Board of Directors of the Brigantine Chamber of Commerce, representatives of the Brigantine Tavern Owners Association, owners of various motels and individuals. A certain few individuals spoke in favor of the issuance of the license, but the overwhelming number of those who appeared was against the license and of this category, most were opposed not merely on the basis of the statutory provision, but primarily on the basis that there are already 6 licensed establishments in Brigantine where liquor is served, plus 1 distribution license and 5 club licenses, and that since Brigantine has been and is basically a residential community which we find it to be, that any proliferation of liquor licenses is not in the best interests of the municipality and its inhabitants. More particularly, since the issuance of this type of license is not dependent upon the population of the municipality and therefore has no restriction other than the number of guest sleeping rooms, the issuance of the liquor license in this case might lead to a flood of similar applications, subject only to the discretion of the governing body, and for which there would be no basis for denial in the event that this license were granted. We can assume that the proponents of such a license, if there were any strong sentiments for the issuance thereof, had as much opportunity to present their views as did the objectors. We find that the absence of any appreciable numbers advocating the issuance of this license or others indicates that the inhabitants of the City, at best, do not consider the issuance of such license of any benefit to the City, and we also find that in view of the overwhelming numerical superiority of those objecting that such objections are representative of many who, for whatever reason, did not appear, notwithstanding the fact that certain objectors, in spite of their protests to the contrary, may be motivated by economic or competitive considerations. We find, therefore, that the issuance of this license or any other similar license at the present time is not in the best interest of the City of Brigantine."

The petition of appeal alleges that the action of the Board was erroneous for the following stated reasons:

"a. The Sandpiper Motel (registered trade name of Emston Corporation) does have the requisite number of guests sleeping rooms pursuant to N.J.S.A. 33:1-12.20.

"b. Respondent improperly reversed a decision previously made on June 28, 1972 to grant the said license.

"c. The Respondent previously found and determined as a fact that the Appellant did have the requisite number of guests sleeping room to comply with N.J.S.A. 33:1-12.20.

"d. Respondent previously found and determined as a fact that the granting of the said license would be in the best interests of the City.

"e. The granting of the said license would be in the best interest of the City of Brigantine.

"f. The Respondent improperly used as a test in determining whether the said license would be in the best interests of the City of Brigantine the possibility that other applications might be filed for similar licenses pursuant to the same statute which test did not relate to the qualifications of the Appellant to obtain such a license.

"g. The Respondent improperly and erroneously placed a burden on the Appellant to produce witnesses favorable to the granting of the license when there is no such burden.

"h. The governing body of the Respondent improperly permitted persons to testify at the hearing who had not previously filed written objections pursuant to the regulations and statutes in such case made and provided.

"i. The finding of the governing body of the Respondent was against the weight of the evidence with respect to both reasons upon which the denial of the said governing body was based."

The Board in its answer denied the substantive allegations of the petition and relied upon the findings of fact and the conclusions as set forth in the subject resolution.

The appeal was heard de novo pursuant to Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony and cross-examine witnesses.

In its petition of appeal and in its oral argument at the hearing held herein appellant contended that the Board was in error in reversing its action to issue the license taken on June 28, 1972. Appellant asserted that, following public hearings held by the Board on June 21 and June 28, a resolution was adopted granting appellant's application for the license. On June 29 the Board informed appellant that it had withdrawn its resolution due to an alleged irregularity in the publication of the notice of public hearing. It appears that appellant re-advertised, that a public hearing was held before the Board on July 19 in accordance therewith, and that on August 2 the Board adopted the resolution complained of, as hereinabove stated in essential part.

Inasmuch as there is nothing in the record to controvert the Board's assertion that appellant had failed to properly or legally advertise in the first instance, it is my view that the Board's action was not erroneous but proper. Although, generally, a local issuing authority may not reconsider its final determination on an application for a license, it may do so in the event of a mistake of law or fact. Under the circumstances

I find there was a mistake because of appellant's failure to comply with the statutory requirements with respect to advertising; thus the action of the Board in ordering a re-advertising and holding a new hearing thereon and thereafter adopting a resolution embodying factual findings and conclusions resulting therefrom was entirely proper.

It might be well to state the established principles in adjudicating this appeal. The issuance of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4. On the other hand, where it appears that the denial was arbitrary or unreasonable, the action will be reversed. Tompkins v. Seaside Heights, Bulletin 1398, Item 1. In Blanck v. Magnolia, 38 N.J. 484, 491 (1962) it was held that "The test in the establishment and issuance of liquor licenses is whether the public good requires it." Thus it must be determined whether there was a need and necessity for such license, i.e., the best interests of the public required it.

The liquor business is an exceptional one and the courts have always dealt with it exceptionally. X-L Liquors v. Taylor et al., 17 N.J. 444 (1955); Mazza v. Cavicchia, 15 N.J. 498 (1954).

Under the statute municipal issuing authorities are vested with the broad measures of discretion in the control of the liquor traffic. They are authorized to adopt ordinances entirely excluding taverns and package stores (R.S. 33:1-12) or limiting their number (R.S. 33:1-40). Even where the municipal governing body passes an ordinance limiting the number of taverns and package stores, it may reasonably decline to issue a license beyond a number less than the maximum authorized by the ordinance. See Bumball v. Burnett, 115 N.J.L. 254 (Sup.Ct. 1935); Po Ambo Democratic Club, Inc. v. Perth Amboy, Bulletin 1158, Item 3.

The testimony adduced herein reflects the following: Appellant has constructed a modern motel containing fifty-one suites, all of them being two-room suites. The two-room suites contain a bedroom, a living room and a bathroom. The two-room efficiency suites contain, in addition to the bedroom, living room and bathroom, an efficiency kitchen. All of the bedrooms contain two full-size beds and each of the living rooms contains a full-size sofa-bed, a mirror, a dresser and a television set. The sofa-bed is a sofa which opens up to a bed.

The motel is located in an uncongested area of the municipality. The nearest homes are located at least one hundred-fifty feet distant from the motel. The room wherein liquor would be served would seat approximately fifty to sixty patrons, ten or twelve of them at the bar. Most of the others would be accommodated at small tables. Off-street parking is adequate. There would be no live music or juke-box music. There would be installed piped-in music. Sandwiches would be served. The nearest church is a mile distant, the nearest school is four blocks distant. The nearest liquor establishment is seven blocks distant.

In support of the Board's position Louis C. Knoell, a deacon of the Brigantine Baptist Church, testified that he was authorized to speak in behalf of the church. The congregation desired to "keep Brigantine a clean town." They were fearful that "riff-raff" would come in the town. He felt that there were sufficient liquor establishments in the municipality. A letter opposing the issuance of the license, signed by the pastor and the board of deacons of the church, was brought to

the attention of the governing body at the hearing held before it and received in evidence.

On cross examination the witness testified that the church was located at the opposite end of the island from the proposed place where the license would be located. He would oppose the issuance of any new license in the municipality regardless of where it would be located.

Charles Vollmer, chairman of the board of deacons of the said church, was opposed to the issuance of the license because he was opposed to liquor on moral grounds. He would oppose the issuance of any liquor license regardless of location.

Stella DiLorenzo, a resident of Brigantine, who testified in opposition to the issuance of the license at the hearing before the Board, testified that she was opposed to the issuance of the liquor license because she felt that there were sufficient liquor outlets in the community to provide for the needs of the winter and summer population.

Cecilia Saia, who has an interest in a thirty-unit motel located eight blocks distant from the proposed location, also expressed her opposition to the issuance of the subject liquor license. None of her guests expressed a desire for alcoholic beverages, to her knowledge.

Alice Berstler, who operates a twenty-two unit motel over thirty blocks distant from the proposed location, testified that she was opposed to the issuance of the liquor license because there was no need for it.

Samuel Kartan, a member of the board of directors of the local Chamber of Commerce, testified that at a meeting of the board it decided to oppose the issuance of the proposed liquor license and that it voiced its objection at the hearing held by the Board. The Chamber was opposed to the issuance of the license because it felt that there were sufficient liquor outlets in this municipality. Furthermore, it felt that appellant was trying to circumvent the State statute which set a minimum requirement of one hundred guest sleeping rooms, whereas appellant had only fifty-one units containing one bedroom in each unit. He is personally opposed to the issuance of the license because, as a motel operator in Brigantine, he has found that he has a more reserved and a family-type patronage now than when the motel contained a barroom.

On cross examination the witness asserted that, if the motel contained one hundred separate units each containing a guest sleeping room, and a dining room where he would have a place to eat, he would have no objection thereto.

Petitions favoring and opposed to the issuance of the license were received in evidence.

It appears that there are presently in existence in the City six plenary retail consumption licenses, one plenary retail distribution license, and five club licenses.

Basically, the issues presented are: (1) Does appellant have the required number of one hundred guest sleeping rooms, thus qualifying it to the issuance of a new license pursuant to the provisions of N.J.S.A. 33:1-12.20, and (2) If appellant's motel does in fact have the minimum number of guest sleeping rooms provided for in the said statute, may the municipal issuing authority decline to issue a new plenary retail consumption license in the reasonable exercise of its discretion.

Historically, the Legislature has sought to promote temperance. It intended the Alcoholic Beverage Law to be remedial of abuses inherent in the liquor traffic and to be liberally construed. R.S. 33:1-73; Kravis v. Hock, 135 N.J.L. 259 (Sup. Ct. 1947), reversed on other grounds 136 N.J.L. 161 (E. & A. 1947); Fanwood v. Rocco, 59 N.J. Super. 306 (1960), aff'd 33 N.J. 404 (1960).

That the Legislature has sought to promote temperance is manifested by its action in amending the State Limitation Law which originally provided that the ratio for plenary retail consumption licenses was one for each 1,000 of the municipality's population as shown by the last then preceding Federal census. Chapter 72 of the Laws of 1960 changed the ratio as to retail consumption licenses to one for each 2,000 of population and, thereafter, Chapter 170 of the Laws of 1969 (N.J.S.A. 33:1-12.14) changed the ratio to one for each 3,000 of population. This clearly shows that the Legislature, in further restricting the issuance of licenses, intended to further promote temperance. This intendment is likewise manifested by the change in the hotel-motel exception increasing the requirement from fifty sleeping rooms to one hundred guest sleeping rooms. (N.J.S.A. 33:1-12.20, supra.)

In Rauoly, Inc. v. Lakewood, Bulletin 1653, Item 2, former Director Lordi, in affirming the municipal denial of an application for a plenary retail consumption license for a hotel, stated:

> "There is no inherent right to a liquor license. *** Nor is a bona fide hotel which meets the minimal requirements of the State limitation law or a municipal ordinance ipso jure entitled to a license merely because it is such a hotel...."

Similarly, it has been held that "... even though the municipality has an ordinance giving it the authority to issue hotel licenses under R.S. 33:1-12.20, it may reasonably decline to issue any such licenses if, in the reasonable exercise of its discretion, it determines that the public interest warrants such action." Tara Bay Club v. Upper Township, Bulletin 1627, Item 1. In Tara, the municipal denial of an application to license a proposed motel was affirmed where one of the reasons for the denial was that the proposed facility would be for the benefit of transients and of residents of other communities rather than geared to the needs of the local residents. See also Durr and McDevitt v. Belmar, Bulletin 1086, Item 1. All of these cited cases involved situations in which neither State nor local license numerical limitations barred the issuance of a license sought for a motel.

In the subject controversy, unquestionably the Board was influenced by the fact that many organizations and individuals expressed opposition to the issuance of the license. Many were primarily opposed because they felt that there were sufficient liquor outlets in the municipality.

In adjudicating this matter I observe that the burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellant. Rule 6 of State Regulation No.15. Further, as Justice Jacobs pointed out in Fanwood v. Rocco, supra:

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

The Director is governed by the guiding principle that, where reasonable men, acting reasonably, have arrived at a determination in the issuance or transfer of a license, such determination should be sustained by the Director unless he finds that it was clearly against the logic and effect of the presented facts. Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502 (E. & A. 1947); cf. Fanwood v. Rocco, supra. In the recent case of Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970), the court stated:

"The conclusion is inescapable that if the legislative purpose is to be effectuated the Director and the courts must place much reliance upon local action. Once the municipal board has decided to grant or withhold approval of a premises-enlargement application of the type involved here, its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion. Although the Director conducts a de novo hearing in the event of an appeal, the rule has long been established that he will not and should not substitute his judgment for that of the local board or reverse the ruling if reasonable support for it can be found in the record...."

The Board has in my opinion understood its full responsibility, and has acted circumspectly and in the reasonable exercise of its discretion in denying the issuance of the license to appellant.

Inasmuch as this specific finding is dispositive of the subject appeal, I find it unnecessary to decide whether appellant's motel met the minimum statutory requirement that it consist of at least one hundred guest sleeping rooms.

Thus I conclude that appellant has failed to sustain the burden of establishing that the action of the Board was erroneous or an abuse of its lawful discretion, as required by Rule 6 of State Regulation No. 15.

Therefore, it is recommended that an order be entered affirming the action of the Board and dismissing the appeal.

Conclusions and Order

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

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

Accordingly, it is, on this 1st day of February 1973,

ORDERED that the action of respondent Board of Commissioners of the City of Brigantine be and the same is hereby affirmed, and the appeal herein be and the s ame is hereby dismissed.

ROBERT E. BOWER
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - AMENDED ORDER.

In the Matter of Disciplinary Proceedings against Murray H. Post t/a Capitol Hotel 325 Seventh Avenue Lakewood, N.J. Holder of Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Lakewood.	AMENDED ORDER

Licensee, Pro se

BY THE DIRECTOR:

On January 24, 1973, Conclusions and Order were entered suspending the plenary retail consumption license of the licensee for fifteen days, effective February 6, 1973, following a plea of non vult to charges as set forth therein. (Re Post, Bulletin 2091, Item 1(G).)

Subsequent thereto, investigation of the records of this Division disclosed that on June 3, 1971, the license had been suspended for forty-four days effective January 4, 1972 on a charge of possession of mislabeled bottles of alcoholic beverages. Re Post, Bulletin 2025, Item 11.

In consequence of such prior suspension, the penalty admeasured on the charges herein will be increased to a total suspension of twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days.

Accordingly, it is, on this 30th day of January 1973,

ORDERED that my Conclusions and Order dated January 24, 1973, in the above matter, be and the same is hereby amended as follows:

ORDERED that Plenary Retail Consumption License C-28, issued by the Township Committee of the Township of Lakewood to Murray H. Post, t/a Capitol Hotel, for premises 325 Seventh Street, Lakewood, be and the same is hereby suspended for twenty (20) days commencing 2:00 a.m. on Tuesday, February 6, 1973 and terminating 2:00 a.m. on Monday, February 26, 1973.

Robert E. Bower,
Director

6. ACTIVITY REPORT FOR JANUARY 1973

ARRESTS:			
Total number of persons arrested			30
Licenses and employees	9		
Bootleggers	9		
Minors	12		
SEIZURES:			
Stills - over 50 gallons			1
Alcohol - gallons			46.60
Mash - gallons			1540.00
Distilled alcoholic beverages - gallons			6.00
Wine - gallons			6.05
Brewed malt alcoholic beverages - gallons			40.395
COMPLAINTS AND INVESTIGATIONS:			
Inspection & visits made on assigned investigations			1352
Complaints assigned for investigation			436
Investigations completed			387
Investigations pending			581
Premises where alcoholic beverages were gauged			600
Bottles gauged			10679
Premises where violations were found			207
Number of violations found			264
License applications investigated			8
Contacts made with other law enforcement agencies			492
LABORATORY:			
Analyses made			132
Refills from licensed premises - bottles			103
Bottles from unlicensed premises			7
Controlled Dangerous Substance			1
IDENTIFICATION:			
Criminal fingerprint identifications made			10
Persons fingerprinted for non-criminal purposes			113
Identification contacts made with other law enforcement agencies			109

DISCIPLINARY PROCEEDINGS:			
Cases instituted at Division			42
Violations involved			51
Sales to minors	7	Employ non-citizen	1
Sales during prohibited hours	13	Purchase from unauthorized source	2
Alcoholic beverages not truly labeled	12	No true books of account	1
Fraud & Front	3	Bottling	1
Aiding & Abetting	3	False answers on license application	1
Sale to non-member	3	Obstructed view	1
Mislabeled malt beverage tap	1	License improvidently issued	1
Sale below filed price	1		
Cases brought by municipalities on own initiative and reported to Division			34
Violations involved			50
Sales to minors	12	Brawls	3
Sales during prohibited hours	6	Unnecessary noise	1
Gambling	2	Acts of violence	2
Poss. Gambling paraphernalia	1	Unlicensed bartender	3
Nuisance	8	Allow minor to loiter on premises	3
Allow persons of ill repute on premises	1	Fail to properly display license	1
Narcotics	1	Alteration w/o approval	1
Illegal activity	4	No E-141-A	1
Fines in lieu of disciplinary proceedings			99
Total amounts of fines			$2370.00
HEARINGS HELD AT DIVISION:			
Total number of hearings held			30
Appeals	4	Eligibility	15
Disciplinary proceedings	11		
STATE LICENSES AND PERMITS:			
Total number issued			1202
Licenses	3	Wine permits	12
Solicitors permits	59	Miscellaneous permits	207
Employment permits	150	Transit insignia	131
Disposal permits	130	Transit certificates	92
Social affair permits	418		

OFFICE OF AMUSEMENT GAMES CONTROL:
Enforcement files established - - - - - - - - - - - 1

ROBERT E. BOWER
Director of Alcoholic Beverage Control
Commissioner of Amusement Games Control

Dated: February 8, 1973

7. DISCIPLINARY PROCEEDINGS - FAILURE TO LIST EMPLOYEES AND DISPLAY LICENSE IN VIOLATION OF RULE 16 OF STATE REGULATION NO. 20 - VALIDATING PERMIT SECURED - VIOLATIONS CORRECTED - NOLLE PROSSED.

In the Matter of Disciplinary Proceedings against

Kennedy's Steak House, Inc.
2018 White Horse Pike
Galloway Township
PO Pomona, N. J.,

Holder of Plenary Retail Consumption License C-14, issued by the Township Committee of the Township of Galloway.)

CONCLUSIONS and ORDER

Licensee, Pro se

BY THE DIRECTOR:

Licensee was charged with an alleged violation of Rules16(b) and (c) of State Regulation No. 20 in that on June 12, 1972 its license certificate was not displayed, and there was no list of current employees on the licensed premises.

Concurrent with the making of the above charges, the violations have been corrected and, in addition, a validating permit was secured from this Division, the fee for which has been paid to and received by the Division. I have therefore determined that the above charges shall now be nolle prossed.

Accordingly, it is, on this 6th day of February 1973,

ORDERED that the charges herein be and the same are hereby nolle prossed.

ROBERT E. BOWER
DIRECTOR

8. STATE LICENSES - NEW APPLICATION FILED.

Savo Balic
t/a Balic Winery
Route #40
Mays Landing, New Jersey

Application filed March 8, 1973 for plenary winery license, with retail privileges.

Robert E. Bower
Director