

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

BULLETIN 1961

March 29, 1971

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STATE OF NEW JERSEY  
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1. APPELLATE DECISIONS - HOLMDEL COMMUNITY CHURCH ET ALS. v.  
HOLMDEL AND HOLMDEL GENERAL STORE, INC.

Holmdel Community Church, U.C.C. and John Waldron,	)	
	)	
Appellants,	)	On Appeal
	)	
v.	)	
	)	CONCLUSIONS
Township Committee of the Township of Holmdel and Holmdel General Store, Inc.,	)	and ORDER
	)	
Respondents.	)	

-----  
Parsons, Canzona, Blair & Warren, Esqs., by John C. Givens, Esq.,  
Attorneys for Appellant  
Potter & Gagliano, Esqs., by S. Thomas Gagliano, Esq.,  
Attorneys for Respondent Township  
Klatsky, Himelman & Siegfried, Esqs., by William Himelman, Esq.,  
Attorneys for Respondent Holmdel General Store, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Committee of the Township of Holmdel (hereinafter Committee) whereby it granted a person-to-person and place-to-place transfer of a plenary retail consumption license from Helen M. Woolf to Holmdel General Store, Inc., (hereinafter licensee) and from premises Highway 35 to premises on Main Street, Holmdel.

Appellants allege in their petition of appeal that the action of the Committee was erroneous for the following reasons:

"(1) There was no factual basis in the record for the findings of fact by the Township Committee.

(2) On the basis of the record before it, the action of the Township Committee constituted an abuse of discretion.

(3) The Township Committee completely disregarded the multitudinous objectors and gave no weight whatever to their opinion.

(4) The action of the Township Committee was contrary to law in that it constituted a violation of the zoning Ordinance of the Township of Holmdel.

(5) In view of the proximity of the church property, the multitudinous activities for both children and adults and the traffic situation adjacent to the premises, the action of the Township Committee was erroneous."

The Committee, in its answer, denied that the license transfer was erroneous and asserted that its action, taken after a full and fair hearing, was proper, legal and reasonable in all respects.

Licensee's answer is substantially similar to the answer of the Committee.

At the conclusion of the hearing held before the Committee on March 4, 1970, it unanimously adopted the following resolution:

"The proposed use in the opinion of the Township Committee is a valid continuation of the existing use under Section 6.1.2 of the Zoning Ordinance of the Township of Holmdel, which allows under Section (b) provision markets, general stores, clothing stores, and similar establishments. The B-1 zone generally allows retail outlet uses, in the only zone in Holmdel which allows retail outlets and the proposed use as described is a similar establishment to the allowed uses.

The proposed use meets the Alcoholic Beverage Control Commission requirements with regard to the 200 foot rule.

Although the proposed use is near existing church uses, it is a commercial area, and properly operated will cause no disturbance to the church and church uses. The Township Committee recognizes that the application for renewal of the license must be made on an annual basis and in the event the operation becomes objectionable, or if substantial changes are made in the nature of the operation, the Township Committee can exercise its discretionary powers to deny renewal.

In the Township Committee's opinion this specific use will not generate any more traffic than would any other retail use of the premises.

Based on the Township Committee's knowledge of the proprietor's character, his demonstrated business practices and citizenship, and the testimony at the public hearing, the Township Committee finds that he will continue to be an asset to the community in the operation of this business."

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.

The Township Clerk, John P. Wadington, testified that at the hearing of March 4, the Committee had before it four letters and petitions containing the names of 492 signatories objecting to the grant of the transfer. He further testified that he was in receipt of a letter sent by the appellant Holmdel Community Church, reciting that at a special congregational meeting held on February 8, 1970, a resolution opposing the proposed transfer was adopted.

Appellant's offer of proof "... through this witness and other witnesses that these premises were being used as a

nonconforming use under the terms of the zoning ordinance, that the contemplated use of selling alcoholic beverages for consumption and for off-premises drinking is an expansion of that nonconforming use and is an illegal act; and that under the cases in this state should not have been allowed, and that the Township Committee had that called to its attention and decided to disregard it" was rejected by this Hearer on the ground that this tribunal does not base its determination on zoning issues. See Lublinter v. Paterson, 33 N.J. 428 (1960).

Wallace B. Smith, a professional engineer and land surveyor, testified that he prepared a map or survey of the general area wherein the licensee and the church properties are located. Smith measured distances in a direct line or the shortest distances between building A (the premises to which the license was transferred) to various church properties, delineated on the map. The measurements shown thereon are as follows: to building 1 (used as a parsonage by the pastor and his family and for other activities such as a youth center, holding committee meetings and adult classes), 100.5 feet; to building 2 (called a Fellowship Hall for holding social gatherings and as a meeting place for groups both related and unrelated to the church), 174.2 feet; to building 3 (the former Holmdel Baptist Church and since the church was merged in 1968 has been used alternately with building 4, for conducting worship services), 222.3 feet and to building 4 (used on Sundays as the main house of worship), 293.6 feet.

Appellant, John W. Waldron, pastor of the appellant church, after testifying as to the activities carried on in the four buildings owned by the church as detailed above, asserted that he was opposed to the transfer of the license because of its proximity to the church, considering appellant's many church-related activities, and in particular, its youth programs. He was also concerned "that this store will not contribute to additional traffic, but will contribute, I think, to the hazard of traffic that is already there."

Although he did not completely abstain from drinking alcoholic beverages, it was his opinion that there was a stigma attached to imbibing alcoholic beverages.

John M. Brady, a local policeman, testified that, at the intersection closest to the licensed premises, there were eleven accidents in 1968 and thirteen accidents in 1969. The traffic is presently controlled by a stop sign and a red flashing light. He is aware that a traffic light will be installed at that intersection.

Dominic Furiato, who, together with his wife Mary Furiato, are the sole stockholders of the respondent licensee corporation, testified that he had operated a small general store selling groceries and meats at the locus in question. The building was damaged by fire in August 1969 and he proposed to install a bar seating twelve patrons, and a package goods counter in one room. He planned to be in charge of the bar and his wife would operate the package goods department. The premises are located in a small shopping area, containing a drugstore, dress shop, professional building, bank, post-office, firehouse, barber shop, beauty shop, hardware store, garden center, butcher shop, restaurant and a surveyor. No other licensed premises are located in that area.

Mary Furiato, wife of the previous witness, testified that she had served the customers while the general store was in operation. Many of them expressed favorably the desire to purchase liquor at the proposed site.

Karl H. Wilber, a land surveyor, who prepared the sketch of survey marked RG-1 in evidence, testified that he measured the distances from the front entrance of the proposed licensed premises to the front door of each of the church owned buildings, as a person would normally walk by proceeding to the nearest cross walk and along what would have been the sidewalk area. No sidewalks were installed in that area. He measured the distances from the front door of the liquor store to the church properties, as follows: to the building which is presently and regularly used as a house of worship, 417 feet; to the building which was formerly the church and presently used for church services on recurring occasions, 814 feet; to the building used as a Fellowship Hall and youth center, 760 feet and to the parsonage which is also used for multi-purposes, 659 feet. The direct door to door distance from the building used for church services on recurring occasions to the licensed premises is approximately 220 feet.

Robert Bruce Phillips, a sergeant in the local police force, in charge of administration and investigation, testified that, in his opinion, based upon his familiarity with the area and its population, the establishment of a bar and liquor store at the proposed site would serve a public convenience and need.

With reference to Furiato's reputation and character:

"As a resident of this Town of Holmdel and as a businessman within the town, he has not had any type of reference to being a poor businessman or any indication of being a poor businessman in the township ... His character is outstanding."

William P. Menges, a member of the Township Committee at the time of the hearing below, testified that, before adopting the resolution, the Committee considered the objections to the transfer, such as the proximity of the church to the proposed location, the likelihood of increased traffic and the possibility that Furiato might at some time in the future, transfer the business to some one else. It was the sense of the Committee that the transfer would not adversely affect the church activities, that it would not generate more traffic than any other mercantile establishment, and that it was a convenience to the area residents.

The Committeeman considered the fact that hundreds of persons had signed petitions opposing the transfer and that at least ninety-five percent of persons attending the hearing were opposed to the transfer. The Committee gave substantial weight to the reaction of the objectors; however, it was the view of the committeemen that the objections lacked sufficient substance upon which they could properly base a denial of the application. The Committee had also considered Furiato's reputation and prior conduct in not permitting undesirables to congregate at the general store he had formerly operated.

Mayor David Cohen articulated his reasons for voting

to approve which were similar to those expressed by Committeeman Menges. Additionally, he was aware that certain objectors would not have objected if they were assured that Furiato would continue to operate the establishment himself.

In arriving at its decision, the Committee considered the fact that a licensee must apply for a renewal of the license annually. It also determined that the approval of the transfer would not be violative of the zoning ordinance.

During the course of this hearing de novo, the attorney for the appellants stipulated that the proposed licensed premises is not violative of the two-hundred-foot provision of R.S. 33:1-76; and I so find.

In response to the question of zoning raised by appellants, I quote from the opinion of Gaulkin, J.A.D. in Lubliner v. Paterson Board of Alcoholic Beverage Control, 59 N.J. Super. 419 (1960) at p. 433:

"Appellants argue that the approval of the transfer was illegal and erroneous because the Paterson zoning ordinance prohibits a tavern in this location. It is not clear from the evidence that the ordinance does so provide, but even if it does that does not make the grant of the transfer improper or its approval by the Director error. The issuance of a license or the grant of a transfer does not permit the licensee to operate without complying with all applicable statutes and ordinances, including zoning ordinances, building codes, health codes and the like. It may be that Hutchins will need a variance or other relief before he can operate a tavern at 39 Carroll Street, but he is not required to obtain it before the grant of the transfer."

The Appellate Division affirmed the grant of the license transfer and its decision was affirmed by the Supreme Court (Lubliner v. Paterson Board of Alcoholic Beverage Control, 33 N.J. 428 (1960)), in which case the opinion (at p. 435) by Judge Jacobs, after remarking that the zoning contention had apparently been abandoned, contained the following language:

"\*\*\* In dealing with that contention (re the zoning ordinance) the Appellate Division properly pointed out that the grant of Mr. Hutchins' application would in nowise permit him to operate in contravention of any applicable zoning provisions; if he ever attempts to so operate, relief is readily available." (Under-scoring added)

Appellants further charged that the Committee's action constituted an abuse of discretion.

The burden of establishing that the action of a local issuing authority is erroneous and should be reversed rests with the appellants. Rule 6 of State Regulation No. 15. The decision as to whether or not a license should be transferred to a particular locality rests within the sound discretion of the municipal issuing authority in the first instance. Hudson-Bergen County Retail Liquor Stores Assn. v. North Bergen, et als.,

Bulletin 997, Item 2. Each municipal issuing authority has wide discretion in the transfer of a liquor license, subject to review by the Director in the event of any abuse thereof. Passarella v. Atlantic City, 1 N.J. Super. 313 (App. Div. 1949). However, action based upon such discretion will not be disturbed in the absence of a clear abuse. Blanck v. Magnolia, 38 N.J. 484 (1962). As Justice Jacobs pointed out in Fanwood v. Rocco, 33 N.J. 404, 414 (1960):

"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."

And further, in evaluating the action of the Committee herein, it might be well to state the view expressed in Ward v. Scott, 16 N.J. 16 (1954), wherein the Supreme Court, dealing with an appeal from a zoning ordinance, set forth the applicable principle (at p. 23):

"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 for variance. 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)."

I have carefully considered the five points raised by the appellants in their petition of appeal and find them to be without merit.

It appears that in arriving at its decision, the Committee was fully aware of the fact that a sizeable percentage of the citizens objected to the transfer of the license and that the situs was in relatively close proximity to various church owned buildings where activities sponsored by several church groups were held. However, it did not consider these reasons compelling under all the facts and circumstances herein.

Additionally, the proof was lacking that the transfer would affect the traffic density in the area or increase the traffic hazards therein.

The Committee was well aware of the fact that application for the renewal of the license had to be made annually. If the premises are conducted in a law-abiding manner (and it must be assumed that such will be the case), inhabitants of the area have nothing to fear. If, however, the licensed premises will be operated in violation of the Alcoholic

Beverage Law, the licensee would subject his license to suspension or revocation. Tagliaferro v. Newark, Bulletin 1710, Item 1; Jesswell v. Newark, Bulletin 1847, Item 5; Monmouth County Retail Liquor Stores v. Middletown et al., Bulletin 1572, Item 1.

In conclusion, it may be stated that in matters involving transfer of liquor licenses the responsibility of the municipal issuing authority is "high", its discretion "wide" and its guide "the public interest". Lubliner v. Paterson, *supra*. (33 N.J. at p. 446). As indicated hereinabove, the Director is governed by the 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 (1947); cf. Fanwood v. Rocco, *Super.* 306 (App. Div. 1960). 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 Committee has in my opinion understood its full responsibility, and has acted circumspectly and in the reasonable exercise of its discretion in granting the transfer. I do not find the objections of sufficient merit and thus conclude that appellants have failed to sustain the burden of establishing that the action of the Committee was arbitrary, capricious, unreasonable or an abuse of its discretion. Rule 6 of State Regulation No. 15.

For the reasons aforesaid, it is recommended that an order be entered affirming the action of the Committee 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, and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendation.

Accordingly, it is, on this 18th day of January 1971,

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

RICHARD C. McDONOUGH  
DIRECTOR

2. APPELLATE DECISIONS- ONELLO v. FORT LEE - ORDER DISMISSING APPEAL.

ROBERT ONELLO,	)	
Appellant,	)	
v.	)	ON APPEAL
	)	ORDER
MAYOR AND COUNCIL OF THE	)	
BOROUGH OF FORT LEE,	)	
Respondent.	)	

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 Guy J. Lanza, Esq., Attorney for Appellant  
 Breslin and Monaghan, Esqs., by John A. Schepisi, Esq.,  
 Attorneys for Respondent

BY THE DIRECTOR:

Appellant appeals from denial by respondent of his application for transfer of a plenary retail consumption license from Northview Club Corporation to Robert Onello, for premises 1560 Bergen Boulevard, Fort Lee.

Prior to hearing appellant's attorney advised me by letter dated January 25, 1971 that the appeal is withdrawn.

Accordingly, it is, on this 27th day of January 1971,

ORDERED that the appeal herein be and the same is hereby dismissed.

RICHARD C. McDONOUGH  
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - LEWDNESS AND INDECENT ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - PRIOR SIMILAR RECORD - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 90 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

FAP, INC. )  
t/a Pal Joey's )  
10-1/2 South Florida Ave. )  
Atlantic City, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-195, issued by the Board of Commissioners of the City of Atlantic City. )

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Licensee, by Joseph Falco, President, Pro se.  
Edward F. Ambrose, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to charges alleging that on October 31, 1970, it permitted (1) lewdness and immoral activity (indecent entertainment) on the licensed premises, in violation of Rule 5 of State Regulation No. 20, and (2) female entertainers to accept drinks at the expense of male patrons, in violation of Rule 22 of State Regulation No. 20.

With respect to the first charge, reports of investigation disclose that several female entertainers performed strip tease routines accompanied by suggestive posturings and gesturings, disrobing to bikini-type briefs and being completely topless, sans even pasties; and with respect to the second charge, that female entertainers consumed drinks, at the expense of male patrons, including domestic champagne in units of splits (6.4 ounces) and 4/5 quart bottles retailing for approximately seventy-five (75) cents and Two dollars eighty-five cents (\$2.85) respectively, at a charge of Seven dollars fifty cents (\$7.50) and Thirty-six (\$36.00) Dollars, respectively.

Licensee has a previous record of suspension of license by the Director for one hundred five days, effective September 25, 1968, for permitting prostitution on the licensed premises and female entertainers to drink at the expense of male patrons, being similar to the second charge herein. Re Fap, Inc., Bulletin 1822, Item 4.

The license will be suspended on the first charge for thirty days (Re Elmcrest Inn, Inc., Bulletin 1860, Item 5), and on the second charge, deeming such violation aggravated by the facts and further considering the prior record of suspension of license for similar violation occurring within the past five years, for sixty days (Re Bucci, Jr., Bulletin 1910, Item 4), or a total of ninety days, with remission of five days for the plea entered, leaving a net suspension of eighty-five days.

Accordingly, it is, on this 27th day of January 1971,

ORDERED that Plenary Retail Consumption License C-195, issued by the Board of Commissioners of the City of Atlantic City to Fap, Inc., t/a Pal Joey's, for premises 10-1/2 South Florida Ave., Atlantic City, be and the same is hereby suspended for eighty-five (85) days, commencing at 7:00 a.m. Thursday, February 11, 1971, and terminating at 7:00 a.m. Friday, May 7, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITY (INDECENT ENTERTAINMENT) - HOSTESS ACTIVITY - LICENSE SUSPENDED FOR 50 DAYS.

In the Matter of Disciplinary Proceedings against )

LAFAYETTE PEANUT BAR, INC. )  
t/a New Peanut Bar )  
149 Lafayette Street )  
Newark, N. J. )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-768, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark. )

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Rocco F. Senna, Esq., Attorney for Licensee  
Francis P. Meehan, Jr., Esq., Appearing for Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charges:

"1. On Thursday night, June 25 and Friday night, June 26, 1970, you allowed, permitted and suffered in and upon your licensed premises, lewdness and immoral activity and foul, filthy and obscene conduct, viz., in that you allowed, permitted and suffered a female dancer, commonly known as a 'Go Go Girl' to perform, commit and engage in by herself and in association with a male acting as a bartender, on your licensed premises, in obscene, indecent, filthy, lewd, lascivious, disgusting and immoral manner, and in acts, gestures and movements of and with her hands and other parts of her body, in association with said acts, gestures and movements, in manner and form having obscene, indecent, filthy, lewd, lascivious, disgusting, immoral and suggestive import and meaning; in violation of Rule 5 of State Regulation No. 20.

"2. On Thursday night, June 25 and Friday night, June 26, 1970, you allowed, permitted and suffered a female employed on your licensed premises, viz., the aforementioned female dancer to accept beverages at the expense of or as a gift from customers and patrons; in violation of Rule 22 of State Regulation No. 20."

Pursuant to specific assignment to investigate an allegation of a lewd show, ABC agents G, S, R, and Ga, participated in the investigation which resulted in the preferment of the charges.

Agent G testified that on June 28, 1970, he and Agent S entered the licensed premises at approximately 7:30 p.m. Agent G described the premises as being a brick, corner building with a corner entrance. He described the interior as having a shuffle board on the right, pool table in the center rear, and as having a bar extending the full length of the left wall. Behind the bar was a go-go stage, approximately four feet by five feet, and

equal in height with the bar. In front of the stage were two supporting poles. One Dinas Munoz was tending bar and he informed the agents that the principal officer was Virgilio Llinas, and that he was not presently on the premises.

Agent G continued his account that there were approximately twenty-five or thirty patrons present, that at approximately 8:45 p.m. a female entered who was later identified as Sonia Montes (a/k/a Sonia Marguerita Montes DeOca); she picked up a suitcase from the go-go stage, proceeded to the rear of the premises and returned dressed in a go-go type costume; before she changed her costume he offered to buy her a drink; the bartender served her what appeared to be a scotch and soda, and that he observed Agent S pay for the drink, a portion of which Miss Montes then consumed.

She danced intermittently throughout the evening taking occasional intermissions. During the breaks she would accept drinks from other patrons.

Miss Montes danced in normal go-go style at the outset of her performance. She then began to make hand motions with clenched fists in front of her private parts, said motions simulating male masturbation. She then, by rubbing her finger on her private parts, simulated female masturbation. She was further observed to rub her hands on and around her private parts and breasts. She was further observed to rub her buttocks against the supporting poles and further to do bumps and grinds while touching the floor with her hands. She was observed to place her hands against the rear wall behind the stage and rub her buttocks against the pole. "Then she was observed to rub her private parts, the front, against the pole bending over."

The bartender, Mr. Munoz, made no effort to stop the performance and Mr. Llinas did not return while he and Agent S were present. He and Agent S departed approximately 10:00 p.m.

Agent G testified that he returned to the licensed premises on June 26, 1970 at approximately 9:30 p.m. with Agents R and Ga; at that time there were approximately thirty patrons present and Munoz and Virgilio Llinas (a/k/a Joe) were tending bar; they were served by Llinas; Miss Montes was again "...dancing in the same manner as she had been on the previous visit...."

"And also on this visit she was observed to take several pieces of newspaper and put them on the floor of the stage, and she would lie down on this paper, and then go through motions that appeared to be simulating sexual intercourse. She would move her body up and down against the floor lying on the paper. She would roll on a side, lift one of her legs into the air, and rub her hand over her leg and across her private parts. She did this a while and stand up and again repeat the motions with her hands. This was the way she performed throughout this visit."

Shortly thereafter Miss Montes was offered a drink. After changing costumes, Miss Montes returned wearing a short robe over a costume that "looked like it was red, red and black bra and a very small patch over her private parts and the back, with strings along the sides." She was served a drink of what appeared to be anisette and soda by Llinas, the drink being paid for by the agents. Miss Montes consumed a portion of the drink.

He observed a patron taking pictures with a polaroid camera; at his request the patron photographed Miss Montes who interrupted her performance to pose for the picture. The photograph clearly portrays the brevity of the costume in which Miss Montes performed.

During the performance by Miss Montes, he observed Llinas making obscene gestures toward Miss Montes' private parts with a small stick which appeared to be about three-quarter inches in diameter and approximately one foot long.

The witness dispatched agent Ga to summon the local police shortly after Miss Montes resumed dancing. Upon the return of Agent Ga, accompanied by two uniformed police officers from the Newark Police Department, the agents seized the unconsumed portion of Miss Montes' drink. The agents then identified themselves to Llinas and informed him of the alleged violation.

It was stipulated that the direct testimony of Agent S, who accompanied Agent G on June 25 would be substantially corroborative of the testimony of Agent G relative to what transpired on June 25.

On cross examination Agent S testified that they arrived at 7:30 p.m.; they seated themselves at the bar, some eight or ten feet from the go-go platform; that Miss Montes entered at about 8:45 p.m.; he purchased a drink for her at approximately 9:10 p.m.; shortly thereafter he purchased her a second drink; the drinks were anisette for which he paid seventy-five cents each; and her performance was substantially as described by Agent G.

It was stipulated that the direct testimony of Agents R and Ga, who had accompanied Agent G on June 26, would be similar to the testimony elicited from Agent G on direct.

On cross examination Agent R testified that Miss Montes was performing in the manner theretofore described by Agent G; he heard Agent G offer to buy and Miss Montes accept a drink; the drink was anisette and ginger ale; and Miss Montes sat with the agents for five or ten minutes.

In defense of the charge, Virgilio Llinas testified as follows: He is part owner of the licensed premises; that he was not present on June 25, 1970; Munoz, the bartender on June 25, is presently in Puerto Rico and unavailable to testify. On June 26, 1970 he was present; agent G and two others entered at approximately 9:50 p.m.; Agent G offered to buy drinks for Miss Montes, two or three times; that after several refusals she accepted a drink; he served her a creme de menthe and ginger ale. He denied the alleged indecent performance. He insisted that Miss Montes danced a regular go-go dance; she did not engage in any touching or squeezing of her body; he made no obscene gestures toward her with a stick; and only the one drink was purchased for Miss Montes on June 26.

On cross examination he continued to deny all acts of alleged lewdness; Miss Montes had finished her dance at approximately 10:30 p.m. After refusing Agent G's offer to purchase drinks several times, she finally accepted. He personally had served her the one drink, and he again denied any act of lewdness or indecency. He observed her performance from time to time, and she did not lie or kneel on the stage.

Sonia Marguerita Montes DeOca (a/k/a Sonia Montes) testified on behalf of the licensee that, on the nights of June 25 and June 26, 1970, she did not perform in a lewd and

indecent manner; that she made no vulgar hand motions as described by the Division witnesses; she does not lie or kneel on the floor as a regular part of her performance; and the only contact made by her with the supporting poles was with her hands. She further identified Agent G as the man from whom she finally accepted a drink after four separate refusals. Finally she stated that the drink was creme de menthe and ginger ale, and that Agent G paid for the drink.

At this point Miss Montes engaged in a brief demonstration of go-go dancing which was completely devoid of any lewd or indecent acts. She insisted that she performed similarly on the nights in question.

On cross examination Miss Montes reiterated that she was served one drink on June 25 which drink was paid for by Agent G, and that on June 26 he bought her another drink.

Pablo Felicino testified that on June 26 he was on the licensed premises; he saw no immoral or indecent performance; he did not see anyone buy Miss Montes a drink; and that he was primarily interested in playing pool.

Manuel Noreiga, a witness for the licensee, testified that he is a regular patron; he was present on June 26, 1970 from 8:00 p.m. until 11:00 p.m. and that he witnessed none of the allegedly lewd acts.

On cross examination he testified that he had consumed fifteen or sixteen nips of beer during the evening; nevertheless, he was able to observe everything by the time he left.

In matters of this nature we are guided by the firmly established principle that disciplinary proceedings against liquor licensees are civil in nature and require proof by a preponderance of the believable evidence only. Butler Oak Tavern v. Division of Alcoholic Beverage Control, 20 N.J. 373 at p.378 (1956).

In appraising the factual picture presented herein the credibility of witnesses must be weighed. Testimony to be believed, must not only proceed from the mouth of a credible witness but must be credible in itself. It must be such as common experience and observation of mankind can approve as probable in the circumstances. Spagnuolo v. Bonnet, 16 N.J. 564 (1954).

The general rule in these cases is that the finding must be based on competent legal evidence and must be grounded on a reasonable certainty as to the probabilities arising from a fair consideration of the evidence. 32A C.J.S. Evidence, sec. 1042.

The able counsel for the licensee in a memorandum submitted in lieu of oral summation, questions the propriety of the Hearer's regard for the testimony of the agents as to their description of the performance alleged to have been lewd and indecent. He cites the elements of proof as set down in City of Newark v. Humphreys, et als., 94 N.J. Super. 384, Law Div. Essex County (1967). This case apparently involved a performance on premises other than one licensed to dispense alcoholic beverages.

The answer to this argument is that "what is lewdness immorality for purposes of a rule regulating premises licensed for the sale of alcoholic beverages may be determined on a

distinctly narrower basis than for the purposes of regulation of commercial entertainment generally." Davis v. New Town Tavern, 37 N.J. Super. 376 at 378 (App. Div. 1955). See generally Re Mrs. Jay's, Inc., Bulletin 1903, Item 2.

It should be further noted that the photograph of Miss Montes, entered in evidence and admittedly depicting the attire worn by her during her performance on June 26, 1970, is clearly an example of the type of attire conducive to the class of entertainment sought to be proscribed on licensed premises.

Counsel further argues that Rule 22 of State Regulation No. 20, which provides:

"No...licensee shall allow, permit or suffer any female employed on the licensed premises to accept any food or beverage, alcoholic or otherwise at the expense of or as a gift from any customer or patron."

is presently violative of R.S. 10:5-4, as amended by Par. 9, sect. 4 of Chapter 80 of Laws of 1970, providing:

"All persons shall have the opportunity to obtain employment ... without discrimination because of ... sex ...."

It is common knowledge that in places where alcoholic beverages are dispensed it has all too frequently been the practice of unscrupulous licensees to engage attractive females to entice gullible male patrons to lavishly engage in the purchase of drinks, the better, they think, to display their masculinity and to feed their ego. This practice for years has led to other, more despicable practices and has often resulted in converting patrons dollars into watered drinks, rather than into family fare. While it may be argued that the male patron must feed his ego at his own expense, it is nonetheless true that such activities do not promote temperance (R.S. 33:1-3) and are therefore to be discouraged, hence, the reason for the classification imposed by the regulation.

"Equal protection of the law does not foreclose classification so long as there is a reasonable basis in relation to the specific objective..." Paterson Tavern and Grill Association v. Hawthorne, 108 Super. 433 at p. 441 (App. Div. 1970), reversed on other grounds 57 N.J.180 decided November 9, 1970. The Supreme Court of New Jersey, in finding a local ordinance which prohibits the employment of female bartenders to be invalid took the position that such statutory enactment "was never intended to bar reasonable police power discriminations (108 N.J. Super at 441) or to nullify specific legislative discrimination..." It is submitted that any classification other than that set down in Rule 22 of State Regulation No. 20 would be unreasonable.

After carefully considering and evaluating the testimony of the witnesses herein and the additional evidence presented, I accept as factual the agents' version of the performance given by the female entertainer. I find that their graphic, detailed and explicit portrayal of the performance was wholly credible. I find that the performer's manual and bodily gestures and hand movements were lewd and obscene.

I further find that, Miss Montes as an employee of the licensee, accepted at least one drink paid for by the agent and served by the licensee.

I reject the testimony of the licensee that the performance was not obscene nor can I give any credence to the testimony of Miss Montes and the two patrons whose testimony I find unbelievable.

It is my view that the evidence is overwhelming that the performance given by the female entertainer was lewd, indecent and immoral and that the female entertainer accepted a beverage at the expense of a patron. I, therefore, recommend that the licensee be found guilty of Charges 1 and 2.

Licensee has no previous record of suspension of license. I further recommend that an order be entered suspending the license on the first charge for thirty days (Re Agron, Inc., Bulletin 1840, Item 3), and on the second charge for twenty days. Re Thomas Bucci, Jr., Bulletin 1832, Item 8, or a total of fifty days.

#### Conclusions and Order

Written exceptions to the Hearer's report were filed by the Division pursuant to Rule 6 of State Regulation No. 16.

I find that the matters contained in the exceptions have either been fully considered by the Hearer in his report or are without merit.

Therefore, having considered the entire record herein, including the transcript of the testimony, the exhibits, the Hearer's report and the exceptions filed with reference thereto, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 27th day of January 1971,

ORDERED that the Plenary Retail Consumption License C-768, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Lafayette Peanut Bar, Inc., t/a New Peanut Bar, for premises 149 Lafayette Street, Newark, be and the same is hereby suspended for fifty (50) days, commencing at 2:00 a.m. Monday, February 15, 1971, and terminating at 2:00 a.m. Tuesday, April 6, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - PURCHASE WHILE ON NON-DELIVERY LIST - AGGRAVATED CIRCUMSTANCES - LICENSE SUSPENDED FOR 30 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

OFFICE LOUNGE, INC.  
22 Wilson Ave.  
Newark, N. J.

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-382, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.

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Carl J. Yagoda, Esq., Attorney for Licensee  
Walter H. Cleaver, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 25, 1970 it purchased nine (9) cases of beer from a New Jersey licensed brewery while on the non-delivery list, in violation of Rule 4(b) of State Regulation No. 39.

Reports of the investigation disclose that the licensee altered an official document of this Division to show that its name had been removed from the non-delivery list until December 11, 1970, on basis of which altered document the brewery made the sale and delivery in question.

Absent prior record, but deeming the violation aggravated, the license will be suspended for thirty days, with remission of five days for the plea entered, leaving a net suspension of twenty-five days.

Accordingly, it is, on this 5th day of February 1971,

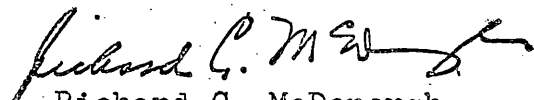
ORDERED that Plenary Retail Consumption License C-382, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Office Lounge, Inc., for premises 22 Wilson Avenue, Newark, be and the same is hereby suspended for twenty-five (25) days, commencing at 2 a.m. Monday, February 22, 1971, and terminating at 2 a.m. Friday, March 19, 1971.

RICHARD C. McDONOUGH  
DIRECTOR

6. STATE LICENSES - NEW APPLICATION FILED.

A.I.G. Trucking Inc.  
t/a Kohler Distributing Co.  
85 Fifth Avenue  
Paterson, New Jersey

Application filed March 26, 1971 for place-to-place transfer of State Beverage Distributor's License SBD-19 from 69-73 Lee Avenue, Haledon, New Jersey.

  
Richard C. McDonough  
Director