

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

January 20, 1965.

BULLETIN 1597

TABLE OF CONTENTS

ITEM

1. NEW LEGISLATION - ACT AMENDING AND SUPPLEMENTING 1962 ACT PROHIBITING, WITH EXCEPTIONS, A PERSON FROM ACQUIRING A BENEFICIAL INTEREST IN MORE THAN TWO RETAIL LICENSES IN THE STATE - ADDED EXCEPTION IN FAVOR OF RESTAURANTS.
2. APPELLATE DECISIONS - WALLACH v. DOVER.
3. APPELLATE DECISIONS - LAKE, INC. v. OAKLYN.
4. DISCIPLINARY PROCEEDINGS (Jersey City) - GAMBLING (NUMBERS BETS) - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.
5. MORAL TURPITUDE - CONVICTION FOR STAKE-HOLDING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.
6. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1964 TO SEPTEMBER 30, 1964 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19, (INCLUDING 57 ISSUED BY THE DIRECTOR PURSUANT TO R.S. 33:1-20).
7. STATE LICENSES - LIMITED TRANSPORTATION PERMIT - APPLICATION DENIED.
8. STATE LICENSES - OBJECTIONS TO APPLICATION FOR WINE WHOLESALE LICENSE - APPLICATION GRANTED. (NEWARK)

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

January 20, 1965

BULLETIN 1597

1. NEW LEGISLATION - ACT AMENDING AND SUPPLEMENTING 1962 ACT PROHIBITING, WITH EXCEPTIONS, A PERSON FROM ACQUIRING A BENEFICIAL INTEREST IN MORE THAN TWO RETAIL LICENSES IN THE STATE - ADDED EXCEPTION IN FAVOR OF RESTAURANTS.

Senate, No. 185 was approved by the Governor on November 23, 1964 and thereupon became Chapter 220 of the Laws of 1964, effective immediately. The act changed Sections R.S. 33:1-12.32 and 37, and added a section, R.S. 33:1-12.38, to read as follows, the under-scored language being new:

"33:1-12.32 The provisions of this act shall not apply to the acquisition of an additional license or licenses or an interest therein, when such license is issued to a person for use in connection with the operation of a hotel containing at least 50 sleeping rooms, or for use in connection with the operation of a restaurant, nor shall the provisions of this act affect the right of any person to dispose of an interest in a license or licenses by will or to the transfer of such an interest by descent or distribution.

Any additional license acquired for use in connection with a restaurant, as herein authorized, shall be limited, however, to the sale of alcoholic beverage for consumption on the licensed premises only.

"33:1-12.37 Any person violating any provision of this act or any rule or regulation issued pursuant to this act shall be punished by a fine of not less than \$50.00 and not more than \$250.00 and such person shall also be subject to the penalties and provisions of Chapter 1 of Title 33 which are applicable thereto by virtue of such violation.

"33:1-12.38 The Director of the Division of Alcoholic Beverage Control may adopt from time to time such rules and regulations as shall be necessary or desirable to carry out the provisions of this act and of the act to which this act is a supplement."

JOSEPH P. LORDI  
DIRECTOR

DATED: January 1, 1965

2. APPELLATE DECISIONS - WALLACH v. DOVER.

David Wallach, )  
 )  
 Appellant )  
 )  
 v. )  
 )  
 Township Committee of the ) ON APPEAL  
 Township of Dover, )  
 ) O R D E R  
 Respondent. )  
 -----  
 Giordano & Giordano, Esqs., by John C. Giordano, Jr., Esq.,  
 Attorneys for Appellant  
 Camp & Simmons, Esqs., by Percy Camp, Esq., Attorneys for  
 Respondent.

BY THE DIRECTOR:

Appellant appeals from denial by respondent on August 11, 1964, of his application for a plenary retail consumption license for the 1964-65 license year for premises located at I Main Street, Toms River, Dover Township.

Prior to the hearing of the appeal, by letter of November 16, 1964, appellant's attorneys advised me that the appeal was discontinued.

No reason appearing to the contrary, it is, on this 17th day of November 1964,

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

JOSEPH P. LORDI  
DIRECTOR

3. APPELLATE DECISIONS - LAKE, INC. v. OAKLYN.

Lake, Inc., t/a "Karl's )  
 Liquors", )  
 )  
 Appellant, ) ON APPEAL  
 )  
 v. ) SUPPLEMENTAL  
 ) ORDER  
 Mayor and Council of the )  
 Borough of Oaklyn, )  
 )  
 Respondent. )  
 -----  
 Epstein & Fluharty, Esqs., by E. Stevenson Fluharty, Esq.,  
 Attorneys for Appellant.  
 Aiken & Lake, Esqs., by James G. Aiken, Esq., Attorneys  
 for Respondent.

BY THE DIRECTOR:

On October 21, 1964, Supplemental Order was entered herein reimposing respondent's suspension of appellant's license.

for twenty days for sale of alcoholic beverages to minors. The penalty was reimposed to commence on October 28, 1964, and to terminate on November 17, 1964. Lake, Inc. v. Oaklyn, Bulletin 1585, Item 2.

Prior to the commencement of the suspension, the New Jersey Supreme Court granted a temporary stay pending the filing of a petition for certification to the Appellate Division. On November 2, 1964, the court denied the petition and denied any further stay.

Subsequent application to the United States Supreme Court for further stay was likewise denied on November 5, 1964. Thus, the suspension may now be reimposed.

Accordingly, it is, on this 9th day of November, 1964,

ORDERED that the twenty-day suspension of license heretofore imposed and stayed during the pendency of proceedings on appeal, be reinstated against Plenary Retail Distribution License D-3, issued by the Mayor and Council of the Borough of Oaklyn to Lake, Inc., t/a "Karl's Liquors", for premises 210-212 White Horse Pike, Oaklyn, commencing at 9:00 a.m. Thursday, November 12, 1964, and terminating at 9:00 a.m. Wednesday, December 2, 1964.

JOSEPH P. LORDI  
DIRECTOR

4. DISCIPLINARY PROCEEDINGS - GAMBLING (NUMBERS BETS) - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 65 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

Frank Gallipoli )  
t/a Frankie's Tavern )  
328 Palisade Avenue )  
Jersey City, New Jersey )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-364, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City. )  
----- )

Michael G. Comunale, Esq., Attorney for Licensee.  
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Licensee pleads non vult to charges (1) and (2) alleging that on July 6, 8, 14, 17, 21, 23, 27 and 29 and August 13, 1964, he permitted the acceptance of numbers bets on the licensed premises, in violation of Rules 6 and 7 of State Regulation No. 20.

Licensee has a previous record of suspension of license then held in partnership with Helen Gallipoli by the Director for forty days effective July 28, 1955, for permitting acceptance of

horse race and numbers bets. Re Gallipoli, Bulletin 1076, Item 10.

The license will be suspended for sixty days (Re My Place, Inc., Bulletin 1577, Item 3), to which will be added five days for the record of suspension for similar violation occurring more than five but less than ten years ago (Re Sports Bar & Grill, Inc., Bulletin 1540, Item 4) or a total of sixty-five days, with remission of five days for the plea entered, leaving a net suspension of sixty days.

Accordingly, it is, on this 9th day of November, 1964,

ORDERED that Plenary Retail Consumption License C-364, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Frank Gallipoli, t/a Frankie's Tavern, for premises 328 Palisade Avenue, Jersey City, be and the same is hereby suspended for sixty (60) days, commencing at 2:00 a.m. Monday, November 16, 1964, and terminating at 2:00 a.m. Friday, January 15, 1965.

JOSEPH P. LORDI  
DIRECTOR

5. MORAL TURPITUDE - CONVICTION FOR STAKE-HOLDING HELD TO INVOLVE MORAL TURPITUDE UNDER FACTS OF CASE.

RE: Eligibility No. 731

Applicant seeks an advisory opinion as to whether or not he is eligible to be associated with the alcoholic beverage industry in this State in view of his conviction of a crime.

Applicant's criminal record discloses that on September 26, 1963 he pleaded guilty in the Morris County Court to the offense of stakeholding, in violation of N.J.S. 2A: 112-7, as a result of which he was sentenced on November 8, 1963 to serve three months in the county jail (suspended), was placed on probation for two years and was fined \$100.

A report received by this Division from the prosecutor's office of Morris County discloses that on November 8, 1962 applicant was arrested in a raid on the home of Mr. X; that at the time of the raid applicant was observed entering the kitchen from the cellar where horse betting slips and other paraphernalia used in bookmaking activities were found; that the applicant and Mr. X refused to give any written statements and that they orally admitted that they were engaged in bookmaking.

The report further discloses that, while the applicant was being questioned, a bettor (Mr. Y) entered the premises and subsequently gave a written statement to the police officers in which he stated that he had been placing bets with the applicant in person and by telephone at the premises for the past ten months; that he paid the applicant when he lost and collected from him when he won.

In a recent interview by an agent of this Division Mr. Y reiterated in substance the contents of his aforesaid written statement.

At the hearing held herein applicant admitted that he was arrested as aforesaid, denied all the other allegations in the prosecutor's report and Mr. Y's statement, and further testified that on the day of his arrest he came to the home of Mr. X, whom he knew as a bookmaker, to make a horse racing bet; that for six or seven months previous thereto he had visited Mr. X once or twice a month; that on each of such visits he placed horse racing bets with Mr. X; that he also bought sweepstakes tickets from him; that on two occasions, as an accommodation for a friend, he delivered wagers on horse races to Mr. X; that "I never picked up bets," and that at the time of his arrest nothing of an incriminating nature was found in his possession.

The crime of stakeholding may or may not involve the element of moral turpitude, depending upon the facts in the case. Where the conviction of the crime of being a stakeholder involves an offense which is an integral part of a commercial gambling operation, it is, in my opinion, a crime involving moral turpitude (Re: Elig. #726, Bulletin 1558, Item 3).

Based on the aforesaid background facts, it is clear that applicant was involved in a commercial gambling operation in connection with the offense for which he was convicted as aforesaid. In view thereof, it is my opinion that the crime of which the applicant was convicted involves the element of moral turpitude.

Under the circumstances, I recommend that applicant be advised that (1) in the opinion of the Director he has been convicted of a crime involving moral turpitude; (2) the alcoholic beverage law of this State (R.S. 33:1-25) provides that no license of any class shall be issued to a person convicted of a crime involving moral turpitude, and (3) R.S. 33:1-26 and Rule 1 of State Regulation No. 13 provide that no licensee shall employ or have connected with him in any business capacity whatsoever a person so disqualified.

I. Edward Amada,  
Attorney

Dated: November 5, 1964

Approved:

JOSEPH P. LORDI  
DIRECTOR

liquor to such ships docked at the New Jersey piers. The applicant has been licensed by the Federal government to engage in this kind of operation and there have been submitted into evidence permits issued by the Federal government setting forth applicants' authority to engage in such activity.

They now seek a Limited Transportation Permit, acting, as expressed by their counsel, "out of an abundance of caution, because I am not certain whether the New Jersey statute is broad enough to require us to have a Transportation License. I feel that we would be on the safer side if we were to apply for and obtain this transportation license which we are now asking the Division to grant to us."

Counsel for the applicants advocates that the present activity of the applicants in soliciting the sale of tax-free alcoholic beverages to New Jersey ships for consumption beyond the jurisdiction of the United States, is not unlawful and could not be declared unlawful by New Jersey statutes; and that since the solicitation or sale of these alcoholic beverages could not be prevented as it would constitute an interference with interstate commerce and commerce with foreign nations, it must follow, therefore, that the refusal to grant a Limited Transportation License would similarly be an abridgement of the applicants' constitutional rights and an interference with Federal regulation of commerce.

R.S. 33:1-2 declares any sale of alcoholic beverages in New Jersey unlawful unless made pursuant to a license first obtained. Under the broad definition of "sale" in R.S. 33:1-1 (w) the applicants' solicitation and deliveries made pursuant to orders received by reason of such solicitation is unlawful unless engaged in and pursuant to a license first obtained. It is thus clear that every commercial transportation of alcoholic beverages within the State must be licensed. R.S. 33:1-2. The Alcoholic Beverage Law "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed." R.S. 33:1-73.

As the Court stated in Boller Beverages, Inc. v. Davis, 38 N.J. 138, 150 (1962):

"In considering the question presented, it is important to have in mind the purposes of alcoholic beverage regulation in this State and the scheme of control which has been set up to carry out those policies. And in this field, one always starts with the proposition that the business, so prone to evils, is one not of right and is peculiarly subject to strict governmental control in every phase. Therefore the authority to regulate is broadly said to be practically limitless."

Franklin Stores Co. v. Burnett, 120 N.J.L. 596, 598 (Sup. Ct. 1938); Hudson Bergen County Retail Liquor Stores Association v. Hoboken, 135 N.J.L. 502, 503 (E. & A. 1947); Mazza v. Cavicchia, 15 N.J. 498, 505-506 (1954); X-L Liquors v. Taylor, 17 N.J. 444, 449 (1955); Fanwood v. Rocco, 33 N.J. 404, 411-412 (1960).

The object of State Regulation is "to promote temperance and eliminate the racketeer and bootlegger", N.J.S.A. 33:1-3, and it "is intended to be remedial of abuses inherent in liquor traffic and shall be liberally construed," R.S. 33:1-73. Thus, these purposes have quite a different orientation from those underlying Federal regulation. The power of the Statute enables the Director to effectively carry out his duty "to supervise the manufacture, distribution and sale of alcoholic beverages in such a manner" as to accomplish the objects of the law. N.J.S.A. 33:1-3.

Finally, it should be noted that the Act is intended to insure the payment of State alcoholic beverage excise taxes. R.S. 33:1-17, 31 and 35.

Counsel, however, advocates that the recent case of Hostetter v. Idlewild Bon Voyage Liquor Corporation (U.S. Sup. Ct. #116, October term 1963; decided June 1, 1964) "holds that a state may not prevent commerce with foreign nations and thus may not interfere with the sale of tax-free liquor for foreign consumption".

My examination of this case convinces me that the factual complex therein is substantially different from that presented in the case sub judice and thus, based on the applicable principles, the result must be different.

In the Hostetter case, the Idlewild Bon Voyage Liquor Corporation was engaged in the retail business of selling bottled wines and liquors to departing international airline travelers at the John F. Kennedy Airport in New York. Its place of business was leased from the Port Authority for use solely as an office in connection with the sale of in-bond wines and liquors.

New York has no law providing for the licensing of appellee's activities at the airport, and thus, it sought to prohibit entirely the sale of tax-free alcoholic beverages for use abroad. The Court properly held that it could not do so since Federal law permitted such activity. The Court, however, stated that New York "has not sought to regulate or control the passage of intoxicants through her territory in the interest of preventing their unlawful diversion into the internal commerce of the State" Rather, the State has sought totally to prevent transactions carried on under the aegis of a law passed by Congress in the exercise of the explicit power under the Constitution to regulate commerce with foreign nations. This New York cannot constitutionally do."

In its supportive argument, the Court cited the case of Collins et als v. Yosemite Park & Curry Company et al, 304 U.S. 518, for the proposition that California could not "prevent the shipment into and through her territory of liquor destined for distribution and consumption in a national park". It went on to say:

"We may assume that if in Collins California had sought to regulate or control the transportation of the liquor there involved from the time of its entry into the State until its delivery at the national park, in the interest of preventing unlawful diversion into her territory,

California would have been constitutionally permitted to do so. But the Court held that California could not prevent completely the transportation of the liquor across the State's territory for delivery and use in a federal enclave with it."

In the instant case, New Jersey does have a law which specifically governs the licensing of wholesale activity and the transportation thereof from and through this State into foreign commerce. Thus, it is undebatable that New Jersey, as distinguished from New York, has not sought to "prevent completely" the sale of alcoholic beverages by the applicants, but has, instead, attempted to control and regulate such activity by requiring them to obtain a wholesale license pursuant to R.S. 33:1-11.1. The applicants surely cannot deny this since they have already applied for such license, and the Division has expressed a willingness to grant such license to cover the tax-free activity which is involved herein.

In short, New Jersey is not delimiting, in the slightest measure, any of the activity granted to the applicants through its Federal permits and authority. They are permitted to sell and to transport provided they obtain licenses from New Jersey to do so. Since, however, they have refused to obtain the appropriate license to engage in the solicitation and sale of tax-free beverages, it would be ludicrous to argue that they should be permitted to transport such beverages in order to enable them to engage in such activity proscribed without proper license.

With further respect to the general concept of regulation, both local and Federal, such regulation has been clearly delineated in a number of decisions of the U.S. Supreme Court. As Mr. Justice Black expressed it, in his concurring opinion in Carter et al v. Virginia, 321 U.S. 131, 137, 64 S. Ct. 464, 88 L. ed. 605, 612 (1944), "Though the precise amount of power [the 21st Amendment] has left in Congress to regulate liquor under the Commerce Clause has not been marked out by decisions, this much is settled: local, not national, regulation of the liquor traffic is now the general Constitutional policy."

As the Court stated in Ziffrin v. Reeves, 308 U.S. 132, 60 S. Ct. 163, 84 L. ed. 128:

"(a state) may adopt measures reasonably appropriate to effectuate (transportation and sale of intoxicants), and exercise full police authority in respect to them."

This concept was expressed in U.S. v. Frankfort Distilleries, Inc., 324 U.S. 293, 65 S. Ct. 661, 89 L. Ed. 951 (1945) as: "the state's full authority to determine the conditions upon which liquor can come into its territory and what will be done with it after it gets there\*\*\*".

In other words, as Justice Frankfurter expressed it in Frankfort, "The Twenty-First Amendment reversed this legal situation by subordinating rights under the Commerce Clause to the power of a State to control, and to control effectively, the traffic in liquor within its borders." (324 U.S., at p. 300, 65 S. Ct., at p. 665, 89 L. Ed., at p. 957).

Thus, as stated hereinabove New Jersey did not reduce the privileges conferred by the Federal authority, but merely seeks to control and to regulate the passage of intoxicants within its borders in the interest of preventing its unlawful diversion into the internal commerce of the State. This is its responsibility, obligation and right under the Alcoholic Beverage Law. R.S. 33:1-1(et seq).

Even though the exercise of such powers may "greatly affect interstate commerce", (Boller Beverages, supra at p. 148), it is unthinkable that the Division should be required to issue a transportation permit to aid the applicants to engage in unlicensed sales of alcoholic beverages in violation of the State Alcoholic Beverage Law.

There is one further matter that was developed at the hearing. Testimony was adduced by the Division to the effect that the applicants hindered, delayed and failed to facilitate and cooperate with an investigation of the alleged sales of alcoholic beverages by the applicants to various ships at the New Jersey piers. The purpose of this testimony was to enable the Director to determine whether or not, if the same were proved, he should exercise his discretion in refusing to issue such transportation permit.

There is also reflected in the record the fact that the applicant has engaged in solicitation and sale of the alcoholic beverages as above mentioned without obtaining the requisite licenses and permits from this Division. It is apparent from this that the applicant did not exercise the "abundance of caution" suggested by his counsel. This, too, is a matter which must be taken into consideration by the Director in his determination as to whether or not to issue the applied-for permit.

However, in view of my resolution of the legal issue considered in the first part of this report, it is unnecessary to consider such testimony, and make any recommendation with respect thereto.

Accordingly, it is recommended that an Order be entered denying the application of applicants for the issuance of a Limited Transportation Permit.

#### Conclusions and Order

Written exceptions to the Hearer's Report and written argument in support thereof have been filed with me by the applicants. Additionally, I heard oral argument on such exceptions.

The principal contention of the applicants is that the Hearer is in error in his finding that "New Jersey does have a law which specifically governs the licensing of wholesale activity and the transportation thereof from and through this State into foreign commerce", which law (R.S. 33:1-11 (1)) the Hearer found is applicable to applicants' sales to ships docked at New Jersey ports of tax-free alcoholic beverages, for consumption beyond the jurisdiction of New Jersey.

First, it should be noted that a limited transportation permit, issuable under Rule 7 of State Regulation No. 18, does not

encompass the specific type of transportation in which the applicants, as appears from the record herein, intend to engage, namely, delivery of tax-free alcoholic beverages from bonded warehouses in New Jersey to ships docked at New Jersey ports. A transportation license, issuable under R.S. 33:1-13, would cover such type of activity.

Accordingly, the application might well be denied without any need for discussing the question whether the applicants intend to utilize the permit in furtherance of unlawful unlicensed sales of alcoholic beverages. However, since the applicants may, in fact, desire to engage in other transportation activities covered by the permit, or they may contemplate applying for a transportation license, I will take up their exceptions at this time rather than await the filing of a new application.

At the hearing herein the applicants, through counsel, stated "that it is the intention of the applicant to sell tax-free alcoholic beverages to ships that are berthed in New Jersey for foreign travel and for use beyond the territorial limits of the United States; that the solicitation will take place in New Jersey." It thus becomes pertinent to inquire whether such intended sales, including the solicitation thereof, could permissibly be made without any New Jersey license. The Hearer has concluded that such unlicensed sales are unlawful and that such State interdiction is not in conflict with federal law as interpreted by the above cited Hostetter case. With this I agree.

R.S. 33:1-11 (1) presently provides:

"Plenary wholesale license. 1. The holder of this license shall be entitled, subject to rules and regulations, to sell and distribute alcoholic beverages to retailers and wholesalers licensed in accordance with this chapter, and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution, and to maintain a warehouse and salesroom; provided however, that the delivery of such alcoholic beverages by the holder of this license to retailers licensed under this Title shall be from inventory in a warehouse located in New Jersey which is operated under a plenary wholesale license. The fee for this license shall be \$3,000.00. " (Under-scoring added.)

When the State alcoholic beverage law was originally adopted in 1933, the section providing for a plenary wholesale license did not contain the above underscored words (nor the proviso covering warehouse inventory, which was enacted on August 19, 1964). However, in 1934 the Control Act was amended to include a new section 12 (3) (later revised as R.S. 33:1-11.3 and subsequently repealed by P.L. 1942, c. 158), which provided for a plenary export wholesale license, the privileges of which were identical to those of the present plenary wholesale license (except with respect to the warehouse inventory proviso). Question thereafter arose as to the construction of the language "and to sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution."

In Bulletin 341, Item 4, the late Commissioner Burnett ruled on August 4, 1939 that sales to unlicensed fishing boats, while docked at New Jersey piers, of alcoholic beverages for consumption in waters beyond the jurisdiction of New Jersey were "out-of-State sales." He further stated, "The only wholesale licenses which authorize out-of-State sales are the plenary and limited export wholesale licenses." (The limited export wholesale license provided the same privileges as the plenary one but was confined to certain types of alcoholic beverages.) In such bulletin item Commissioner Burnett specifically construed the phrase "sell and distribute without this State to any persons pursuant to the laws of the places of such sale and distribution" to include such out-of-State sales to fishing vessels. See also Bulletin 97, Item 3 and Bulletin 290, Item 15 for background to Commissioner Burnett's construction of the statutes in question.

This construction has been consistently followed ever since by my predecessors and is the Division's current interpretation of R.S. 33:1-11(1), as amended to its present form. The applicant nevertheless argues that the phrase in question is intended "to permit a wholesaler to sell not only to wholesalers in New Jersey but as well to sell to licensed wholesalers or retailers outside of the State of New Jersey if their laws permit them positively to ...". Thus applicant contends sales to ships docked in New Jersey for extra-territorial consumption would not be covered by the statute unless the ships held wholesale or retail licenses issued by the place of ultimate distribution. In other words, the mere absence of any prohibitory law in such other jurisdiction would not bring such sales within the scope of the statute as being made "pursuant to law." Presumably, under such construction, sales to unlicensed ships therefore could lawfully be made by no one under State law. R.S. 33:1-2. In such event, applicants argue, State law would bow to federal law under the Hostetter case and then everyone, including the applicants and New Jersey licensed wholesalers, could engage in such activity.

I am not persuaded by such reasoning. Rather, I find that "pursuant to the laws of the places of such sale and distribution" means provided that the laws of the places of such sale and distribution do not prohibit such activity. For example, a New Jersey licensed wholesaler could not solicit in New Jersey to sell alcoholic beverages to an unlicensed buyer who intended to distribute the alcoholic beverages in a "dry" State or in a "State requiring a license and in which he does not hold such license. If the Legislature intended applicants' construction, it could easily have inserted the word "licensed" before the words "pursuant to the laws of the place of such sale and distribution."

In the exceptions filed herein applicant has cited the recent case of Ammex Warehouse Co. v. Department of Alcoholic Beverage Control, 224 F. Supp. 546 (Dist. Ct., Calif., 1963), affirmed by the United States Supreme Court on June 15, 1964, in a memorandum decision, 12 L. ed. 2d 743, for the proposition that New Jersey's licensing law does not fit the applicants' activity. While it is true that this case held that California's law did not cover the sales to consumers being made by the plaintiff therein, the decision necessarily turned on California's statutes, which differ materially from New Jersey's. I have read the Ammex case and find nothing of assistance in determining whether New Jersey's

statutes fit applicants' activities.

Under the circumstances, after carefully considering the entire record herein, I shall deny the application.

Accordingly, it is, on this 23rd day of November 1964,

ORDERED that the application of the applicants for the issuance of a limited transportation permit be and the same is hereby denied.

JOSEPH P. LORDI  
DIRECTOR

8. STATE LICENSES - OBJECTIONS TO APPLICATION FOR WINE WHOLESALE LICENSE - APPLICATION GRANTED.

In the Matter of Objections to the Issuance of a Wine Wholesale License to	)	
	)	CONCLUSIONS AND
Dodd Importers & Distributors, Inc.,	)	
24 Commerce Street	)	ORDER
Newark, New Jersey	)	

-----  
Joseph P. Dunn, Esq. and Robert D. Corbin, Esq., Attorneys for Applicant.  
Milton H. Cooper, Esq., Attorney for Objector.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

The applicant has filed an application for a Wine Wholesale License for premises located at 252A Park Avenue, Newark.

A written objection to the issuance thereof having been filed by the objector herein, a hearing was held thereon on September 18, 1964, pursuant to Rule 12 of State Regulation No. 1.

At the hearing the attorney for the N.J. Wine & Spirit Wholesalers Association (the objector herein), who is also its Executive Director, appeared on its behalf. However, no witnesses were called nor any testimony offered on behalf of the objector. The letter addressed to the Director set forth as its objection the allegation that there is "no definite public need or necessity for this license."

At the hearing herein the following picture was reflected from the testimony: The applicant is a newly formed corporation which, subject to issuance of this license, has been designated as the sole distributor in New Jersey of wines for the Mediterranean Importing Co., Inc., a New York corporation. The Mediterranean Importing Co., Inc. has been in the wine

importing business since 1947 and handles a complete line of imported Italian wines.

According to Peter Tempesta (the president of Mediterranean), these wines are unique because they come from some of the most famous wineries in Italy. These wineries operate their own vineyards, have special blending processes and do their own bottling. Mediterranean is the sole importer of these wines.

Tempesta has also made some surveys of persons interested in purchasing this wine in New Jersey and has also received a number of inquiries regarding their products from New Jersey residents. He further stated that he had planned this operation in New Jersey over a period of years and is familiar with the officers of the corporate applicant.

Mrs. Rose Sassone (the president of the corporate applicant) testified that she has had no experience in this business but has arranged to employ Anthony Vitolo, a man of considerable experience in this field, as general manager. She intends to invest about \$10,000 in this enterprise and has received assurances from Mediterranean that ample credit will be extended to the applicant during its initial period.

Anthony Vitolo corroborated Mrs. Sassone's testimony with respect to his intention to become a sales manager of the corporate applicant. He also has made a personal survey in this State with respect to potential customers and has set forth in detail the results of such survey, which indicate that there would be a ready acceptance of Mediterranean's products in this area. He corroborated Tempesta's testimony with respect to the uniqueness of some of the wines, and explained that these wines come from choice wineries, are of an exceptional quality and are of the kind that would be used in the finest restaurants. He felt that it was impractical to get an adequate distribution of these products through other distributors who do not have an exclusive distributorship.

Joseph P. Dunn (associate attorney for the applicant) clarified some of the technical arrangements which the applicant intends to make. It was on his advice that the applicant retained Vitolo to manage its operations. He also stated that, actually, approximately \$20,000 would be available for capital. So far as the warehousing arrangements are concerned, negotiations had been concluded with the Calhoun Trucking Company, in Kearny, which would provide whatever warehouse space would be needed, depending upon the volume of business.

In order to sustain its application for this license the applicant must establish by a prima facie showing that there exists a need and it would afford a convenience for its products in the State. In its broadest application this means that such issuance would not be detrimental to the public interest and the public welfare. Re Joeli Wine Distributors, Inc., Bulletin 1390, Item 10.

The applicant has demonstrated that its products are unique in that they are bottled from selected wineries in Italy and have a special body and taste; that a survey of New Jersey licensees indicates that there is a demand for its products; that its products cannot be satisfactorily handled unless a sole distributorship is given. In addition, it should be noted that while

the officers of the corporate applicant have had no experience in this field, the applicant has been wisely counselled and has accordingly retained as its general and sales manager an individual with adequate experience in wholesale wine distribution. Thus it has made a prima facie showing in support of its application.

On the other hand, there has been not the slightest scintilla of evidence offered to buttress the general objection that there is no need or necessity for this license. Such general objections, when unsupported, must be considered untenable and invalid.

I want to further observe that there is nothing in the record to indicate that the officers of the corporate applicant are not persons of good reputation and moral character. I find under the facts and circumstances that the issuance of this license to permit applicant to operate competitively with products geared to a receptive market would be in the public interest. Cf. Mauriello v. Driscoll, 135 N.J.L. 220 (Sup.Ct. 1947).

I therefore conclude that the evidence herein is sufficient to establish that the applicant's request for a Wine Wholesale License is not unreasonable; its issuance would fulfill a public need and would not be detrimental to the public interest and welfare. Cf. Re Admiral Wine Co., Inc., Bulletin 1460, Item 7.

Accordingly, it is recommended that the license be issued upon completion of all statutory requirements.

#### Conclusions and Order

No written exceptions to the Hearer's Report were filed with me by the attorney for the objector.

I have given careful consideration to the evidence, the argument of counsel and the Hearer's Report. I concur in the conclusions of the Hearer and adopt them as my conclusions herein. I shall therefore grant the application.

Accordingly, it is, on this 25th day of November 1964,

ORDERED that the application herein be granted and the license be issued to the applicant upon completion of all statutory requirements.

  
Joseph P. Lordi  
Director

New Jersey State Library