Gossweiler

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1509 May 6, 1963

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ITEM

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1. COURT DECISIONS - BAYONNE v. B & L TAVERN, INC. AND DIVISION OF ALCOHOLIC BEVERAGE CONTROL - DIRECTOR AFFIRMED

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
Docket No. A-894-61

BOARD OF COMMISSIONERS OF
THE CITY OF BAYONNE,

Appellant,

vs.

B & L TAVERN, INC. and DIVISION
OF ALCOHOLIC BEVERAGE CONTROL,

Respondents.

Argued February 4, 1963 -- Decided April 15, 1963

Before Judges Conford, Gaulkin and Kilkenny.

Mr. Frank J. Ziobro argued the cause for appellant.

Mr. Raphael G. Jacobs argued the cause for respondent, B & L Tavern, Inc. (Mr. Harold H. Fisher, of counsel).

Mr. Herbert S. Alterman, Deputy Attorney General, argued the cause for respondent, Division of Alcoholic Beverage Control (Mr. Arthur J. Sills, Attorney General of New Jersey, attorney; Mr. Alterman, of counsel).

The opinion of the court was delivered by
KILKENNY, J.A.D.

This is an appeal by the governing body of the City of Bayonne from a final decision of the State Director of Alcoholic Beverage Control, reversing the City's denial of an application for renewal of a local tavern license and directing the license renewal. (B & L Tavern, Inc. v Bayonne, Bulletin 1459, Item 1.)

B & L Tavern, Inc., a family corporation, has owned and operated a tavern at the corner of Avenue C and 21st Street, Bayonne, since 1950. Prior to a fire which destroyed the building in January 1961, its license had been annually renewed by the City without objection, protest, or reservation of any kind. When the licensee began the construction of a new building and made timely application for the annual renewal for the period commencing July 1, 1961, a number of

residents in the neighborhood of the tavern opposed the application. The Board of Commissioners, acting as the locallicensing authority, conducted a public hearing, at which the objectors and the licensee's witnesses testified. Thereafter, on September 22, 1961, the local board adopted a resolution denying the application for renewal of the license.

This resolution recited that, from the evidence taken at the hearing before the Board, the said tavern "is the scene of constant disorder and noise and that a renewal of the plenary retail consumption license *** is not in the interests of the City of Bayonne and this Board is further of the opinion that the same cannot be conducted without being a nuisance in the neighborhood." Other than this general finding and prognostication, the local board made no specific findings of fact or references to the evidence upon which its conclusions were based.

The licensee appealed to the State Director and there was a plenary hearing de novo before the Division of Alcoholic Beverage Control, with the result first noted above. Seven witnesses testified at that hearing in favor of renewal of the license. They were the licensee's president and principal stockholder, its nighttime bartender, a Sergeant of Police, a patrolman, a Captain of Police, a detective working out of the local A.B.C., and a retired Assistant Superintendent of the Bureau of Criminal Identification of the Bayonne Police Department. Testifying in support of the City's denial of the renewal were the Mayor, three other City Commissioners, two local policemen, an investigator for the local Board of Health, a proprietor of a neighborhood liquor package store, and seven women and one man who resided in the vicinity of the subject tavern. Needless to say, with this plethora of testimony, the proofs pro and con were in conflict.

We consider first the testimony of the residents in the neighborhood of the tavern. Louis Wernick, who operated a poultry market on the opposite corner of Avenue C and 21st Street and lived above the market, gave testimony, the mere recital of which indicates its highly exaggerated character. He testified:

> "I watch the tavern all day and night. All day I'm outside, my place is open. At night we can't sleep because the noise from the tavern, fighting, shooting, everything in the world, thousands of people. Cars block up my place, the other place, bottles and cans, everything you could find in this here block. They come from New York, from Pennsylvania, that's a nest. They know where to hang around."

There had been a shooting in this tavern, but in 1946, several years before the present ownership.

The complaints of the seven women objectors dealt essentially with conditions outside the tavern. They were not patrons of the establishment. They testified that on occasion when they passed this corner men standing outside the tavern made suggestive remarks. Also, some so-called "winos" congregated outside the tavern, sitting on a ledge which existed along the side of the old building, but which has been eliminated in the new one. The structure which existed before the fire in January 1961 had an unfenced rear yard into which

empty wine bottles and other debris were cast. The area is now much smaller and completely walled and fenced in. The witnesses claimed that in the summertime, with the windows open, noise and cursing could be heard emanating from the tavern. The new building is air conditioned. They claimed they saw people in automobiles in the area drinking from bottles. They described lascivious conduct in the general neighborhood of the tavern. One of the women testified to having seen a bottle come flying out of the tavern, but was unable to remember the year and then indicated that it was about six years before the hearing. Another told the highly incredible story of having actually seen in 1960, as she passed the tavern, a man and woman in the tavern having intercourse on a "small table," evidently in plain view of other patrons, even remembering that there was a checkered tablecloth on the table. It developed that such tableclothes were used by the previous owner; the present owner installed formica tables and never used tablecloths.

As the Hearer for the Division observed:

> "***the major objections made by these witnesses appeared general in nature and did not specifically accuse the operators of the appellant's establishment of any wrongdoing. Only in one or two instances did these witnesses attempt to connect appellant's premises with the alleged unsatisfactory conditions about which they complained."

Mr. Jackson, investigator for the Board of Health, testified that he had made no investigations in the area of B & L Tavern in the two years preceding the hearing in the Division, because another investigator named Gregory had been assigned to that district. About December 10, 1959, complaints had been received that "the backyard was filthy." He investigated, found some empty liquor bottles and about four contraceptives in the back yard behind the former tavern structure, talked to the bartender about it, and the yard was cleaned up.

Patrolman Hudak, a witness for the City, testified that between January and November, 1959, he worked in the area of B & L Tavern and "noticed men congregating and hanging around that corner on 21st Street." He said that they were under the influence of liquor and "before they got loud or noisy" he told them "to break it up and keep it broke up." He explained that during the daytime a dozen or more men would be waiting at this corner "to be picked up by different men who were looking for men to work for them." He stated that these men behaved "in a quiet manner." He found that groups of men congregated in front of other taverns in Bayonne and he dispersed them too. He never had occasion to arrest any of the patrons in the B & L Tavern for causing any disturbance and he never saw any disturbance in that tavern. He declared that the men in front of this tavern were no different from the men in front of any other tavern in the area. There are ten other taverns and package stores in this same vicinity.

Officer Dembowski, another witness for the City, testified that he arrested two men outside B & L Tavern about 1955, but then signed no complaint against them because the desk lieutenant asked him

to do this favor for him. The two men were released. Evidently, the offense was not of a serious nature and there was no showing of any relation between it and the operation of this tavern. He stated that he had been in B & L Tavern several times, the last time being in the early part of 1958. However, he passed the tavern almost every day, at all hours of the day, sometimes while on duty and at other times while off duty. He lived two blocks from the tavern. He observed people in front of the building and along its side blocking the corner, saw men in cars in the area drinking from bottles and cans of beer, and once notified someone in the bar to clean up the mess outside. This was done. On occasions, he heard loud noises and "a lot of cuss words" coming out of the building and around the building. He described the area as a "hell hole," but apparently observed no violation of law because he never arrested anyone except in the 1955 incident noted above. However, he testified that since the new building was erected, following the 1961 fire, "winos" and others no longer congregate there, and there is "peace and quiet." He did not know where the men drinking outside the building had obtained their liquor or wine.

Edward Swissman, owner of a package store on Avenue C between 21st and 22nd Streets, about 200 feet from B & L Tavern, testifying for the City, stated that he knew plenty of "winos" in the neighborhood, who came into his store to buy wine "plenty of times." He did not know where they went to drink it and did not know whether they congregated in front of B & L Tavern. He generally sold them pints of wine for forty-five and fifty cents. However, he stated that for about eight years prior to the hearing these pint bottles did not bear his label "Eddie's Wine and Liquor." We assume that this testimony was offered to rebut that by Max Baer, president of the licensee, that some of the bottles tossed into the rear yard bore the label of "Eddie's Wine and Liquors." Nevertheless, the evidence of these sales "plenty of times" to known "winos" by a package store in the immediate neighborhood casts serious doubt upon the culpability of B & L Tavern for this drinking from bottles outside its tavern and the deposit of the empties in its then readily available rear yard.

The Hearer, whose report was adopted by the Director, found it significant that, "if conditions were as bad as objectors' witnesses claimed or violations had been committed," the City had not preferred disciplinary proceedings against the licensee. It cannot be said that this failure was due to a lack of awareness by the city fathers as to existing conditions. Two of the Commissioners who testified before the Division stated that they were familiar with the area.

The Mayor and three of the City's four other Commissioners were queried at the Division hearing as to why they had voted to deny renewal of the license. Commissioner Januszewski stated only that he "considered the testimony of the people." He furnished no more specific reason and referred to no specific items of evidence. Commissioner Prendeville didn't recall any acts of misconduct inside the licensed premises and stated that he relied on what took place outside the tavern. When asked what those acts were, he replied, "The testimony of all the witnesses." Commissioner Fitzpatrick specified the incident of the bottle which allegedly came through the window, six

years before the hearing. He stated that the allegations of intercourse were not taken into consideration, but those of noise and bothering of women were. The Mayor spoke in most general terms of "noise," "other disorders," and "bottles in the backyard," but seemed influenced principally by the objectors' petition.

As against the testimony of the witnesses for the City, that of four active members and one recently retired member of the Bayonne Police Department in support of the licensee is most impressive.

Detective Arnot, assigned to the supervision of alcoholic beverage matters in the city, testified that he made personal inspections of the various taverns in the city and that, from his observation, the subject tavern was not conducted any differently from the other taverns in the area. He found no complaints against the licensee's operation. Captain Roake, who had served on desk duty for a number of years before becoming Captain in September 1960, did not recall any specific complaint with reference to the operation of this tavern in all those years. Sergeant West had been assigned to this area during most of his eight years on the force and described it as "a normal tavern," neither noisier nor more disorderly than other taverns in the vicinity, and whenever he saw "winos" near the tavern, he dispersed them in accordance with the policy of the Police Department. Officer Andrews spent his entire lifetime in the area where the tavern is located and described its operation as comparable to that of other taverns in the vicinity. He chased "winos" found near the tavern. Thomas Heaney, retired Assistant Superintendent of the Bureau of Criminal Investigation, testified that, prior to his retirement in September 1960, he visited the tavern on many occasions and found everything in order. Since his retirement, he goes to this corner to hire men for his brother in the trucking business. Thus, not one of these police officers found any impropriety in this licensee's operation.

Some effort was made to discredit the police officers by attempting to show on the cross-examination of Max Baer that one or more of them had received favors at the hands of the licensee. For example, Baer was asked if Sergeant West had worked on the new building either for him or for the contractor. His answer was, "No, he never did." The cross-examination left unimpaired the testimony under oath of the several police officers, some of high ranking authority in the City's Police Department.

The licensee's night bartender, LeRoy Rhodes, testified that he had been employed in that capacity for eight years. The bar is open until midnight, except on Fridays and Saturdays when the closing hour is 3 A.M. He testified that he has kept the interior of the licensed premises under control. If arguments arose between patrons, he separated them; and if the arguments did not cease, he ordered the participants to leave the premises. He was not aware of any untoward congregation of persons or activities outside the premises because his job was to take care of the inside. He denied that the establishment was "too noisy" and stated that he had "quieted down most of the noise" in the last three years.

Max Baer, president of the corporate licensee, testified that when his corporation acquired this tavern in 1950 it was a rough place, but he barred the trouble-makers and for the past four

or five years had had no occasion to call police headquarters. He did not sell wine in bottles. He admitted that "winos," who bought their wine elsewhere, would on occasions sit on a cement ledge on the side of his old building and drink, and then throw the empties in the back yard of the tavern. He testified that Mrs. Shaneen once called his attention to these bottles and he had pointed out to her that the labels thereon read "Eddie's Wine and Liquor Store." He had cleaned up the yard regularly. There had been a social club on the second floor of the former building and this probably accounted for the presence of men in the vicinity of the tavern. When he found men congregating on the corner, he requested the police officer assigned to the area to "break them up." He pointed out that the new building occupied all but a small portion of the rear yard and this was being walled in to avoid that source of annoyance. His attorney agreed at oral argument that the licensee would follow the suggestion of the Director and would discontinue the tenancy of the social club to eliminate any potential disturbance from that source.

Testimony from the City's own witnesses showed that conditions are fine since the erection of the new building. As noted above, Officer Dembowski said that there is "peace and quiet" in the neighborhood since the new building has been put up. Mrs. Otis was asked what the condition of the area was since the fire and answered, "Oh, it is a pleasure to pass the corner because you have no remarks said to you, it is just wonderful." Mrs. Melacrino stated that nobody is sitting outside the present building, or on the curb, and as to the back yard, "everything is nice and quiet and very clean." When Mrs. Cure was asked what the condition of the place is now, her response was, "It is heaven." Mrs. Scarano found the present condition "very pleasant."

We are satisfied from our study of the entire record that there is substantial evidence in support of the conclusion reached by the State Director and that his decision should be affirmed. We may, under R.R. 4:88-13, make independent findings of fact, but "we should be cautious in invoking the power at least when dealing, as here, with the fact finding of an experienced agency of demonstrated competence." In re Larsen, 17 N.J. Super. 564, 577 (App. Div. 1952). See, too, Hornauer v. Div. of Alcoholic Beverage Control, 40 N. J. Super. 501, 504 (App. Div. 1956), in which we said: "The reason for this exercise of judicial restraint is that otherwise the agency 'would be reduced to the status of a mere conduit for the transmission of evidence to the courts.' Mazza v. Cavicchia, above, 28 N. J. Super., at page 289." As noted in Neiden Bar and Grill v. Municipal Board of Newark, 40 N.J. Super. 24, 29 (App. Div. 1956):

> "The order of the municipal Board is not the subject of this appeal. It was taken, and necessarily so, from the action of the Director. His review was plenary and resulted in independent findings and decision. And nowhere is it suggested that his conclusion was not justified by the evidence.
>
> In the administrative hierarchy created by the statute for the conduct of such proceedings, the director provides the final agency review. His finding and decision entirely supersede the action taken at the original hearing level.***"

The scope of our appellate review in cases of this character is well expressed in Belmar v. Div. of Alcoholic Beverage Control, 50 N. J. Super. 423, 426 (App. Div. 1958), wherein we said:

> "*** while the local issuing authority is vested with discretion in the exercise of any statutory jurisdiction committed to it, nevertheless when the Division determines on appeal that that discretion has been exercised improperly or mistakenly and the court is reviewing the Division's determination, the inquiry becomes one as to whether it can be said that the Director's action was a manifestly mistaken exercise of his own sound discretion."

In the present case, we cannot say that there was a manifestly mistaken exercise of discretion in review by the Director of the Division. The City argues that the Director made no express finding that the determination of the local board was mistaken, or an abuse of discretion, or the result of bad faith. In answer thereto, the following language in the Belmar case, supra, at p. 426-427 is applicable here:

> "While the Director might have done so more explicitly, he has in substance, concluded that there was a mistaken and unfair exercise of local discretion, under all the circumstances that appeared at the time of his decision."

The licensee agrees that no one is entitled to a renewal of a liquor license as an inherent right. On the other hand, "a licensee who has lived up to the law and complied with all requirements ought, in fairness, to have first consideration when renewals are determined." William J. Malone v. Township Committee of Bordentown Township, Bulletin 129, Item 8 (Div. of A B C 1936). As we said in Tp. Committee of Lakewood Tp. v. Brandt, 38 N.J. Super. 462, 466 (App. Div. 1955):

> "An owner of a license or privilege acquires through his investment therein, an interest which is entitled to some measure of protection***."

The Director's decision in the instant case is in accord with the long established policy of the Division covering similar situations. In Freeland v. Roselle, Bulletin 352, Item 5 (1939), the Borough of Roselle had denied renewal of a license for reasons similar to those alleged here. In reversing the municipal action, Commissioner Burnett pointed out that a licensee is responsible for conditions outside his licensed premises which are caused by his patrons. "However, where it appears that the conditions on the outside result from other factors which are not within the control of the licensee, such evidence would not be sufficient to warrant denial of the renewal." The Commissioner observed that the licensee "apparently has made efforts to correct this condition and the police department seems to have that situation under its control." The same can be said here. In giving the licensee a renewal to demonstrate his worthiness to hold the license, Commissioner Burnett noted the right to institute disciplinary proceedings if unsatisfactory conditions resulted from further operation.

In Vasto v. Atlantic Highlands, Bulletin 622, Item 4 (1944), then Commissioner Driscoll laid down the rule:

> "Where a license has been renewed from year to year, and where no disciplinary proceedings have been instituted for alleged misconduct during the current license year, and the licensee has thereby been encouraged to make a substantial investment in the business, common fairness requires that the refusal to renew be supported by valid reasons."

That case also involved an appeal from the municipality's refusal to renew a license because witnesses had testified that they had observed intoxicated persons in the vicinity of the licensed premises and had heard unnecessary noises therefrom. The Commissioner noted that the licensee had cooperated with the local police. The renewal of license was ordered.

In Monesson v. Lakewood, Bulletin 657, Item 1 (1945) Commissioner Driscoll again reversed the municipality's refusal to renew a plenary retail consumption license, noting:

> "As I have heretofore pointed out on many occasions, the grant of a renewal license, like that of an original license, is subject to the exercise of a reasonable discretion by the local issuing authority. Where, however, as in this case, a license has been renewed year after year, a refusal to renew thereafter must be founded upon valid and substantial grounds, supported by the weight of the evidence.
>
> If, during the course of a licensing year, evidence of misconduct is brought to the attention of the issuing authority, proper investigation should be made and, if warranted, disciplinary proceedings for the suspension or revocation of the license instituted."

In Salmanowitz v. Highstown, Bulletin 807, Item 2 (1948), the Borough's refusal to renew a license was reversed. In that case, too, there were charges of disorderly conditions inside and outside the licensed premises. Commissioner Hock stated the applicable rule in these words:

> "Where, as here, a license has been renewed from year to year, with no adjudicated record of any offenses during the current licensing year, common fairness dictates that the investment of a licensee in his business should not be jeopardized except on grounds which are attributable to some malfeasance or misconduct on his part."

Thus, the long established policy of the Division of Alcoholic Beverage control has been to equate a refusal to renew an annual license with revocation proceedings and to necessitate timely action by the local licensing authority. "Common fairness" to the licensee has been the basis for this policy. If undesirable conditions develop in the future, the local authorities always have the power to institute disciplinary proceedings even before the renewed license period has expired.

The City relies heavily on Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960), affirmed 33 N.J. 404 (1960). That case is readil

distinguishable. There, the underlying facts were not in dispute and the question involved in that case was whether the Director had the right to compel a municipality to permit a package store or tavern to move into an area where none exists and in which the municipality does not want one to exist. It was held that the municipal governing body may reasonably honor local sentiment by declining to license taverns and package stores in designated areas within the municipality. In the instant case, the facts were greatly in dispute and the local board had denied renewal of the license, which had been annually renewed for at least ten years prior thereto, on the asserted reason that the tavern was "the scene of constant disorder and noise." The implied finding to the contrary by the Director is amply supported by substantial evidence. This is the kind of case in which we ought to pay due deference to the expertise of the State administrative agency. As the Supreme Court said in Fanwood v. Rocco, 33 N.J., at p. 414-415:

> "Although New Jersey's system of liquor control contemplates that the municipality shall have the original power to pass on an application for a tavern or package store 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.*** However, where the municipal action was unreasonable*** or improperly grounded *** the Director will grant such relief or take such action as is appropriate.*** On judicial review, the court will generally accept the Director's factual findings *** and will not interfere with his action so long as it was not unreasonable or illegally grounded."

See also Fanwood v. Rocco, supra, 59 N.J. Super., at p. 317-319; cf. Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 59 N.J. Super. 419, 431 (App. Div. 1960), aff. 33 N.J., 428 (1960).

It is our conclusion that the Director's action was not unreasonable or illegally grounded and that we should not interfere with it.

We do not condone the manner in which this tavern was conducted. However, it seems plain that this tavern was not much different from the other taverns in the area, and that it was permitted to function in this fashion without as much as a warning since 1950. If the tavern was as bad as the City now says it is, it should have instituted disciplinary proceedings long ago. Had it done so, or had it even warned tavern owners generally, or the B & L Tavern specifically, that the policy of benevolent blindness was a thing of the past, we are certain that the Director would have sustained the refusal to renew. That is not to say that prior warning is necessary in every case. There may be conduct so indisputably bad that a single instance would warrant revocation or the refusal to renew, but this is not such a case.

The decision of the State Director of the Division of Alcoholic Beverage Control is affirmed, but subject to the condition that the licensee will not rent the second floor of the premises for use as a social club. Cf. Lubliner, supra, 33 N.J., at p. 447.

CONFORD, S.J.A.D., dissenting.

The governing body of the City of Bayonne, as the licensing authority of first instance, had plenary discretion to deny renewal of the tavern license here on the ground that the establishment in question was a public nuisance and its continuance not in the interests of the municipality. Its determination was fully supported by the proofs adduced before it, and that evidence was buttressed and corroborated by the testimony submitted on the appeal before the Division of Alcoholic Beverage Control. There is ample basis from the entirety of both hearing records to believe that the site of this establishment, to the knowledge of the licensee, then was and long had been a continuous spectacle of public drunkenness, rowdyism, immorality, and outrage to neighborhood decency and good order.

The Director of the Division did not find there was no nuisance; indeed, he found to the contrary --"a nuisance to the neighborhood." However, he sustained his Hearer's implied finding that there was no "malfeasance or misconduct" by the licensee because other licensed outlets nearby "could have contributed in some part" to the condition, and he upheld the recommendation that the licensee be given "an opportunity to demonstrate its worthiness to hold a liquor license," with a warning of penalty for future misconduct. This, in my judgment, constituted an unjustified and illogical factual conclusion and a plainly mistaken exercise of discretion in the supervisory authority of the Director. This was preeminently a case for upholding the salutary judgment and action of the local authority in subordinating the pecuniary stake of the licensee to the overriding interests of the public and the community. Demonstration of the foregoing requires a fairly full survey of the evidence at both hearings. Because of confusing truncation of the transcripts as reproduced in the appendix, I have had recourse to the original transcripts.

The essence of the position of the objectors to the license renewal was that long prior and continuously up to the destruction of the licensed premises by fire on January 29, 1961, this building, the tavern on the ground floor thereof, an upstairs "social club" (rented out by the licensee) and the sidewalks and back yard surrounding the premises were a "hangout" for a group of habitual alcoholics of varying degrees of drunkenness. There is evidence that at least some of them also patronized the tavern. A whole array of unwholesome conditions emanated from this basic circumstance. Most of these people were known as "winos" because of their special addiction to wine which they consumed from bottles while standing, sitting or lying sprawled on the sidewalk alongside the building, or in its hallway, at almost any hour of the day or night. The proofs before the local body may be summarized as follows.

The licensed premises were in a building on the southwest corner of Avenue C, a main north-south thoroughfare, and 21st Street, a side street running east-west. The corporate owner of the building and licensee is headed by Max Baer, its principal stockholder. The tavern occupied most of the first floor. Street access was by two doors, one on 21st Street near the corner,

another on Avenue C. Another door on the 21st Street side opened to a hallway leading to the upstairs clubroom rented for years by the licensee to a "club" which Baer testified he did not "know"; he merely collected rent from it. Another door led to a back room of the tavern which Baer said he kept locked up. On the side and rear walls of the building was a masonry ledge which was convenient for the "winos" to sit upon and lounge against while drinking. The rear yard, entered from 21st Street, was unfenced from the street and from an adjacent "car wash" operated by the Shaneen family. Immediately west thereof was the home of Mrs. Shaneen, a leader in the neighborhood opposition to the renewal of the tavern license.

Mrs. Shaneen testified that (before the fire) she couldn't walk along the sidewalk on 21st Street adjacent to the tavern because "drunks [were] littered all over the sidewalk" using "foul and filthy language" who "flirted" with and "sassed" her as she went by. Her thirteen-year-old daughter couldn't pass by there. The drunks began to accumulate at about 10 A.M. and increased in number as the day went by. They numbered about a dozen during the week and more on week-ends. She made numerous complaints to Baer about them.

She and her family would hear noise emanating from inside the tavern from early evening until closing which prevented her husband from sleeping.

The back yard was constantly full of broken bottles thrown there by the drunks as they emptied them. There was garbage strewn about the yard. About two years previously, on her complaint, Baer called the police to chase the drunks, and for a while the conditions improved, but then they "started accumulating again," and Baer told her he couldn't do anything about it.

Couples parked at night in cars in the car wash (apparently gaining access via the tavern back yard) and engaged in sex acts which could be observed from the Shaneen second floor. Mrs. Shaneen found prophylactics in the car wash and saw then in the tavern back yard. She was particularly concerned over these conditions because she didn't want to "subject [her] daughter" to them. (This particular testimony is corroborated by St. Clair Jackson, a city Health inspector, who testified before the Division that he responded to complaints by Mrs. Shaneen in February and December, 1959, and then and on a third occasion found contraceptives in the yard. His record contains entries, "Filthy, bottles" (liquor). Baer cleaned up the yard but bottles accumulated again because of the absence of a fence.)

Mrs. Otis, who resides with her husband and four children eight houses distant from the B & L Tavern on the same side of 21st Street, testified: "When you pass there they have drunks on the outside *** their pants are open and they are using bad language. My kid comes home and tells me what she has been seeing." She saw men come out of the tavern with liquor "in their hands" and drink it on the outside. Her husband testified: "These fellows get drunk and they don't stay inside the tavern. They come outside" and pass remarks to women and girls--"not clean remarks." Since the fire and the consequent discontinuance of the tavern the objectionable situation has disappeared.

Mrs. Melacrino, residing four houses from the tavern, on 21st Street, corroborated the previous testimony as to the passing of "remarks" by the drunken loungers. She testified there was "noise in the wee hours of the morning. You have

fights *** and swearing and they wake you up."

Mrs. Durando, residing across the street on 21st Street, three houses opposite the tavern, with three children including a nineteen-year-old daughter, gave vivid testimony, too explicit to incorporate in an opinion, as to the behavior and nature of the remarks to her by congregants of the sidewalk outside the tavern as she passed by. Her daughter came home complaining of indecent exposure by one of them. Out-of-state cars parked at the curb on both sides of the street were there "all hours of the night" with men and women in them. People came out of the tavern using indecent language. They congregated on the corner day and night, even after the tavern closed, especially in the summertime. There was continuous noise from the tavern. On one occasion she was awakened early one morning by the sound of milk bottles in her hallway knocked over by a couple having intercourse there.

Mrs. Scarano, residing on the south side of 21st Street on the same block as the tavern, who is the mother of a fourteen-year-old daughter, testified that she and the child had on occasion been "approached" as they walked by the tavern. "There were men sprawled in the doorway" and on the street in front of the tavern. They were forced to walk on the other side of the street. The tavern has "always been the cause of disturbance. Late at night you hear sirens going down. The police would be picking up somebody or other out of the tavern." Since the place burned down, however, "it's absolutely peaceful *** a different place."

A Mrs. Cure and a Mrs. Bolden, both residents of 21st Street, gave generally corroborative testimony as to the foregoing complaints. Mrs. Cure saw the rowdy and swearing men come out of the tavern from her window. This went on "all times, in the morning, at night." She couldn't sleep for the noise. Mrs. Bolden testified the drunks used the tavern back yard as a "bathroom." Liquor bottles were lined up in the early morning on the front steps and along the street to the corner. Her twelve-year-old daughter told her of stumbling over bottles and seeing men drinking in hallways across the street from the bar.

The Board of Commissioners received in evidence a letter from Jon Hinkamp, pastor of the Fifth Street Reformed Church of Bayonne, objecting to renewal of the license. This referred, among other things, to the "character of the establishment" as a matter of "common knowledge, not to say notoriety, and public record." It mentioned "incessant disturbances of the public peace and offenses against common decency," as well as contribution "to the corruption of morals and the neighborhood decay that blights community life."

Richard Lynch, of the Bayonne Police Department, produced records under subpoena by objectors calling for "all of the complaints, investigations, and so on" regarding this tavern. The only record of an event in the tavern was a 1946 murder while Baer was tending bar. Lynch testified: "In the vicinity of 477 Avenue C (the licensed premises) I always have some kind of records. It's a congested area." The police receive "numerous complaints" by telephone as to automobiles, people congregating, etc. Police cars are dispatched by radio, but "ordinarily" signed complaints are not sought. The policemen sent to the scene use their judgment in handling the situations which arise. No official police record is made of complaints of noise. Only signed complaints are recorded.

Baer testified he had only one A.B.C. violation, about six years previously, for sale to a minor. He opens the tavern at 7 A. M. The place closes weekdays at midnight, on Friday and Saturday nights at 3 A. M. He tends bar days until 6 P. M. Bartenders in his employ work evenings. He occasionally comes down to check on operations evenings.

Baer admitted there was a group of "winos," which he said numbered five or six, congregating at his tavern location. He described them as "real alcoholics," who drank only wine. He said he used to "catch them a lot of times in the lavatory drinking out of a pint bottle." He doesn't sell pints of wine. He testified that in the "last two, three years" he had "barred them out" of the tavern. He would occasionally hear noise in the hallway to the club-room and would have the policeman on the beat chase the culprits. Mrs. Shaneen complained to him two or three times about the drunks "drinking out of a bottle" outside. He refused her requests to call the police, but would have patrolmen on duty there disperse them.

Baer's new building will have only one door on the 21st Street side, which will enter the tavern directly. The new entrance to the upstairs social club will be on the Avenue C side. The new building will occupy almost the entire yard.

The place was "rough" when Baer bought it twelve years ago. (But as noted there is a record of his tending bar there in 1946 when there was a homicide.) He had fights in the tavern until he "barred the people out." Mrs. Shaneen complained to him about bottles being thrown into his yard and asked him to fence the yard in. He used to clean up the yard but bottles would continue to accumulate there. He never fenced the yard. He denied having been told by Mrs. Shaneen that people were using the yard as a latrine. (She testified to this condition before the Division.)

Rhodes, the night bartender, testified that Baer instructed him to run the place as if it were "his own"; keep order, bar the troublemakers. The clientele now is "very orderly" and the place is run "in an orderly fashion." On cross-examination, Rhodes admitted that when he came to work at 6 P. M. he would see possibly six or seven people outside the tavern. He occasionally hears noise outside the tavern, but doesn't go outside to see about it.

Baer produced two witnesses from the police department, Sgt. West and Patrolman Gordon. There was evidence (in part, adduced before the Division) that both of these men were employed as construction workers on the licensee's new building. West testified Baer conducts the tavern "in an orderly fashion"--"as other tavern owners." Baer has on occasion sought his help in dispersing crowds or groups. West has seen people sitting outside the tavern on 21st Street--three or four, or as many as seven. He doesn't report these dispersals to headquarters. Gordon is an occasional patron of the bar and a friend of the bartenders there. He testified the "inside" of the bar is conducted in an orderly fashion, but that the bartenders have asked him to disperse the groups hanging around from time to time when he was on duty.

James Savage, a city dog warden, who is a frequent patron of the tavern, testified the place was conducted "just like any other tavern," in an orderly fashion. There was no more noise there than in any other tavern.

Aside from receipt in evidence of petitions containing numerous signatures for and against the renewal of the license, and

one petition on file against the grant of a permit for the new building, the foregoing represents the substance of the case before the local board. The record made before the local board is material for consideration by this court as well as by the Director on the review before him. Zicherman v. Driscoll, 133 N.J.L. 586, 588 (Sup. Ct. 1946); Florence Meth. Church v. Tp. Committee Florence Tp., 38 N.J. Super. 85, 90 (App. Div. 1955). We must know what was presented before the local board in passing upon the question whether the Director respected his obligation to sustain the local action if it was reasonable. See Fanwood v. Rocco, 33 N.J. 404, 412 (1960).

Having in mind the proofs before the local board and the commissioners' undoubted familiarity with the general sociological and physical background of the area involved, it is inescapable that the board was justifiably convinced that a public nuisance of a particularly reprehensible character had grown up here over the years and that the condition was closely associated with the existence of a tavern on the site. It is not necessary here to survey all of the proofs adduced in the Division on appeal to show that the essential case against the renewal of a license in the supervening interest of the public and the service of the objectives and policy of the alcoholic beverage control act was not weakened, but, if anything, strengthened by the evidence at Division level.

Baer's case before the Division was aimed at establishing the freedom from disorder inside the tavern and his exclusion therefrom of the drunk and disorderly persons he admitted had frequented it before the last few years. But he conceded that notwithstanding his alleged dislodgment of the drunks from the inside, they continued to congregate against the outside wall drinking out of wine bottles and throwing them into the back lot. He explained that the "winos" would "panhandle" from their friends at the social club upstairs and buy wine from a package store nearby. There was no explanation on behalf of Baer as to why the "winos" didn't consume their liquor where they bought it, if they bought it elsewhere, rather than against his building or in his hallway. Baer said he did not consider the "winos" as "trouble." He was only interested, he said, in what went on inside the tavern. Apparently he regarded his responsibility as limited to the four walls of the tavern interior except when he received specific complaints. At this hearing, contrary to his testimony before the local board, he admitted Mrs. Shaneen complained to him of men urinating in his back yard. He admitted he did not regard it as a "headache" when the "barred out" winos "sneaked" into the tavern to use his toilet (apparently the more fastidious ones) and he had to chase them out.

Rhodes admitted that until a "couple of years ago" the banished "winos" nevertheless kept coming back into the tavern once or twice a week. A new witness for the licensee, Patrolman Andrews, a friend of Baer and a patron of his tavern, testified: "These winos would practically be there at any time during the day." The corner of 21st Street and Avenue C was a hangout for the "winos" and their friends. He dispersed them 30 or 40 times over an eleven-year period.

Edward Roake, a police captain who had served as desk officer for seven years, testified he did not specifically "recall" receiving complaints regarding conditions at the tavern. It appeared he meant "inside" the tavern rather than in the area. A retired police detective, Heaney, who worked for licensee's attorney on this case, testified the "winos" would run messages for the upstairs club

members for wine money, and would solicit handouts from people in the vicinity like himself. They would sit on the building ledge day and night. He would find them at times sitting five or six abreast on the stairway to the clubroom and saw some of them in the tavern. As recently as four months before the fire he saw wine bottles lined up outside the building on the sidewalk. Some of these bore the label of the nearby package store. He has seen "winos" in front of other taverns in the area.

A policeman named Dembowski, who lives 2 blocks away on 22d Street, testified for the objectors before the Division, and described the tavern site as the "hell hole of the City of Bayonne." He corroborated the first-hand testimony of the other objector witnesses before both bodies concerning the congregation of drunks on the sidewalks adjacent to the tavern, their blockage of the way of other passersby, the parking of cars with drinking occupants, the "mess" of bottles, cans and other rubbish alongside and in back of the building, repetition of such conditions after clean-ups due to his warnings to the licensee, and loud and indecent language from inside and around the building. These conditions had existed from the time the tavern was established until its destruction by fire. Since the fire there had been "peace and quiet." In this connection, incidentally, the opinion of the court notes that many of the objectors' witnesses testified before the Division that since the erection of the new building conditions at the location had been peaceful and quiet. This is true. It is strongly evidential of the causal connection between the former existence and operation of the tavern and the existence of the nuisance. If the intended implication of the opinion is that the tavern was in operation during the hearing before the Division, as of when the witnesses were describing the peaceful new conditions, it is in inadvertent error, as it was expressly conceded by the licensee at the outset of the hearing in the Division that the tavern was not then in operation (November, 1961), the license not having been renewed for that period.

On cross-examination, the witness Dembowski said the sidewalk inebriates came from both the inside of the tavern and the clubrooms. They would stand, sit and lie sprawled on the sidewalk, generally drunk. They usually numbered 15 to 20 men; often six to eight would be drinking in the back yard. Many would bring drinks or glasses of beer from inside the tavern to the outside. When he chased them, they would re-enter the tavern or go up to the club. A short time after he dispersed them they would return. The "winos" would often push each other around and block passage of citizens. "You could have used a cop on this corner 24 hours a day."

An elderly chicken market operator living and doing business on the northwest corner of the same intersection, one Mr. Wernick, supported other testimony of objectors as to drunkenness, noise, especially late at night, rowdyism, obstruction of sidewalks, rubbish and bottles. Men and women at night carried on in cars, and on the sidewalks and in hallways, including his own. One couple he chased from his hallway "walked in back again to the B & L." A bottle containing whiskey was thrown through his second floor window. His business fell off greatly because customers were afraid to pass by. When the tavern closed at night, the "whole Coxey's Army" would noisily repair to the upstairs clubroom and continue with the noise there.

The testimony of the women resident objectors was in general

tenor the same before the Division as before the local board, but in some respects more specific and detailed. In addition to the complaints already mentioned, there was mention by one witness of women coming to the corner at night for purposes of prostitution and consorting with the drunks. There were details as to indecent exposure, blockage of sidewalks by sprawled-out drunks, accosting of women and young girls, throwing of bottles, sex acts in hallways and cars, and urination outside the tavern. It was clearly indicated that the whole obnoxious situation continued up until the time of the fire.

Patrolman Hudak of Bayonne clarified other testimony concerning job-seekers on the tavern corner. He stated that although a dozen or so would wait to be picked up by prospective employers in the early morning, most of these would be gone within a half-hour. Thus this factor cannot mitigate the incriminating testimony as to conditions the rest of the day and evening. Hudak saw drunks going in and out of the tavern, and his testimony was pin-pointed to the period from January to June 1959, when he patrolled the area. He saw men coming out of the tavern "yelling and hollering."

It may be conceded that some of the opposition testimony at both hearings was to some extent emotional and inarticulate, although understandably so, and as to some incidents may have been exaggerated, remote or perhaps untrue. On the other hand, most of that on behalf of the licensee was obviously interested or biased, some patently untrue, and some of it bears suspicion of having been arranged for. Yet through the whole spectrum of the variegated proofs on both sides, taken as a whole, there is adumbrated a hard core of credible and corroborated evidence that these premises were for a long time and until the fire the fulcrum of conditions egregiously offensive to every objective of salutary liquor control as well as public order and decency. The local commissioners testified before the Division that their action in denying the renewal was based upon the evidence they heard and the fact of objections by the neighboring citizenry. They mentioned disorder, noise, debris, accosting of women, and conduct outside the tavern.

It would be supererogation to cite or quote from the many decisions emphasizing our stringent public and statutory policy for control of the liquor business. This record is rife with violations of that policy of the most shocking nature continued over an extended period of time. "The liquor business is one that must be carefully supervised and it should be conducted by respectable people in a reputable manner." Zicherman v. Driscoll, supra (133 N.J.L., at p. 588). Neither the licensee, the Director, nor the court majority undertake to excuse what went on here on the ground that the worst of the overt conditions and actions complained of took place outside the tavern proper. The Conclusions and Order under review properly stress the licensee's responsibility for conditions both inside and outside the licensed premises. But the Director, and the court majority, take the position that it is unfair to the licensee to fail to renew a valuable license after years of operation without prior warning by the authorities that the establishment is a nuisance or previous efforts at enforcement which might alert the licensee to the danger of continuing to do business in such manner. In other words, a kind of estoppel is invoked in favor of the licensee and against the public interests affected by the operation in question.

The foregoing reasoning, it seems to me, misses the point

in two important particulars. First, there is no vested property right in a liquor license. Bumball v. Burnett, 115 N.J.L. 254, 255 (Sup. Ct. 1935); Butler Oak Tavern v. Division of Alcoholic Control, 20 N.J. 373, 381 (1956). It is held by grace of the State, under condition of strict compliance with statutory and administrative regulations. The dog is not necessarily entitled in this area to two bites. I do not suggest that the length of undisturbed operation under a license or the value of the franchise are never proper factors for consideration in a review of licensing action. But such considerations can never create a conclusive estoppel against the licensing authority. They are at most elements of variable weight in appraising the exercise of discretion by the responsible authorities. No more can properly be spelled out from the administrative rulings cited in the court's opinion. None of them deal with so bad a situation as this. This licensee knew or should have known that the conditions proven here were at all times grossly incompatible with the public interest and the standards to be expected of a liquor licensee and that total retribution might fall upon it at any time.

Second, in the area of licensing, as distinguished from disciplinary violation proceedings, the determinative consideration is the public interest in the creation or continuance of the licensed operation, not the fault or merit of the licensee. In the matter of licensing the responsibility of a local authority is "high," its discretion "wide," and its guide "the public interest." Lubliner v. Bd. of Alcoholic Bev. Con., Paterson, 33 N.J. 428, 446 (1960). "Whether an original license should issue or a license be renewed rests in the sound discretion of the issuing authority. *** The common interest of the general public should be the guide post in the issuing and renewal of licenses;" Zicherman v. Driscoll, supra (133 N.J.L., at p. 588). And while, assuredly, the nature of the application is one for renewal rather than original issuance is a proper factor for consideration, yet in principle, "A renewal license is in the same category as an original license," id., at p. 587.

Thus, here, entirely apart from considerations as to the licensee's culpability for the deleterious conditions which surrounded this establishment, the broad question necessarily posed before the local board on the application was whether, in the light of all the surrounding circumstances and conditions, it was good for Bayonne and the neighborhood involved that a tavern continue to exist at this particular location at all. There were eleven or twelve other taverns within a radius of a few blocks (150 in the city as a whole). The evidence makes it clear that this is a fairly crowded area of mixed residential and commercial character, of a probably moderate or low income level. There could hardly be any quarrel with an objective judgment that one less tavern, even if well conducted, would probably serve the public interest of the community at large and the immediate neighborhood. That observation is a fortiori in the light of the peculiar magnetism of this establishment for drunkards, as reflected by this record, and the concomitant disorder and disturbance of public morality consequent thereupon. The conclusion of the local body that there flourished here a nuisance was, as noted, concurred in by the Director. Whether or to what extent there was such likelihood of a mitigation of the offensive nature of this operation in the new building as to make it desirable to renew the license in the public interest, was, in my view, for the controlling judgment of the local body, which was best equipped to make it. The Division should have sustained its determination in that regard.

The licensee objects to being connected with disorder and immorality on the sidewalks, across the street, in the car-wash next to its back yard, etc. However, aside from the conceded responsibility for conditions on the premises themselves, inside and outside the tavern, the issue of the public interest is not, as already indicated, necessarily related to personal fault of the licensee. The determinative question is: was it in the public interest to deny the renewal for any sound reason, including the coexistence of a liquor operation and the many offensive concomitants in the immediate surrounding area?

Although uttered in a quite different factual context, the language of Mr. Justice Jacobs for the Court in Fanwood v. Rocco, supra (33 N.J., at p. 415), in the course of approving our reversal of an order of the Division setting aside the action of a local authority in a transfer matter, is here also significant:

> "The fact is that the sentiment [of the people against a package store in a business section] does exist and in honoring it the governing body did not act at all unreasonably. The interests of effective liquor control are best advanced where the municipal licensing program displays fair regard not only for the convenience of residents who purchase alcoholic beverages but also for the sentiments of residents who are unsympathetic or hostile to their sale."

How much more compelling is the situation where the local body is giving fair regard to the views of residents who are continuously and directly affronted and inconvenienced by the offensive conditions surrounding the operation of a particular licensed establishment!

The court in Fanwood also restated the controlling rules for scope of review in a licensing case. It said (33 N.J., at p. 414): "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." (emphasis added). On judicial review, said the court, the court "will generally accept the Director's factual findings*** and not interfere with his action so long as it was not unreasonable or illegally grounded" (at pp. 414, 415). The court held the Director's decision to set aside the local action in refusing to approve a transfer of a package store to Fanwood's business area to be erroneous in disregarding the local body's right to keep such stores out of the business area. The local attitude was required to be respected notwithstanding its foundation in local popular sentiment and in part upon moral precepts (at p. 415).

How much more justification underlay the Bayonne body's decision to extirpate the foul situation centering about these licensed premises in and about the southwest corner of Avenue C and 21st Street by denial of a license renewal! The local body's action was entirely reasonable. Its failure to do something about this situation earlier has nothing to do with the necessity of sustaining its present action in the supervening public interest. The real antagonists here are not Baer and the Bayonne commissioners, but Baer and the general public of the City of Bayonne.

The action of the Director in overruling the local board was unreasonable and illegally grounded in the notion that the holder of a license who has tolerated if not maintained a reprehensible condition over a period of time must be given a warning and an opportunity to operate properly before the local body may deny a renewal notwithstanding a reasonably supportable factual judgment by it that the continuance of the license will entail a nuisance and is not in the interests of the city. That notion is not good law, and it is patently contrary to the salutary objectives of statutory liquor control in this State.

My vote is for reversal of the order of the Division and reinstatement of the action of the local body.

2. STATE LICENSES - NEW APPLICATION FILED.

Delaware Valley Distributors, Inc.
403 Samuel Street
Hamilton Township, N. J.
Application filed May 2, 1963 for person-to-person, place-to-place transfer of Limited Wholesale License WL-72 from Schwarz-Crescent Company, 72 William Street, Newark, New Jersey.

Emerson A. Tsonupp
Acting Director