

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

BULLETIN 1193

OCTOBER 22, 1957.

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OCTOBER 22, 1957.

1. APPELLATE DECISIONS - EARDLEY, PATTERSON, PARKER, FIELDER
AND REV. JOHNSON v. HOWELL TOWNSHIP, HOWELL RECREATION
CENTER, INC., AND HUZ.

EDWARD T. EARDLEY, WILLIAM)	
PATTERSON, PAUL P. PARKER,)	
EDWARD FIELDER and REV. GORDON)	
D. JOHNSON,)	
)	ON APPEAL
Appellants,)	CONCLUSIONS AND ORDER
-vs-)	
TOWNSHIP COMMITTEE OF THE)	
TOWNSHIP OF HOWELL, HOWELL)	
RECREATION CENTER, INC., and)	
NICHOLAI T. HUZ,)	
)	
Respondents.)	

William A. Consodine, Esq., Attorney for Appellants.
Bernard H. Weiser, Esq., Attorney for Respondent Township
Committee of the Township of Howell.
Isadore I. Zlotkin, Esq., Attorney for Respondents Howell
Recreation Center, Inc., and Nicholai T. Huz.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Township Committee whereby it approved, by a three-to-two vote, the transfer of a plenary retail consumption license from Nicholai T. Huz to respondent Howell Recreation Center, Inc., and from premises on the west side of State Highway No. 9 to proposed premises on the same side of the said Highway approximately 500 feet distant.

"Appellants contend, among other things, that the approval of the transfer was erroneous because Mayor Harry P. Burdge, due to illness, was not present at the meetings of May 6, May 13 and May 27, 1957, during which times the matter in question was heard by the other four members of respondent Committee. At the meeting of May 27, 1957, the question of transfer was voted upon by the four members present and resulted in a tie vote -- two for approval of the transfer and two opposed. On June 10, 1957, the five members of the respondent Committee were present and, after discussion of the matter, the question of the transfer was again voted upon with the result that three members (one of whom was Mayor Burdge) voted in favor and two members voted against the transfer.

"In Gomulka v. Linden, Bulletin 294, Item 8 (wherein the action of the local issuing authority in denying a place-to-place transfer was upheld), former Commissioner Burnett stated:

'Appellant's final contention is that respondent's denial was erroneous because local hearing (pursuant to the protest of an objector to appellant's application) was attended only by Commissioners Givens and Niesz of respondent's 3-man board; that the application was then carried over for further study; that it was

denied at a subsequent meeting with Commissioners Givens and Erlenkotter sitting and both voting in disapproval; that Mr. Erlenkotter, not having been present at the first meeting, had no standing to vote; that respondent's action is, therefore, "coram non iudice".

'Hence the two commissioners who sat at the second meeting constituted a quorum and had jurisdiction to deny appellant's application for transfer despite the fact that one of them had not been present at the original hearing.

'In any event, the appellant is not in any position to complain. A hearing on any liquor application is necessary only for the purpose of inquiring into the merits of a protest against it. State Regulation 3, Rules 8, 9 and 10. The objector is the only party who could possibly be aggrieved by the differing constituency in the quorum of the two hearings held by the local board.'

"Although Commissioner Burnett did not disapprove of the procedure followed by the local issuing authority, his chief concern appeared to be for those who were aggrieved by the determination in the matter.

"It should be noted that in the Gomulka case the appellant was the applicant for the license; that he was not entitled to a hearing, and that the local issuing authority might, on its own motion, after the requisite statutory investigation, determine not to issue a license to him. Rule 8 of State Regulation No. 2. In the instant case, however, the objectors who appeared were entitled to be heard and to have the members of the issuing authority pass upon their objections. They became aggrieved parties as a result of the vote of Mayor Burdge to approve the transfer in question despite the fact that, because of illness, he did not attend the three meetings when the matter was heard and discussed. Thus, the participation of Mayor Burdge in casting the deciding vote to approve the transfer was improper.

"Mayor Burdge contends that he was familiar with the matter as he had been briefed by his colleagues on the Committee, the Township Clerk and the Township Attorney. This manner of ascertaining information as to the events which took place before the respondent Committee at the various meetings cannot be considered as a substitute for his attendance thereat when the matter was heard.

"The granting of a liquor license involves action judicial in nature. Freehold et al. v. Div. of Alcoholic Beverage Control et al., 26 N. J. Super. 388 (App. Div.). The determination in such case must be reached in accordance with legal principles and rules. Dufford v. Nolan, 46 N.J.L. 87 (Sup. Ct. 1884).

"Justice Brennan, speaking for the New Jersey Supreme Court in the case of City of Asbury Park v. Dept. of Civil Service, 17 N. J. 419, p. 423, among other things stated that

'Fair play is plainly denied to litigants when a trier of fact who has not heard and evaluated all the testimony influences the decision by his participation in the deliberations by which it is reached.'

"Respondent-licensees allege that the sale of intoxicating liquor is a subject by itself, to the treatment of which all the analogies of the law, appropriate to other topics, cannot be applied. However, in the case sub judice, the action taken by respondent Committee was erroneous and should be reversed. I so recommend. In view of the foregoing recommendation, it is unnecessary to consider here various other objections which were advanced by appellants for reversal.

"It appears that respondent Committee has renewed the license of Nicholai T. Huz for the 1957-58 licensing period for the premises for which it was formerly issued. Since the license in question has expired, the recommendation herein is merely advisory."

The attorneys for the respondents in order to obtain an immediate determination in the instant appeal, have waived the ten-day period to file exceptions as provided in Rule 14 of State Regulation No. 15. The attorney for the appellants has consented to said waiver.

After careful consideration of the matter herein, I have decided to adopt the conclusions of the Hearer as my conclusions in this case and shall reverse the action of the respondent Township Committee.

Accordingly, it is, on this 25th day of September, 1957,

ORDERED that the action of respondent Township Committee in granting the transfer in question, be and the same is hereby reversed.

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - 9W REALTY CORP. v. ENGLEWOOD CLIFFS, NORTH BEACH CONSTRUCTION CORP. AND OLD HEARTH, INC.

9W REALTY CORPORATION,)
A CORPORATION OF NEW JERSEY,)
Appellant,)

-vs-

ON APPEAL
O R D E R

BOROUGH COUNCIL OF THE BOROUGH)
OF ENGLEWOOD CLIFFS, NORTH BEACH)
CONSTRUCTION CORP., and OLD)
HEARTH, INC.,)
Respondents.)

-----)
Sidney Slauson, Esq., Attorney for Appellant.
Harry L. Towe, Esq., Attorney for Respondent Borough Council.
William V. Breslin, Esq., Attorney for Respondents North
Beach Construction Corp. and Old Hearth, Inc.

BY THE DIRECTOR:

The above appeal was filed from the action of respondent Borough Council whereby it granted transfer of plenary retail consumption license C-3 from respondent Old Hearth, Inc. to respondent North Beach Construction Corp., and from Sylvan Avenue and Hollywood Boulevard to 464 Sylvan Avenue, Borough of Englewood Cliffs.

Prior to the hearing scheduled to be held herein, the attorney for appellant advised me, in writing, that his client desires permission to withdraw the appeal. No reason appearing to the contrary,

It is, on this 17th day of September, 1957,

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

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - TOMPETRINI v. HAWTHORNE; TOMPETRINI v. HAWTHORNE AND COPPOLA; TOMPETRINI v. HAWTHORNE.

FRANK TOMPETRINI and SILVIO) Case #1
TOMPETRINI, t/a GOFFLE BROOK)
INN,)

Appellants,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
BOROUGH OF HAWTHORNE,)

Respondent.)

-----)
FRANK TOMPETRINI and SILVIO) Case #2
TOMPETRINI, t/a GOFFLE BROOK)
INN,)

Appellants,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
BOROUGH OF HAWTHORNE, and EUGENE)
COPPOLA, t/a TOWN HOUSE,)

Respondents.)

-----)
FRANK TOMPETRINI and SILVIO) Case #3
TOMPETRINI, t/a GOFFLE BROOK)
INN,)

Appellants,)

-vs-)

BOARD OF COMMISSIONERS OF THE)
BOROUGH OF HAWTHORNE,)

Respondent.)

Peter Cammelleri, Esq., Attorney for Appellants.
Evans, Hand and Evans, Esqs., by Francis Caminetti, Esq.,
Attorneys for Respondent Board of Commissioners.
Peter Calcia, Esq., Attorney for Respondent Eugene Coppola.
Alexander E. Fasoli, Esq., Attorney for Objectors.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"For the purposes of this decision the above cases will be herein referred to as Case #1, Case #2 and Case #3.

ON APPEAL
CONCLUSIONS AND ORDERS

"A hearing was held in Case #1 and Case #2 on June 5, 1957, and a hearing in Case #3 was held on August 28, 1957. All of the cases may be disposed of in a single opinion.

"In Case #1 appellants appeal from the action of respondent on May 1, 1957, whereby respondent denied appellants' application to transfer their plenary retail consumption license from 142 Goffle Road to 1048-58 Goffle Road. In Case #2 appellants appeal from the action of respondent Board of Commissioners on May 1, 1957, whereby respondent transferred the plenary retail consumption license held by respondent Eugene Coppola from 184 Diamond Bridge Avenue to 142 Goffle Road. In Case #3 appellants appeal from the failure of respondent to act upon their application for renewal of their plenary retail consumption license for the 1957-58 licensing year for premises at 142 Goffle Road.

"For a number of years last past appellants conducted their licensed business at 142 Goffle Road, which is owned by another individual now deceased. Their lease expired March 1, 1957, and was not renewed. The owner or a representative of the estate of the deceased owner instituted dispossess proceedings against them in the Passaic County District Court in the early part of May 1957, and these proceedings were pending at the time of the first of the hearings held on June 5, 1957. During the pendency of the dispossess proceedings appellants remained in physical possession of the premises known as 142 Goffle Road until about July 7, 1957, at which time they vacated the premises pursuant to an order of the Court, and no one is operating under a liquor license at said premises at the present time.

"As to Case #1: The application for the transfer of their license to 1048-58 Goffle Road was filed by appellants with respondent on March 27, 1957. Thereafter a petition containing the names of approximately 180 persons who objected to the transfer was filed with respondent but respondent never scheduled a hearing upon said objections as it was required to do by Rules 8 and 9 of State Regulation No. 6. The attorney for appellants and one of the appellants appeared at a meeting of respondent held on April 17, 1957, and asked for an opportunity to be heard, which was granted. The appellant who appeared testified, and the attorney for appellants then presented to respondent a petition containing the names of approximately 200 people who favored the transfer of the license. It also appears that three objectors were present at the hearing, one of whom testified. Decision was reserved until May 1, 1957, at which time respondent denied the application for transfer and thereafter notified appellants of such denial.

"At the hearing held herein Mayor Louis Bay, 2nd, was asked to give the reasons for the denial and testified as follows:

'I examined the petitions both for and against, and I felt that the number of petitions -- the petition containing those against represented many more people in the area to which the tavern would be transferred than the petition favoring the transfer represented people in that particular area. In other words, you will find a number of people in the immediate area in which the tavern is presently located who petitioned for the tavern to be transferred out of that area. *** I felt I was serving the public best in what I interpreted as their interest in denying this application.'

"In the early case of Dunster v. Bernards, Bulletin 99, Item 1, Commissioner Burnett said:

'Respondent merely counted signatures on a petition, upon the erroneous hypothesis that the petition bearing more signatures represented the will of the majority. No independent determination of the propriety or desirability of granting or denying appellant's application was made. It is the duty of respondent to hear both sides and its responsibility to determine on all the facts whether or not the license should be granted.'

"The determination herein cannot be sustained upon the basis of the petitions favoring and opposing the transfer. There are other factors to be considered, including the fact that the area to which the license was sought is a mixed industrial and residential area and the fact that there is now one plenary retail consumption license located approximately 400 feet from the premises to which appellants seek to transfer their license. Moreover, it would be the duty of respondent to pass upon the plans and specifications filed for a building to be erected on the vacant land which is owned by appellants at 1048-58 Goffle Road. Thus, aside from the procedural question concerning the failure to hold a hearing upon the written objections, it does not sufficiently appear that respondent has made a decision upon the merits of the case. Ordinarily this would require that the case be remanded for further consideration but, since the licensing period during which this action was taken has expired, I recommend that an order be entered in Case #1 dismissing the appeal without prejudice to the right of appellants to file with respondent an application for the transfer of their renewed license (as hereinafter indicated) to 1048-58 Goffle Road or to other premises. Such a subsequent application, if filed, should be considered upon its merits in accordance with the opinion herein.

"As to Case #2: Apparently Eugene Coppola made arrangements with the owner of 142 Goffle Road to obtain possession of said premises after the lease held by the Tompetrinis expired on March 1, 1957. Although the Tompetrinis were in physical possession of the premises known as 142 Goffle Road on May 1, 1957, respondent at that time granted the application filed by Coppola for the transfer of his license to the said premises. There may be a question as to whether Coppola then had a sufficient proprietary interest in the premises to warrant the transfer of the license. However, it appears that at the present time the Tompetrinis have vacated the premises, and it is represented that Coppola is now in possession of and renovating the premises. Under these circumstances it is recommended that an order be entered affirming the action of respondent in Case #2. Segal v. Clifton et al., Bulletin 732, Item 5. While this question has not been raised on appeal, no reason appears herein why the pending application by Eugene Coppola for the renewal of his license at 142 Goffle Road should not be granted.

"As to Case #3: It is stipulated that appellants have filed application in proper form for renewal of their license for the 1957-58 licensing year for 142 Goffle Road. The evidence shows that they were in physical possession thereof on July 1, 1957, and it is represented by the attorney appearing for respondent that no action has been taken upon said application pending the outcome of the two prior appeals hereinabove referred to. Under these circumstances it is recommended that

an order be entered in Case #3 remanding the matter to respondent to act upon the pending application. It is indicated that respondent has no desire to deprive appellants of a license. Under all the circumstances it would appear that there is no legal objection to the granting of the pending application filed by appellants for renewal of their license for 142 Goffle Road solely for the purpose of permitting appellants to obtain a transfer thereof to other premises with the approval of respondent pursuant to a subsequent application for such transfer. Cf. Marplane Corp. v. Newark et al., Bulletin 1149, Item 3; cf. Cohen and Abramson v. Watchung, Bulletin 1101, Item 1. Since the appellants are no longer in possession of the premises known as 142 Goffle Road, they may not, of course, operate under their license until it is duly transferred to other premises by respondent."

The Hearer's Report was filed with me on August 30, 1957, and copies thereof were mailed on the same day to each of the attorneys herein. On September 17, 1957, the attorney for appellants filed with me an "objection" reading as follows: "The appellants in the above matter filed objection to the Hearer's Report and request oral argument." The "objection" contained no written exceptions and argument as required by Rule 14 of State Regulation No. 15 and, moreover, was not filed within ten days of receipt of the report. On September 20, 1957, I notified the attorney for appellants that the "objection" did not contain written exceptions and that it had been filed out of time. In the same letter I advised him that, after examining the files, I had decided not to hear oral argument in these cases.

After carefully considering all the evidence given and exhibits presented at the hearings held, and the briefs filed in Cases #1 and #2, I agree with the conclusions set forth in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is, on this 25th day of September, 1957,

ORDERED that the appeal in Case #1 be and the same is dismissed without prejudice to the right of appellants to file with respondent an application for transfer of their renewed license to 1048-58 Goffle Road or to other premises; and it is further

ORDERED that the action of respondent Board of Commissioners in Case #2 be and the same is hereby affirmed; and it is further

ORDERED in Case #3 that the matter be remanded to respondent to act upon appellants' pending application for renewal in accordance with the opinion herein.

WILLIAM HOWE DAVIS
Director.

4. RECAPITULATION OF ACTIVITY FOR QUARTERLY PERIOD FROM JULY 1, 1957 THROUGH SEPTEMBER 30, 1957

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
ARRESTS:				
Total number of persons arrested	22	38	19	79
Licenses and employees	8	17	3	28
Bootleggers	14	21	16	51
SEIZURES:				
Motor vehicles - cars	2	2	4	8
Stillis - over 50 gallons	3	-	1	4
- 50 gallons or under	-	1	2	3
Mash - gallons	265.00	350.00	1,012.50	1,627.50
Distilled alcoholic beverages - gallons	130.51	8.08	102.43	241.02
Wine - gallons	-	6.00	.62	6.62
Brewed malt alcoholic beverages - gallons	13.90	23.47	13.50	50.87
RETAIL LICENSEES:				
Premises inspected	556	505	445	1,506
Premises where alcoholic beverages were gauged	448	512	452	1,412
Bottles gauged	6,976	8,631	7,293	22,900
Premises where violations were found	61	62	48	171
Violations found	100	82	55	237
Type of violations found:				
Unqualified employees	52	39	11	102
Application copy not available	7	23	8	38
Reg. #38 sign not posted	14	5	11	30
Prohibited signs	11	2	4	17
Improper beer taps	-	1	3	4
Other mercantile business	1	2	-	3
Disposal permit necessary	2	1	-	3
Gambling devices	-	-	1	1
Other violations	13	9	17	39
STATE LICENSEES:				
Premises inspected	31	32	47	110
License applications investigated	9	10	14	33
COMPLAINTS:				
Complaints assigned for investigation	506	430	368	1,304
Investigations completed	413	451	381	1,245
Investigations pending	(184)	(166)	149	149
LABORATORY:				
Analyses made	159	198	162	519
Refills from licensed premises - bottles	-	2	-	2
Bottles from unlicensed premises	42	45	18	105
IDENTIFICATION BUREAU:				
Criminal fingerprint identifications made	73	33	15	121
Persons fingerprinted for non-criminal purposes	363	239	217	819
Identification contacts made with other enforcement agencies	284	199	178	661
Motor vehicle identifications via N.J. State Police teletype	5	9	1	15
DISCIPLINARY PROCEEDINGS:				
Cases transmitted to municipalities	5	15	18	38
Violations involved	6	18	21	45
Sale during prohibited hours	1	12	12	25
Sale to minors	4	3	5	12
Failure to close prem. during prohibited hours	-	2	1	3
Permitting hostesses on premises	1	-	-	1
Permitting brawl on premises	-	1	-	1
Sale to intoxicated person	-	-	1	1
Service to women at a bar (local reg.)	-	-	1	1
Permitting foul language on premises	-	-	1	1
Cases instituted at Division	29	19	42	90
Violations involved	37	26	54	117
Sale to minors	11	11	14	36
Sale during prohibited hours	15	4	14	33
Sale below minimum resale price	3	-	7	10
Permitting immoral activity on premises	1	3	3	7
Sale outside scope of license	-	1	2	3
Hindering investigation	1	-	1	2
Permitting bookmaking on premises	1	1	-	2
Permitting gambling (cards) on premises	1	-	1	2
Employing bartender w/o identification card (local reg.)	-	1	1	2
Mislabeling beer taps	-	-	2	2
Possessing illicit liquor	1	-	-	1
Delivery without bona fide invoice	1	-	1	2
Permitting lottery activity (numbers) on premises	1	-	-	1
Fraud in application	1	-	-	1
Employing female bartender	-	1	-	1
Conducting business as a nuisance	-	1	-	1
Permitting foul language on premises	-	1	-	1
Permitting hostesses on premises	-	1	-	1
Permitting brawl on premises	-	1	-	1
Failure to affore view into prem. during prohibited hours	-	-	1	1
Rebottling by retailer	-	-	1	1
Unauthorized transportation	-	-	1	1

	<u>JULY</u>	<u>AUG.</u>	<u>SEPT.</u>	<u>TOTAL</u>
DISCIPLINARY PROCEEDINGS (Continued)				
Cases Instituted at Division (Continued)				
Violations involved:				
Sale to intoxicated persons	-	-	1	1
Sol'r furnishing unlawful inducements to retailer	-	-	1	1
Sol'r engaging in conduct prohibited to employer	-	-	1	1
Sol'r violating terms of permit	-	-	1	1
Sol'r employed by retailer	-	-	1	1
Cases brought by municipalities on own initiative and reported to Division				
	10	11	15	36
Violations involved				
Sale to minors	12	12	20	44
Sale during prohibited hours	2	8	2	12
Permitting brawl on premises	2	4	1	7
Permitting foul language on premises	2	-	5	7
Conducting business as a nuisance	2	-	3	5
Permitting bookmaking on premises	2	-	1	3
Hindering investigation	-	-	2	2
Permitting female impersonators on premises	1	-	-	1
Permitting foul language on premises	1	-	-	1
Licensee working while intoxicated	-	-	1	1
Employee working while intoxicated	-	-	1	1
Sale on Primary Election Day	-	-	1	1
Permitting gambling (cards) on premises	-	-	1	1
Failure to afford view into prem. during prohibited hours	-	-	1	1
Sale to intoxicated person	-	-	1	1
HEARINGS HELD AT DIVISION:				
Total number of hearings held	48	44	43	135
Appeals	7	9	7	23
Disciplinary proceedings	33	22	24	79
Eligibility	4	7	6	17
Seizures	3	4	2	9
Tax revocations	-	2	4	6
Hearing on petition	1	-	-	1
STATE LICENSES AND PERMITS ISSUED:				
Total number issued	2,668	1,226	1,305	5,199
Licenses	943	3	4	950
Employment permits	366	229	193	788
Solicitors "	87	56	40	183
Disposal "	64	120	70	254
Social affair "	513	418	460	1,391
Wine "	-	2	-	2
Miscellaneous "	259	130	258	647
Transit insignia	408	222	227	857
Transit certificates	28	46	53	127

Dated: October 10, 1957

WILLIAM HOWE DAVIS
DIRECTOR

5. APPELLATE DECISIONS - UNION COUNTY RETAIL LIQUOR STORES ASSOCIATION AND DOWLING'S TAVERN AND LIQUOR STORE, INC. v. ELIZABETH, HOLIDAY BEVERAGES, INC., PAL'S TAVERN & LIQUOR STORE, INC. AND FOOD FAIR STORES, UNION, INC.

UNION COUNTY RETAIL LIQUOR STORES)
ASSOCIATION, and DOWLING'S TAVERN)
AND LIQUOR STORE, INC.,)

Appellants,)

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE)
CONTROL OF THE CITY OF ELIZABETH,)
HOLIDAY BEVERAGES, INC., PAL'S TAVERN)
& LIQUOR STORE, INC. and FOOD FAIR)
STORES, UNION, INC.,)

Respondents.)

ON APPEAL
CONCLUSIONS AND ORDER

Julius R. Pollatschek, Esq., Attorney for Appellant Union
County Retail Liquor Stores Association.
John A. Lyons, Esq., Attorney for Appellant Dowling's Tavern
and Liquor Store, Inc.
Jacob Pfeferstein, Esq., by Raymond A. Leahy, Esq., Attorney
for Respondent Municipal Board of Alcoholic Beverage Control.
Kasen, Schnitzer & Kasen, Esqs., by Daniel G. Kasen, Esq.,
Attorneys for Respondents Holiday Beverages, Inc., Pal's
Tavern & Liquor Store, Inc. and Food Fair Stores, Union, Inc.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent Board on May 16, 1957 whereby it approved an application to transfer a plenary retail consumption license (with broad package privileges) from respondent Pal's Tavern & Liquor Store, Inc. to Holiday Beverages, Inc. and from premises 1009 Elizabeth Avenue to 131 Spring Street, and whereby at the same time it approved an application to transfer a plenary retail consumption license (without broad package privileges) from Food Fair Stores, Union, Inc., to Pal's Tavern & Liquor Store, Inc. and from premises 115-117 Spring Street to 1009 Elizabeth Avenue, Elizabeth.

"The members of the respondent Board, by a 2 to 1 vote, approved the aforesaid applications.

"On June 26, 1957 applications for the licenses aforementioned, as transferred, were approved for renewal by respondent Board for the 1957-58 licensing period.

"The principal objection appears to be directed to the transfer of the license with broad package privileges to the respondent Holiday Beverages, Inc. as aforesaid.

"Appellants, in their petition of appeal contend, among other things, that the action of the respondent Board was erroneous and should be reversed for the following reasons:

- (a) The transfers above set forth constitute in effect an exchange of licenses which is not authorized under the statute of the State of New Jersey with reference to licenses issued for the sale of alcoholic beverages.

- (b) The broad package privilege attaching to the license previously held by Pal's Tavern & Liquor Store, Inc. and now held by virtue of said transfer by Holiday Beverages, Inc., was abandoned by said Pal's Tavern & Liquor Store, Inc. and continued in a state of abandonment and has never been renewed.
- (c) Said exchange of licenses were issued in violation of Section 5 of the ordinance of the City of Elizabeth relating to the sale of alcoholic beverages.
- (d) The licensee, Food Fair Stores, Union, Inc. discontinued the operation of the license held by it for premises at 115-117 Spring Street, Elizabeth, N.J. more than one year ago, and therefore the public convenience and necessity is presently adequately served by the other existing licenses in the area.
- (e) The building in which the license held by said Food Fair Stores, Union, Inc. was located was demolished prior to July 1, 1956 and the license held by said Food Fair Stores, Union, Inc. at the time of the application for the renewal thereof was improvidently issued by reason of the fact that said licensee did not have any premises in which said license could be located, and therefore the transfer of said license authorized by the said Municipal Board of Alcoholic Beverage Control was erroneous in that it transferred a license which was not legally in existence.
- (f) The license issued to the predecessor in title of said Food Fair Stores, Union, Inc. was a conditional license conditioned upon the use of a service bar only, and thus the issuance of the transfer herein provided for, for a full use, is illegal.

* * * *

- (h) The action of respondent Board was arbitrary, improper and capricious.

"A license with a broad package provision is distinct from one without such privilege and grants the holder thereof more extensive rights. Since the Alcoholic Beverage Law does not provide for the exchange of existing licenses, both applications here must be considered as applications for transfers within the provisions of N.J.S.A. 33:1-26.' Petrangeli v. Barrett et als., 33 N. J. Super. 378. I might add, however, that although the transfers in the instant case might be considered 'a unit transaction', the question of exchange of licenses has no applicability because the parties to the respective transfers were not identical in each instance.

"The record herein contains no testimony which might in any manner substantiate appellants' contentions with reference to the abandonment of the broad package privileges by Pal's Tavern & Liquor Store, Inc. and also with respect to Section 5 of the local ordinance. Therefore, said reasons will be disregarded. There is also no merit in the contention that the failure of Food Fair Stores, Union, Inc. to operate its business pursuant to its license since May 1956 indicates that there was no need for the license in the vicinity. Such fact, coupled with the general objections to that end as appear herein, are not of sufficient weight to support the contention that there was no actual need for or convenience to be served by said liquor outlet at the premises in question.

"The reason advanced by appellants in their petition of appeal where it refers to the renewal of the license of Food Fair Stores, Union, Inc. for the 1956-57 licensing period cannot be considered herein because no timely appeal was taken thereto. It also will not be considered in the instant matter.

"There was no evidence presented nor do the records of the Division disclose that the condition limiting the use of a service bar existed in the license of the transferor to the Food Fair Stores, Union, Inc. when transfer was approved by the local issuing authority. Therefore, such contention appears to be without merit.

"The number of licensed places to be permitted in any particular area is a matter confided to the sound discretion of the issuing authority. Santoriello v. Howell, Bulletin 252, Item 8; Sudol v. Wallington, Bulletin 267, Item 10; Pitman v. Pemberton, Bulletin 277, Item 6; Boody v. Gloucester, Bulletin 300, Item 11; Smith v. Winslow, Bulletin 334, Item 1; Alpert v. Asbury Park, Bulletin 380, Item 2; Winslow v. Pennsauken, Bulletin 401, Item 11; Bodrato v. Northvale, Bulletin 433, Item 1; Segal et als. v. Clifton et al., Bulletin 732, Item 5.

"The Director's function on appeals of this type is not to substitute his personal opinion for that of the issuing authority, but merely to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal view on the subject. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Petti v. Bayonne, Bulletin 564, Item 7; Mulcahy et al. v. Maplewood et al., Bulletin 658, Item 4.

"It should be noted here that one of the appellants in the instant case is a liquor association and the other appellant is a holder of a plenary retail consumption license. It is quite apparent that this appeal, to a large extent, was predicated on economic grounds. The fact that the transfer of a license may be contrary to the economic interest of a liquor licensee having an establishment in the neighborhood or elsewhere in the municipality is not a sufficient reason for setting aside the transfer. Knast et al. v. Camden et al., Bulletin 810, Item 2.

"There appears to be a real difference of opinion on the part of the members of the respondent Board as to whether or not the transfers in question should have been granted. It is apparent from the testimony that there was an honest difference of opinion among the members of the respondent Board. There is no evidence that any of the members of said Board acted in an arbitrary, capricious or an unreasonable manner in reaching their determination.

"The burden of establishing that the action of respondent Board is erroneous and should be reversed rests with the appellants. Rule 6 of State Regulation No. 15. This burden has not been sustained.

"Under all the facts and circumstances in this case, I recommend that the action of respondent Board be affirmed."

No exceptions to the Hearer's Report were filed within the time limited by Rule 14 of State Regulation No. 15. Having carefully considered the entire record, I concur in the findings of the Hearer and adopt the recommendation submitted by him herein. Hence, I shall affirm the action of the respondent Board in granting the transfer in question.

Accordingly, it is, on this 12th day of September, 1957,

ORDERED that the action of respondent Board of Alcoholic Beverage Control of the City of Elizabeth be affirmed, and the appeal filed herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

6. APPELLATE DECISIONS - LEE v. CLIFTON.

CHARLES LEE and DONALD LEE,)
trading as LEE'S TAVERN,)
Appellants,)

-vs-

ON APPEAL
CONCLUSIONS AND ORDER

BOARD OF ALCOHOLIC BEVERAGE)
CONTROL OF THE CITY OF CLIFTON,)
Respondent.)

-----)
Shershin and Feder, Esqs., by Richard Yale Feder, Esq.,
Attorneys for Appellants.
Edward F. Johnson, Esq., by Manfred Triebel, Esq.,
Attorney for Respondent.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

"This is an appeal from the action of respondent whereby it suspended appellants' license for fifteen days, effective July 8, 1957, after finding appellants guilty of a charge alleging that they allowed, permitted and suffered the sale of alcoholic beverages to a minor, in violation of Rule 1 of State Regulation No. 20.

"Upon the filing of the appeal, an order was entered on July 3, 1957, staying the effect of respondent's order until the entry of a further order herein.

"The facts herein are not disputed. On the afternoon of Sunday, April 7, 1957, Officer Kopec, of the Clifton Police Department, was in appellants' premises and observed John --- consuming the contents of a glass of beer. The Officer questioned John who said he was twenty-one years of age. After the Officer inquired if he had any identification indicating his age, John requested the Officer to step to the rear of the tavern where he admitted that he was nineteen years of age. Thereafter the Officer asked Kenneth McKay (the bartender then on duty) if he had questioned John as to his age and McKay said that he had not because the owners had been serving John during the prior six months. John testified that he is nineteen years old and that, on the afternoon in question, he purchased a glass of beer from McKay who did not question him or require him to sign any written statement as to his age. John further testified that he had previously purchased beer in appellants' premises and that, when he started to go there, he told Charles Lee that he was twenty-one. Charles Lee testified that he has known John as a friend of his younger son (who is of full age) and that, when John first visited the licensed premises, he questioned him as to

his age, at which time John told him he was twenty-one. Charles Lee admitted that John had never made any written representation that he was twenty-one years of age or over.

"While appellants do not dispute the sale to the minor on the date in question, they allege that they have established a defense under R. S. 33:1-77. The attorney for appellants argues that the term 'in writing' in R. S. 33:1-77(a) was intended by the Legislature to eliminate fraudulent claims by a licensee that a minor represented his age and that no written representation is necessary where it appears, as in this case, that the minor admitted that he verbally misrepresented that he was twenty-one years of age or over. This contention has no merit. In Sportsman 300, t/a Sportsman 300, v. Nutley and Div. of Alcoholic Beverage Control, 42 N. J. Super. 488 (App. Div. 1956), the Court said:

'We have no hesitancy in stating that in our opinion to constitute the statutory defense to such a prohibited sale, the accused must establish not some but all of the factual elements enumerated in the enactment relating thereto.'

"Since it is admitted that the minor did not represent in writing that he was twenty-one years of age or over, as required by R. S. 33:1-77(a), no defense under the provisions of R. S. 33:1-77 has been established. The facts fully justify the finding of guilt. It is recommended, therefore, that an order be entered affirming the action of respondent and fixing the dates during which the fifteen-day suspension shall be effective."

There were no exceptions taken to the Hearer's Report within the time limited by Rule 14 of State Regulation No. 15.

After carefully considering the record in this case I agree with the conclusions in the Hearer's Report and adopt them as my conclusions herein.

Accordingly, it is, on this 18th day of September, 1957,

ORDERED that the action of respondent be and the same is hereby affirmed; and it is further

ORDERED that the fifteen-day suspension imposed by respondent, and which was stayed during the pendency of these proceedings, be restored against the license held by appellants for premises at 291 Crooks Avenue, Clifton, to commence at 3:00 a.m. September 30, 1957, and to terminate at 3:00 a.m. October 15, 1957.

WILLIAM HOWE DAVIS
Director.

7. DISCIPLINARY PROCEEDINGS - SALES TO MINORS - PRIOR DISSIMILAR VIOLATION OF PREDECESSOR IN INTEREST - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against PIONEER CAFE, INC. T/a PIONEER CAFE 1 Main Street Wrightstown, N. J.,

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Wrightstown.

Parker, McCay and Criscuolo, Esqs., by Robert W. Criscuolo, Esq., Attorneys for Defendant-licensee. David S. Piltzer, Esq., appearing for the Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge that it sold and allowed, permitted and suffered the sale of alcoholic beverages to two minors and permitted said minors to consume such beverages on its licensed premises, in violation of Rule 1 of State Regulation No. 20.

The file herein discloses that acting upon information received from Air Force Police located at McGuire Air Force Base, ABC agents secured signed sworn statements from Donald ---, age 19, and Walter ---, age 20. Donald, in his statement, sets forth that he entered defendant's tavern on July 24th at about 12:30 a.m. and consumed three glasses of beer served by a bartender who did not make any inquiry as to his age or request identification; that he observed Walter consuming beer; that he (Donald) had been served beer at the licensed premises on three previous occasions; and that on the first such occasion he was required to present his ID card, which evidenced that he was a minor, whereupon the bartender at first refused and later served him with beer.

Walter, in his statement, sets forth that he entered defendant's tavern on July 23rd at about 11:30 p.m. and stayed until closing time, during which period he was served with and consumed about six glasses of beer by a bartender who did not ask his age or require identification; that he observed Donald there drinking beer and that he (Walter) had been served beer previously on about six occasions.

The defendant has no prior adjudicated record. However, its president, Louis Schwartz, who holds 98% of its stock, is individually the holder of a license for other premises in the same municipality, which license was suspended for ten days effective May 18, 1955 by the local issuing authority for an "hours" violation. Two previous suspensions of such license for dissimilar violations, imposed more than five years ago, are not being considered in fixing penalty. Re Sandor & Zhelesnik, Bulletin 1167, Item 11.

The minimum suspension imposed for a sale of alcoholic beverages to a 19-year-old minor is fifteen days, to which will

be added five days by reason of a prior dissimilar violation, within the past five years, making a total suspension of twenty days. Re Farrell, Bulletin 1176, Item 2. Five days will be remitted for the plea entered herein, leaving a net suspension of fifteen days.

Accordingly, it is, on this 11th day of September, 1957,

ORDERED that Plenary Retail Consumption License C-7, issued by the Borough Council of the Borough of Wrightstown to Pioneer Cafe, Inc., t/a Pioneer Cafe, for premises 1 Main Street, Wrightstown, be and the same is hereby suspended for fifteen (15) days, commencing at 2:00 a.m. September 18, 1957 and terminating at 2:00 a.m. October 3, 1957.

WILLIAM HOWE DAVIS
Director.

8. STATE LICENSES - NEW APPLICATION FILED.

Kramer Bros. Freight Lines, Inc.
303 Paterson Plank Road, Carlstadt, N.J.
Application filed October 17, 1957 for Transportation License.

WILLIAM HOWE DAVIS
Director.

9. EASTERN STANDARD TIME EFFECTIVE THROUGHOUT NEW JERSEY FROM 2:00 A.M. SUNDAY, OCTOBER 27 (1957) UNTIL 2:00 A.M. SUNDAY, APRIL 27 (1958).

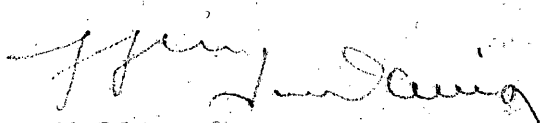
Under New Jersey Law (Revised Statutes, 1:1-2.3, as amended) the standard of time in the State is Eastern Standard Time except from 2:00 a.m. on the last Sunday in April until 2:00 a.m. on the last Sunday in October, in each year, when the standard is Eastern Daylight Saving Time which is one hour in advance of Eastern Standard Time.

The Law is State-wide in its application and is binding on all municipalities.

This year's Daylight Saving Time period is almost over. From 2:00 a.m. Sunday, October 27th, and throughout the Eastern Standard Time period (until 2:00 a.m. on April 27, 1958) the time will be one hour behind the present Daylight Saving Time. Thus, as of 2:00 a.m. Sunday, October 27th, clocks are to be turned back one hour.

On the morning of Sunday, October 27th, there will be no difference in the closing hour of licensed places in municipalities with an ordinance fixing the closing at midnight or 1:00 a.m. or 2:00 a.m. There will be a difference in the closing hour on the morning of Sunday, October 27th, in municipalities with an ordinance fixing the closing hour later than 2:00 a.m. Take a municipality with a closing hour of 3:00 a.m. At 2:00 a.m. on the morning of Sunday, October 27th, the licensee in that municipality will turn their clocks back one hour, and may then keep open for an extra hour -- until the changed clock time reaches 3:00 a.m.

Dated: October 22, 1957.


William Howe Davis
Director.