26 Rose Avenue,
Madison,
Morris County, New Jersey.

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1024 JULY 19, 1954.

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ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 1024 JULY 19, 1954.

1. APPELLATE DECISIONS - MIKULICZ v. NEWARK.

EDWARD MIKULICZ and JOSEPH MIKULICZ,
Appellants,
-vs-
MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Harkavy & Lieb, Esqs., by Abraham I. Harkavy, Esq., Attorneys for Appellants.
Horace S. Bellfatto, Esq., by George B. Astley, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from denial of an application to transfer Plenary Retail Distribution License D-67 from The Charles Liquor Store, Inc., to appellants and from premises 949 Broad Street to premises 135 Tichenor Street, Newark.

The petition of appeal alleges that the action of respondent was erroneous because (1) no similar license is situated within 750 feet of the proposed premises; (2) public need and convenience warranted the availability for housewives of a place to purchase packaged liquor other than an establishment operating under a C license, and (3) said action constituted an abuse of discretion.

At the hearing held herein, a transcript of the testimony taken at the hearing before respondent Board was introduced into evidence and additional testimony was taken pursuant to Rule 8 of State Regulations No. 15.

For the past eight years appellants have operated a general food store, selling groceries, meats, vegetables, ice cream and soda, at 135 Tichenor Street. The evidence indicates that this section of Newark is of a mixed residential and business character. There is a public housing project about two blocks distant and a school about 225 feet distant from appellants' premises. The premises known as 949 Broad Street are located in a different section of the City.

It has been stipulated that there is no plenary retail distribution license within 750 feet of 135 Tichenor Street, but a map introduced into evidence shows that within the immediate area there are five places for which plenary retail consumption licenses have been issued. Appellants testified that numerous customers have asked for alcoholic beverages, particularly bottled beer, and that the nearest package store is about five blocks from their premises. At the hearing held herein eight women who reside near appellants' premises testified that they preferred to buy liquor in a grocery store rather than in a tavern. The testimony of some of these witnesses indicates that the neighborhood is "not very good" and "getting worse." At the hearing held below three women and four men who reside near appellants' premises testified that they oppose the transfer because children shop at appellants' store, because said store is near a school, and because there are enough liquor outlets in the neighborhood.

At the hearing herein Joseph A. D'Alessio, a member of respondent Board, testified that he voted to deny the transfer because there were a considerable number of objectors; because there were a considerable number of liquor outlets in the area; because there was a school nearby; because the majority of patrons of the food market were women and children, and because "it was a changing neighborhood." Harry Lerner, another member of respondent Board, testified that his reasons for denial were substantially the same.

The transfer of a liquor license is not a right inherent in the license but is, rather, a privilege which the issuing authority may grant or deny in the exercise of a reasonable discretion. If denied on a reasonable ground, such action will be affirmed. VanSchoick v. Howell, Bulletin 120, Item 6.

The mere fact that appellants' premises are not within 750 feet of an existing place of business for which a plenary retail distribution license has been granted does not entitle appellants to a transfer of the license. Market Liquor Store Corp. v. Newark, Bulletin 1005, Item 2. Appellants' contention that the transfer should be granted because people prefer to buy bottled goods at a "package store" is without merit. Thompson v. Mount Olive, Bulletin 986, Item 1, and cases therein cited. The question of whether or not a place-to-place transfer is to be granted is within the sound discretion of respondent in the first instance and, on appeal, the burden is on appellant to show that respondent abused its discretion. Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Rutgers House Corp. v. New Brunswick, Bulletin 1006, Item 6; Pasquale v. Tenafly, Bulletin 1012, Item 1.

After considering the evidence herein, I conclude that appellants have not sustained the burden of proof in showing that the action of respondent was erroneous. Rule 6 of State Regulations No. 15. Hence, the action of respondent will be affirmed.

Accordingly, it is, on this 24th day of June, 1954,

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

WILLIAM HOWE DAVIS
Director.

2. APPELLATE DECISIONS - EANA, INC. v. PLEASANTVILLE.

EANA, INC.,
Appellant,
-vs-
COMMON COUNCIL OF THE CITY OF PLEASANTVILLE,
Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Isaac C. Ginsburg, Esq., Attorney for Appellant.
Louis D. Champion, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action on March 29, 1954, whereby it denied (for the second time) appellant's application for a person-to-person transfer of a plenary retail consumption license from Walter Lash to appellant, for premises 323 South Main Street, Pleasantville.

Previously, on November 16, 1953, respondent had denied such transfer upon the mistaken theory that a previous suspension in disciplinary proceedings of a license then held by appellant in another municipality (Egg Harbor Township) for sales to minors on two separate occasions, in violation of Rule 1 of State Regulations No. 20, mandatorily disqualified appellant from holding a license by reason of R.S. 33:1-25 which reads, in part, as follows:

> "No license of any class shall be issued to any individual who is an alien; to any person under the age of twenty-one years; to any person who has been convicted of a crime involving moral turpitude; or to any person who has been twice convicted in a court of criminal jurisdiction of violation of this chapter."

By order dated March 4, 1954, the proceedings were remanded to respondent for its further consideration consistent with the law and the opinion rendered. Eana, Inc. v. Pleasantville, Bulletin 1005, Item 3.

By stipulation it now appears that, on March 15, 1954, petitions objecting to the granting of the transfer, signed by 93 residents and citizens of Pleasantville, were filed with the City Clerk, pursuant to which a public hearing was scheduled, publicized and held on March 29, 1954; that all persons interested were given an opportunity to be heard after which a resolution was adopted containing a recital of the facts and the following paragraphs:

> "WHEREAS this body has duly considered the said written objections filed to the granting of the said transfer and has given a hearing at this meeting to all persons interested in the matter of the granting or denying of the said application for transfer and the said Eana, Inc. having, on February 18, 1952 entered a plea of non vult to charges made against it before the Township Committee of Egg Harbor Township, while the holder of Plenary Retail Consumption License No. C-9 of the Township of Egg Harbor, charging it with the sale, service and delivery and allowing, permitting and offering the service and delivery of alcoholic beverages directly or indirectly to persons under the age of twenty-one years and allowing, permitting and offering for consumption alcoholic beverages by such persons upon the licensed premises on or about December 7, 1951 and December 28, 1951 in violation of Rule 1 of State Regulations No. 20, this body having heard and considered the arguments for, and the objections to the granting of said transfer and being of the opinion that it is for the best interests of the inhabitants of the City of Pleasantville that the said application for transfer shall be denied:
>
> "NOW, THEREFORE, BE IT RESOLVED BY COUNCIL OF THE CITY OF PLEASANTVILLE that the application of Eana, Inc. for the transfer of plenary retail consumption license No. C-3 issued to Walter Lash for premises 323 South Main Street, Pleasantville, New Jersey to it, the said Eana, Inc. be and the same is hereby denied."

On this (second) appeal appellant contends that respondent's action was erroneous, arbitrary and an abuse of discretion because (1) the Director's order of March 4, 1954 was ignored; (2) the application was not considered on its merits; (3) no hearing on the application was held within the meaning of the order and the law; (4) no evidence or legally valid reason was assigned for the denial; and (5) considerations of expediency entered into the determination.

Respondent, in its answer, denied these contentions.

At the beginning of the hearing on this (second) appeal, counsel for appellant moved for "summary judgment" contending, in effect, that respondent's reasons for the second denial were no different from the reasons for the first denial and that, consequently, the previous order had resulted in a finding that said reasons were without merit. This motion was denied and it was stipulated that the testimony of the following witnesses who testified at the first appeal and who were present at the hearing on this (second) appeal would be considered on this appeal: Messrs. Warke, Mullen, Huckel, O'Brien and Hildebrandt.

From all of the evidence it appears that the events enumerated in the agreed statement of facts actually occurred. Following the receipt of the petition of objections to the grant of the transfer, respondent held a well-publicized hearing where various residents, several of whom testified on this (second) appeal, spoke in opposition to the transfer. For the most part the objectors, as parents, referred to their own and other children attending nearby schools and adverted to appellant's record of "minors" violations. (For reasons which clearly appear from reading the transcript, the testimony of the witness Hedrick has been disregarded.)

Appellant's witnesses testified that it had conducted its business in Egg Harbor Township in a proper manner.

In appeals of this nature, the burden of establishing that the action of the respondent was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15.

After carefully considering all of the evidence in this case I find that appellant has failed to sustain this burden.

Appellant's contention (4) that the required "hearing" on the application was not held is without merit. The record discloses that a well-publicized hearing was held on March 29, 1954, attended by a considerable number of people and that all interested people, including appellant's counsel, were given an opportunity to be heard. In any event, appellant's rights have been fully protected by this appeal, which was heard de novo. See Ashton v. Hopewell, Bulletin 782, Item 11.

Appellant's other contentions, including counsel's claim that the matter is res judicata, are equally without merit. Respondent considered the previous record of appellant when it held a license in Egg Harbor Township and the objections of its own residents and, as clearly appears from the following language contained in its resolution of March 29, 1954 (not set forth in the earlier denial), determined that it was "... for the best interests of the inhabitants of the City of Pleasantville that the said application for transfer ... be denied."

It is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy persons to receive the privilege of a license, and its determination should be given considerable weight on appeal. Jackie Clark v. West Orange, Bulletin 631, Item 7; certiorari denied, Jackie Clark v. West Orange and Driscoll, Bulletin 635, Item 2. It was within respondent's province to consider appellant's violations committed in another municipality. Deola v. Millville, Bulletin 789, Item 12.

Under all of the circumstances I cannot find that respondent's action in denying the transfer to appellant constituted an abuse of discretion, warranting reversal.

Accordingly, it is, on this 28th day of June, 1954,

ORDERED that the action of respondent Council of the City of Pleasantville be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

WILLIAM HOWE DAVIS
Director.

3. APPELLATE DECISIONS - TUMULTY v. DUNELLEN.

JAMES JOSEPH TUMULTY,)
Appellant,)
-vs-) ON APPEAL
) CONCLUSIONS AND ORDER
MAYOR AND COUNCIL OF THE BOROUGH OF DUNELLEN,)
Respondent.)

William K. Miller, Esq., Attorney for Appellant.
Henry Handelman, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's action whereby it suspended appellant's plenary retail consumption license for a period of twelve days, after it had adjudged appellant guilty in disciplinary proceedings on a charge alleging that, on October 21, 1953, he sold, served and delivered alcoholic beverages to a minor and permitted the consumption of such beverages by said minor upon his licensed premises, in violation of Rule 1 of State Regulations No. 20.

Upon the filing of the appeal an order, dated February 1, 1954, was entered staying the suspension pending the determination of this appeal. R. S. 33:1-31.

Appellant contends that respondent's action was contrary to the weight of the evidence.

On this appeal the matter was heard de novo. Rule 6 of State Regulations No. 15.

The minor, who was 17 years of age on the night in question, and her husband testified that they entered appellant's licensed premises at approximately 8:00 p.m.; that they sat at the bar where each was served and consumed eight rounds of drinks consisting of brandy and beer; that the drinks were served by Clark, the bartender; and that, after leaving the licensed premises several hours later, they were apprehended by the police and taken to police headquarters. The minor testified that she had not been questioned with respect to her age. Both admitted that, at police headquarters that night, neither of them had named appellant's premises as the place where they had been drinking and that the minor had named two other licensed premises, both some considerable distance away. Her husband testified that the next morning he told the police that they had been drinking at appellant's premises. Both further testified that they had not been drinking at any other place on the night in question. The minor could give no reason for her admittedly false answers to the police but testified that the names of the two other taverns merely came to her mind when she was being questioned.

One of the police officers who apprehended the minor and her husband testified that he found them in an intoxicated condition "right around the corner" from appellant's licensed premises; that the minor stated that they had been drinking at "Greenies" but that her husband had mentioned "Jim Nic's" (appellant's trade name).

Another policeman, who went on duty at midnight after the minor had left headquarters, testified that he had not heard the husband mention appellant's premises but that he had mentioned "Greenies."

Two ABC agents testified that the minor and her husband had identified appellant's licensed premises as the place where they had been drinking and Clark as the bartender who had served them.

Appellant testified that Clark, his bartender, had been on duty on the night in question; that Clark had been so employed for two or three weeks; that he had instructed Clark not to serve minors; and that, since he became a licensee in 1939, he has not been found guilty of any violations.

Clark testified that he had been tending bar at appellant's premises between 8:00 p.m. and 10:00 p.m. on the night in question but denied having seen the minor until after that night. However, he then testified that he did not "remember selling them anything" and did not "remember selling to her."

Appeals to the Director from action of the local issuing authority are heard de novo and the burden of establishing that the action of such issuing authority was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15; Neu v. Irvington, Bulletin 923, Item 3; Laurence Harbor Amusement Corporation v. Township of Madison, Bulletin 955, Item 1; Roth v. Newark, Bulletin 993, Item 5.

After carefully considering the entire record before me I find that appellant has failed to sustain the burden. While it is true that, when apprehended, the minor named two other taverns, no reason appears why she and her husband should testify falsely under oath. Furthermore, the circumstances tend to support their sworn testimony. They were apprehended by the local police in an intoxicated condition a very short distance from appellant's premises. The other places they named at police headquarters are quite far away and they were on foot. Under all of the circumstances I cannot disagree with respondent's finding of guilt.

The action of respondent will be affirmed, the appeal will be dismissed and the twelve-day suspension originally imposed will be reinstated.

Accordingly, it is, on this 30th day of June, 1954,

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

ORDERED that the twelve-day suspension by respondent of appellant's 1953-54 Plenary Retail Consumption License C-4 for 316 North Avenue, Dunellen, be and the same is hereby restored and reimposed against appellant's 1954-55 Plenary Retail Consumption License C-4 for the same premises, to commence at 1:00 a.m. July 7, 1954, and terminate at 1:00 a.m. July 19, 1954.

WILLIAM HOWE DAVIS
Director.

4. APPELLATE DECISIONS - SCHENGRUND AND MINKOFF v. EAST ORANGE.

EVELYN SCHENGRUND and FLORENCE MINKOFF, trading as CITY HALL LIQUOR STORE,

Appellants,

-vs-

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF EAST ORANGE,

Respondent.

ON APPEAL
CONCLUSIONS AND ORDER

Green & Yanoff, Esqs., by H. Kermit Green, Esq., Attorneys for Appellants.
Walter C. Ellis, Esq., Attorney for Respondent.
Herman E. Hillenbach, Esq., Attorney for Frankel Wine & Liquor Corporation of East Orange, Objector.

BY THE DIRECTOR:

This is an appeal from respondent's action on April 6, 1954, whereby it denied appellants' application for a place-to-place transfer of their plenary retail distribution license from premises 361 Main Street to premises 384 Main Street. The minutes of the meeting noted the fact that seven letters had been received objecting to the transfer; that a representative of a competitor (Mr. Frankel) and of a trade association had appeared at the meeting to express objections and that one Board member, Mr. Karl, had disqualified himself because he formerly had represented Mr. Frankel as his attorney. The minutes also contained the following: "The Board considered the application, objections, and after considerable discussion decided that the public welfare would best be served by denying the application."

Appellants, in their petition of appeal, contend that respondent's action was arbitrary and unreasonable and an abuse of discretion and that the reason stated for the denial was not a valid ground therefor.

Respondent, in its answer, denies these allegations and sets forth that the proposed new location at 384 Main Street is on the same (north) side of the street and in the same block (between Winans and North Walnut Street) as another similar licensed premises at 366 Main Street and that there is no need for an additional license of that class there since that area is adequately served by the existing licensed premises at 366 Main Street.

This appeal was heard de novo pursuant to Rule 6 of State Regulations No. 15. One of the appellants (Evelyn Schengrund), Mr. Mack, a member and secretary of respondent Board, and Mr. Frankel, President of the objecting competitor at 366 Main Street, appeared and testified. In addition, the letters of objection received by respondent, a diagram and other exhibits were introduced in evidence.

From all of the evidence it appears that the license held by appellants (D-1) has been in existence since Repeal and has been located at either 363 or 361 Main Street (south side) since December 1933. Appellants have held the license jointly for 361 Main Street since 1945. Between 1942 and 1945 Evelyn Schengrund held the license. Appellants have leased said premises from the representatives of an Estate for short terms (2 to 3 years), the Estate being unwilling to rent for a longer term. It further appears that, since Repeal, another

plenary retail distribution license (held by objector Frankel Corporation) has been located in the same block but on the north side of Main Street, being at 372 until 1940 and at 366 from 1940 to date.

Main Street is a heavily traveled artery running through the heart of the City and the area involved is a shopping center near City Hall. Appellants' present premises at 361 Main Street are almost directly across Main Street from the Frankel premises at 366 Main Street, while the proposed new location at 384 Main Street is on the same (north) side of Main Street as the Frankel premises, ten stores away. The distance between the Frankel premises and appellants' present location at 361 Main Street, measured as a person would normally walk (to the nearest crosswalk at Winans Street where there is no traffic light) appears to be approximately the same as the distance between 366 and 384 Main Street. All three premises are on Main Street between North Walnut and Winans Street. The principal difference is that 361 is on the opposite side of Main Street from 366 while 384 and 366 are on the same side of Main Street.

Evelyn Schengrund testified that appellants seek the transfer because they can obtain a longer lease at the proposed new location and have off-street parking facilities not enjoyed at the present location. However, Mr. Frankel testified that appellants made no such claim at the hearing below and further testified that the only reason for moving given to respondent by Evelyn Schengrund was that she felt that she would be able to do more business. It is admitted that appellants are not being threatened with eviction by their landlord.

Secretary Mack testified that his reasons for voting to deny the transfer were as follows: the objections received; the lack of any letters favoring the transfer; the fact that Main Street is heavily traveled and difficult to cross with safety; the unwritten policy of the Board, rigidly adhered to, namely, to locate licenses geographically and not to issue two licenses of the same class on the same side of the street in any block; and his opinion that the Frankel license is sufficient to serve the need for a "package store" in that block. (After the hearing, by consent of counsel, it was shown that plenary retail consumption licenses with the "broad package privilege" exist in the same block with plenary retail distribution licenses. This does not alter the basic policy which, from the evidence, apparently has existed for many years.) Mr. Mack also testified that his opinion would have been the same, if no letters of objection had been received. He further testified that no transfer application similar to the application in question had ever been received by respondent.

Mr. Frankel testified that, when his corporation applied for a plenary distribution license in 1933 for premises on the south side of Main Street near Walnut Street, such application was denied because there was already a license of the same class on the same side of the street. He further testified that the local issuing authority had then suggested that he seek a location across the street; that he did so and that the license was then granted.

It would appear that counsel for the parties are in agreement with respect to the general principles involved. It is not contended that anyone has a right to the issuance or transfer of a license to sell alcoholic beverages. Indeed, the contrary has been well established. Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946); Biscamp v. Teaneck, 5 N. J. Super. 172 (App. Div. 1949). The decision as to whether or not a license will be transferred to a particular locality rests within the sound discretion of the local issuing authority in the first instance. Watson et al. v. Camden et al., Bulletin 1010, Item 1.

It is contended however, that a place-to-place transfer which does not increase the number of outlets for the sale of liquor in a particular area or does not aggravate the concentration of such outlets, should be granted. Counsel for appellant has cited in support of that contention Leonia Liquors, Inc. v. Leonia, Bulletin 766, Item 1; Juraska v. Perth Amboy, Bulletin 718, Item 5; Bivona v. Hock, 5 N. J. Super. 118 and other authorities.

As a general rule that proposition is sound and many more authorities could be cited in support thereof. However, none of those authorities involves the particular situation presented by this appeal. None of the authorities cited involved an express policy adopted by a local issuing authority with respect to the issuance or non-issuance of licenses in a particular area or at a particular location. Here, there seems to be no doubt that, since Repeal, the local issuing authority has had a policy (unwritten but none the less rigidly enforced) against the issuance of two licenses of the same class on the same side of the street in any block. Such policies have been recognized and upheld even though not reduced to writing or contained in a resolution or ordinance. Palmarozza v. Keansburg, Bulletin 190, Item 10 and cases there cited. See also Kemo v. Trenton, Bulletin 983, Item 2; Malloy v. Cape May, Bulletin 1010, Item 4.

The burden of establishing that respondent's action was erroneous and should be reversed rests with appellant. Rule 6 of State Regulations No. 15.

After a careful consideration of all of the evidence in this case I find that the appellants have failed to sustain that burden.

Accordingly, it is, on this 6th day of July, 1954,

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

WILLIAM HOWE DAVIS
Director.

5. DISCIPLINARY PROCEEDINGS - LEWDNESS AND IMMORAL ACTIVITIES (INDECENT SONGS, INDECENT STORIES, INDECENT LANGUAGE) - HOSTESS - PRIOR RECORD NOT CONSIDERED BECAUSE NO "LOCUS POENITENTIAE" INTERVENED - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against JAMES JOSEPH TUMULTY 316 North Avenue Dunellen, N. J., Holder of Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Dunellen.	CONCLUSIONS AND ORDER

William K. Miller, Esq., Attorney for Defendant-licensee.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant pleaded not guilty to the following charges:

"1. On Monday night, December 21, 1953 and Saturday night, January 16 and early Sunday morning, January 17, 1954, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises in that on all of the above mentioned dates female entertainers performed in a lewd, indecent and immoral manner and sang songs, recited stories, uttered words and phrases and made gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning and on the last two above mentioned dates, male entertainers uttered words and phrases and made gestures and movements having lewd, lascivious, indecent, filthy, disgusting and suggestive import and meaning; in violation of Rule 5 of State Regulations No. 20.

"2. On Saturday night, January 16 and early Sunday morning, January 17, 1954, you allowed, permitted and suffered Adele ---, also known as Adele ---, a female employed on your licensed premises, to accept beverages at the expense of and as a gift from customers and patrons; in violation of Rule 22 of State Regulations No. 20."

At the hearing herein, six ABC agents testified in support of the charges. In the following recitation of and comment on their testimony their names will not be used but, instead, they will be referred to by the initial letter of their last names and each will be designated "investigator."

Investigators "F," "R," and "M," testified with respect to their visit to defendant's licensed premises on December 21, 1953, and such testimony may be summarized as follows:

They entered defendant's barroom at approximately 9:20 p.m. and took seats at the bar. At 9:45 p.m. a female entertainer went to a small stage inside the bar and played the piano, sang songs to her own accompaniment and told jokes for approximately thirty minutes. After another thirty minutes she returned to the piano where she again played, sang and told jokes for a similar period. The licensee, who was not there during her first performance, witnessed the second performance. The songs were standard popular songs and unobjectionable. The same cannot be said of some of her jokes and other remarks. No useful purpose would be served by repeating them here. Suffice it to say that they were indecent and immoral and have no place upon licensed premises. Re Sickles, Bulletin 977, Item 6.

Investigators "G," "C," and "H," testified with respect to their visit to defendant's premises on the night of January 16, and early morning of January 17, 1954, and such testimony may be summarized as follows:

They entered defendant's barroom at approximately 9:30 p.m. on January 16, 1954, and took seats at the bar in front of a small stage in the rear of the barroom. At approximately 10:15 p.m., a female (Adele) entered and was embraced by three males, one of whom (alternately called "George" and "Georgiana") placed one hand on her breasts and one on her buttocks. At 10:30 p.m., this female and two males (a drummer and an organist) went to the rear stage where the female sang songs accompanied by the two musicians. She sang some standard popular songs but also sang choruses of some of these songs using words which changed the entire meaning. For example, in singing an extra chorus of "A good man nowadays is hard to find," she used a slang expression connoting sexual intercourse. In other songs and in commenting on them she used other slang expressions referring to sexual organs, perversion and other sexual activity.

The investigators also testified that, while she was on the bandstand male patrons passing by grabbed her leg or patted her buttocks and that, on one occasion, the organist grabbed her buttocks and she reached over to touch his privates.

When she concluded her first performance at 11:00 p.m., she went to the bar where she had a drink purchased for her by a male patron. The licensee was seated nearby.

At 11:20 p.m., she again sang songs and otherwise entertained from the stage in the rear of the barroom. While the songs were different they were of the same general nature as those included in the first performance. As she left the stage and approached the bar one of the investigators bought her a drink of Canadian Whiskey, which was served by one of the bartenders who took a dollar bill from the bar in front of the investigator, rang up seventy cents on the cash register and returned the change. After the female had consumed a part of her drink the investigators identified themselves as agents and seized the balance of the drink. Chemical analysis revealed that the drink was an alcoholic beverage.

On behalf of the licensee both female entertainers, the licensee and the organist appeared and testified.

The first entertainer testified that she had sung songs and told jokes at defendant's licensed premises on the night of December 21, 1953. She admitted telling some of the jokes attributed to her by the investigators but denied that they were objectionable. She sought to explain that she had read them in a well known "joke book" and that they could be heard in popular "night clubs." She denied some of the other stories and remarks contained in the testimony of the investigators.

The other entertainer testified that she had performed at defendant's licensed premises with the drummer and organist on the night of January 16, 1954. She too admitted some of the songs and jokes attributed to her by the investigators and also denied that they were objectionable. She, at first, denied changing any of the words to the songs but later admitted that she had sung one "standard" chorus and one "show" chorus of some of the songs. She admitted knowing the meaning and import of some of the words used but denied knowledge of some others. She admitted that at least one of the jokes had two meanings but testified that she had entertained in numerous places using the same material and generally denied that any of it was indecent. She also denied that she had permitted or engaged in any liberties involving anyone's person. She also denied that anyone but the licensee bought her a drink and, although admitting drinking with investigator "G," sought to claim that the drink was not paid for by anyone but was put on her account.

The licensee admitted that he had entered his barroom at 11:00 p.m., on the night of December 21, 1953, but denied that there was anything wrong with the entertainment provided on that night. He also admitted entering his barroom at 11:30 p.m. or 11:40 p.m. on January 16, 1954, and he and the organist both testified that the songs which were sung that night were "standard" popular songs and that there was no improper physical conduct indulged in between the entertainers or patrons that night. The licensee also denied that any drinks had been offered to the female entertainer and testified that her drinks were charged to her and paid for by her each Sunday. However, no proof was submitted to substantiate this claim.

Over the objection of defendant's counsel, the Hearer admitted in evidence, provisionally and for my ultimate ruling as to its admissibility, a "Dictionary of the Underworld" to show the meaning of certain words and phrases. I need not rule on the question of its admissibility because I have completely disregarded it. Some of the words and phrases contained in some of the songs and jokes are obviously indecent, immoral and suggestive within the meaning of Rule 5 of State Regulations No. 20, to say the least.

After carefully considering all of the evidence in this case I find defendant guilty of so much of charge (1) as pertains to the stories, words and phrases but not guilty as to that portion of the charge which pertains to gestures and movements because the latter have not been established by the requisite preponderance of the evidence.

I find defendant guilty as to charge (2).

Defendant has a prior record. His license was suspended by the then Deputy State Commissioner for sixty days, effective February 24, 1947, for possession of illicit liquor (Re Tumulty, Bulletin 742, Item 8; Bulletin 749, Item 2.) Since that violation is dissimilar in nature and is beyond the five-year period, I will not consider it in arriving at the penalty herein. Re Kicey, Bulletin 1009, Item 9. In addition, defendant's license was suspended by the local issuing authority for twelve days, effective February 8, 1954 for sale of alcoholic beverages to a minor. That suspension was stayed by my order dated February 1, 1954, pending appeal, and has now been reimposed, effective July 7, 1954, by order entered simultaneously herewith. However, because no locus poenitentiae intervened, the present violation will not be considered in the same manner in which a dissimilar violation within the five-year period would be considered. In other words, no period of suspension has yet been served by defendant following the finding of guilt on the "minors" charge and thus it cannot be said that, following a period of suspension, still unregenerate, defendant suffered a subsequent violation and adjudication. Cf. Re Capestro and Friedlander, Bulletin 1000, Item 9; Re Drayman, Bulletin 946, Item 2.

Under all of the circumstances, and especially since the incident which constitutes the violation in charge (2) was isolated and involved no solicitation or other aggravating circumstance, I shall suspend defendant's license for twenty-five days. This suspension will become effective at the expiration of the twelve-day suspension reimposed in Tumulty v. Dunellen, decided simultaneously herewith.

Accordingly, it is, on this 30th day of June, 1954,

ORDERED that Plenary Retail Consumption License C-4, issued by the Mayor and Council of the Borough of Dunellen to James Joseph Tumulty, effective July 1, 1954, for premises 316 North Avenue, Dunellen, be and the same is hereby suspended for twenty-five (25) days, commencing at 1:00 a.m. July 19, 1954, and terminating at 1:00 a.m. August 13, 1954.

WILLIAM HOWE DAVIS
Director.

6. ACTIVITY REPORT FOR JUNE 1954

ARRESTS:
Total number of persons arrested - - - 21
- Licensees and employees - - - 9
- Bootleggers - - - 12

SEIZURES:
- Motor vehicles - cars - - - 3
- Stills - over 50 gallons - - - 2
  - 50 gallons or under - - - 4
- Mash - gallons - - - 2,500.00
- Distilled alcoholic beverages - gallons - - - 25.00
- Wine - gallons - - - 1.89
- Brewed malt alcoholic beverages - gallons - - - 9.65

RETAIL LICENSEES:
- Premises inspected - - - 1,180
- Premises where alcoholic beverages were gauged - - - 663
- Bottles gauged - - - 12,390
- Premises where violations were found - - - 119
- Violations found - - - 161
  - Type of violations found:
    - Unqualified employees - - - 78
    - Reg. #38 sign not posted - - - 10
    - Disposal permit necessary - - - 6
    - Prohibited signs - - - 4
    - Other mercantile business - - - 4
    - Improper beer taps - - - 2
    - Probable front - - - 1
    - Other violations - - - 56

STATE LICENSEES:
- Premises inspected - - - 8
- License applications investigated - - - 711

COMPLAINTS:
- Complaints assigned for investigation - - - 410
- Investigations completed - - - 439
- Investigations pending - - - 129

LABORATORY:
- Analyses made - - - 145
- Refills from licensed premises - bottles - - - 3
- Bottles from unlicensed premises - - - 30

IDENTIFICATION BUREAU:
- Criminal fingerprint identifications made - - - 16
- Persons fingerprinted for non-criminal purposes - - - 436
- Identification contacts made with other enforcement agencies - - - 332
- Motor vehicle identifications via N. J. State Police teletype - - - 3

DISCIPLINARY PROCEEDINGS:
- Cases transmitted to municipalities - - - 12
  - Violations involved:
    - Sale to minors - - - 6
    - Sale to non-members by club - - - 2
    - Permitting gambling (numbers) on prem. - 2
    - Sale during prohibited hours - - - 1
    - Permitting females at bar (local reg.) - 1
- Cases instituted at Division - - - 13
  - Violations involved:
    - Sale during prohibited hours - - - 5
    - Permitting immoral activity on premises - 2
    - Hindering investigation - - - 2
    - Fraud and front - - - 2
    - Conducting business as a nuisance - - - 1
    - Possessing contraceptives on premises - - 1
    - Possessing illicit liquor - - - 1
    - Sale outside scope of license - - - 1
    - Sale on election day - - - 1
    - Permitting brawl on premises - - - 1
    - Mislabeled beer taps - - - 1
- Cases brought by municipalities on own initiative and reported to Division - - - 14
  - Violations involved:
    - Sale during prohibited hours - - - 6
    - Sale to minors - - - 4
    - Permitting brawl on premises - - - 3
    - Conducting business as a nuisance - - - 2
    - Permitting hostesses on premises - - - 2
    - Permitting foul language on premises - - 2
    - Sale to intoxicated persons - - - 1
    - Permitting bookmaking on premises - - - 1
    - Permitting prostitutes on premises - - - 1
    - Permitting immoral activity on premises - 1
    - Licensee working while intoxicated - - - 1

HEARINGS HELD AT DIVISION:
Total number of hearings held - - - 36
- Appeals - - - 5
- Disciplinary proceedings - - - 8
- Eligibility - - - 7
- Seizures - - - 11
- Tax revocations - - - 3
- Applications for license - - - 2

PERMITS ISSUED:
Total number of permits issued - - - 1,166
- Employment - - - 469
- Solicitors' - - - 32
- Disposal of alcoholic beverages - - - 68
- Social affairs - - - 413
- Miscellaneous - - - 184

WILLIAM HOWE DAVIS
Director.

Dated: July 1, 1954.

7. DISCIPLINARY PROCEEDINGS - SALE ON ELECTION DAY - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against ANNA PATRON & MARIAN WETZEL 450 Washington Street Newark 2, N. J., Holders of Plenary Retail Consumption License C-652 for the 1953-54 and 1954-55 licensing years, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark.	CONCLUSIONS AND ORDER

Giuliano & Giuliano, Esqs., Attorneys for Defendant-licensees.
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to a charge alleging that on Tuesday, June 15, 1954, while the polls were open for voting at a special municipal election held in the City of Newark, they sold and permitted the consumption of alcoholic beverages on their licensed premises, in violation of Rule 2 of State Regulations No. 20.

The file herein discloses that on June 15, 1954, at about 3:30 p.m., ABC agents entered defendants' licensed premises by a rear door and observed therein several men consuming alcoholic beverages. The agents made known their identity and seized three partially filled glasses of beer and a glass containing whiskey, from the bar in front of the patrons. The bartender gave the agents a sworn statement wherein he admitted that he had been selling alcoholic beverages for an hour prior to the agents' arrival.

It is high time all retail licensees knew that Rule 2 of State Regulations No. 20 means exactly what it says in prohibiting the sale, service, delivery or consumption of alcoholic beverages at their licensed premises during the polling hours on election days. The public purpose being served by such a regulation is self-evident. On election days the electorate should be encouraged to cast their ballots for their favorite candidates, not their favorite drinks.

In fairness to the defendants, I may note that they have no prior adjudicated record. I shall suspend their license for fifteen days, less five for the plea, leaving a net of ten days. Re Guadagno, Bulletin 909, Item 6; Re Bane, Bulletin 950, Item 4. Cf. Re Jaffe, Bulletin 994, Item 10.

Accordingly, it is, on this 2nd day of July, 1954,

ORDERED that Plenary Retail Consumption License C-652, issued for the 1954-55 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Anna Patron and Marian Wetzel, for premises 450 Washington Street, Newark, be and the same is hereby suspended for a period of ten (10) days, commencing at 2:00 a.m. July 12, 1954, and terminating at 2:00 a.m. July 22, 1954.

WILLIAM HOWE DAVIS
Director.

8. ADVERTISING - MALT BEVERAGES NOT TO BE PRICE-ADVERTISED ON AND AFTER JULY 15, 1954.

IMPORTANT NOTICE OF RULING

TO ALL RETAIL LICENSEES (EXCEPT CLUB LICENSEES) AND MANUFACTURERS AND WHOLESALERS OF MALT ALCOHOLIC BEVERAGES:

MALT ALCOHOLIC BEVERAGES MAY NOT BE PRICE-ADVERTISED IN ANY PERIODICAL, PUBLICATION, CIRCULAR, HANDBILL OR DIRECT MAILING PIECE, EITHER DIRECTLY OR INDIRECTLY, ON AND AFTER JULY 15, 1954.

It is revealed in a flood of advertising matter in newspapers and other publications that predatory price wars among retail licensees who sell malt alcoholic beverages (beers and ales) in original containers have become so rampant in recent weeks as to endanger the public welfare and may well lead to undesirable practices at the retail level violative of the basic principles of the Alcoholic Beverage Law.

Since malt alcoholic beverages are presently excepted from the Rules of State Regulations No. 30, which make mandatory the listing of brands of alcoholic beverages in the Minimum Consumer Resale Price Pamphlet (no item may be sold below the prices listed therein), the current spectacle of wild and uncontrolled price competition of beers in original containers among retail licensees with the resulting dangerous impact and undue persuasions upon the consumer public makes drastic remedial action necessary.

In order to effectuate my determination to maintain an orderly distribution of all alcoholic beverages among consumers with equal fairness to all retailers, it is my ruling that on and after July 15, 1954, no brand of malt alcoholic beverage (including private brands owned or controlled by a retailer or exclusive brands confined to or distributed by one retailer) may be price-advertised at retail (including direct or indirect reference to price) in any periodical, publication, circular, handbill or direct mailing piece in this State by a manufacturer, wholesaler or retailer.

Violation of the ruling will be punishable by suspension or revocation of license.

WILLIAM HOWE DAVIS
Director.

Dated: July 6, 1954.

9. STATE LICENSES - NEW APPLICATIONS FILED.

Land and Sea Service Co., Inc.
Inlet Drive, Point Pleasant Beach, N. J.
Application filed July 9, 1954 for Plenary Retail Transit License.

Russell A. Tonks, Sr. and Russell A. Tonks, Jr.
Inlet Drive, Point Pleasant Beach, N. J.
Boat "Yank Jr."
Application filed July 9, 1954 for Plenary Retail Transit License.

Dorothy C. Noe
Ken's Landing, Point Pleasant, N. J.
Application filed July 14, 1954 for Plenary Retail Transit License.

WILLIAM HOWE DAVIS
Director.

10. RETAIL LICENSEES - NO MACHINE MADE SUBSTITUTE FOR DIRECT PERSONAL SUPERVISION IN SALE OF DRINKS - SELF-SERVICE TAVERNS PROHIBITED.

July 8, 1954

Dear Sir and Madam:

You hold a plenary retail consumption license with the so-called broad package privilege for your premises at the above address.

In your letter of July 1st, received on the 6th, you ask whether you may operate a self-service tavern at your premises with the drinks being "dispensed by individual coin slot machines from each original bottle". You say that the tavern would be under the general supervision of a "manager and cashier".

The answer to your scheme is an emphatic No. In Bulletin 214, Item 8, it was ruled that self-service of alcoholic beverages at any type of retail licensed establishment was prohibited. In Bulletin 767, Item 15, this ruling was relaxed to a limited degree some years ago with respect to package goods at a liquor store type of establishment where, among other things, the patron, although merely picking up the package himself, must then consummate the sale with a competent adult employee before leaving the store.

But the foregoing restriction against self-service has never been relaxed or changed with respect to self-service of drinks. Nor do I think that it should be. Drinks should be served by the tavernkeeper or his employees, and not by an impersonal machine operated at the whim or caprice of a patron dropping a coin. I have heard of machines that can levitate, gyrate, formulate, calculate, and almost cogitate, but I have not yet heard of a machine that can say "no" to a minor or a drunk or any other person who should not be served.

If it's the custom of "bending the bartender's ear" that you want to avoid, just hire unsympathetic bartenders but don't abdicate your responsibility as a tavernkeeper.

Very truly yours,

William Howe Davis
Director.