

Division of

**ALCOHOLIC
BEVERAGE
CONTROL**

Bulletin

TRW Complex, Bldg. 20, 200 Woolverton Street, CN 087, Trenton, New Jersey 08625-0087

BULLETIN 2457

May 15, 1991

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May 15, 1991

1. **APPOINTMENT OF CATHERINE A. COSTA AS DIRECTOR OF THE
DIVISION OF ALCOHOLIC BEVERAGE CONTROL**

On November 19, 1990, after nomination by Governor Jim Florio and unanimous advice and consent of the New Jersey State Senate, Catherine A. Costa was sworn in by Attorney General Robert J. Del Tufo as the 13th Director of the Division of Alcoholic Beverage Control in the Department of Law & Public Safety. Director Costa is the first female Director of the Division and brings to the office a wealth of prior civic and governmental experience.

Director Costa was the first woman elected to the Burlington County Board of Chosen Freeholders, where she served 12 years. She was the Board's Director in 1975. She has served as president of the State Association of Conservation Districts, and as chairman of both the Willingboro Zoning and Local Assistance Boards. She was the founder of the Willingboro Library in 1959.

Director Costa served one term in the New Jersey Assembly before taking her seat in the New Jersey Senate on January 10, 1984. She was re-elected in 1987 and held that office until she resigned to accept the appointment as Director of the Division of Alcoholic Beverage Control.

Director Costa brings to the office an intensive awareness of issues involving consumer concerns and alcoholic beverage control, having exercised the responsibilities as Freeholder Director in charge of the Burlington County Office of Consumer Affairs for 10 years and as Chairman of the New Jersey Alcoholic Beverage Control Study Commission from 1984 to 1990.

2. NOTICE TO CLUB LICENSEES - CHANGE IN POLICY - CLUB LICENSEES CAN NOW REQUEST CONVERSION OF LICENSE SUSPENSIONS TO A MONETARY PENALTY UNDER N.J.S.A. 33:1-31 - PRIOR BULLETIN 2431, ITEM 7 IS SUPERSEDED AND BULLETIN 2453, ITEM 2 IS MODIFIED

This notice shall formally identify a change in Division policy and will discontinue a previous internal Division requirement that Club licensees must be suspended upon a determination of a violation of the Alcoholic Beverage Control Act or the regulations promulgated thereunder.

In Bulletin 2431, Item 7 (June 14, 1983), former Director John F. Vassallo, Jr., announced his policy to not accept monetary offers in compromise in lieu of suspension or revocation of club licenses. His reasoning was predicated upon the status of Club licensees as not-for-profit organizations and the recognition that monetary penalties are computed in the Division by assessing the equivalent loss of profits that would be gained if the license was actually suspended. This position set aside the prior Division policy which allowed Club licensees to pay, in proper cases, a monetary penalty in lieu of serving a suspension of license. (See, e.g., IMO Disciplinary Proceedings Against Browns Mill Memorial Post VFW 6805, Bulletin 2391, Item 3 (March 25, 1980).)

Then Director Vassallo also extended his policy modification to the Notice of Inspection program in Bulletin 2453, Item 2 (October 31, 1988). As a consequence, even in instances of minor infractions, Club licensees would have to have their license privileges suspended rather than be given the option available to all other retail licensees of paying a monetary penalty, which in many instances could be quite modest.

The law which authorizes the Director to accept monetary penalties provides:

"The director may, in his discretion and subject to rules and regulations, accept from any licensee an offer in compromise in such amount as may in the discretion of the director be proper under the circumstances in lieu of any suspension of any license issued by the director or any other issuing authority." (emphasis supplied.) N.J.S.A. 33:1-31.

While the policy of the Division is to charge as a penalty the dollar "profit" which the Division calculates a licensee would lose if it were closed by a suspension, that practice is not required from the terms of the statute. Additionally, from the law's plain

language, it appears clear that the legislature did not intend to place an artificial restriction upon any particular class of licensee; but rather, the monetary penalty alternative is available to all licensees in the discretion of the Director.

I have been informed that, in many instances, requiring a suspension of a club license often causes a severe disadvantage to club members who have had no connection with the violation. I do not see why Club licensees should be discriminated against in this regard, since the Division will, in all other appropriate cases, accept monetary penalties from any other type of licensee. The Division's practice is to calculate a "profit" per day for non-club retail licensee and accept that penalty in lieu of an actual license closing. While that procedure may not be completely appropriate and applicable to Club licensees, there are other methods of arriving at standardized, reasonable financial penalties.

Accordingly, I shall rescind the previous policy which required Club licensees to serve suspensions and shall order the return to the prior practice of judging, with proper application of Division guidelines, each licensee's penalty on its own merits. The artificial barrier imposed upon Club licensees is abolished and Club licensees shall now be afforded the same opportunities to apply to pay a monetary offer as other licensees under similar circumstances.

Club licensees that seek the opportunity to pay a monetary penalty in lieu of license suspensions will be required to submit a copy of their last filed Federal Income Tax return, and/or a verified accounting breakdown of the gross receipts made from all sales of alcoholic beverages, as well as a statement of the cost of all alcoholic beverages purchased. Additionally, Club licensees should further submit an affidavit setting forth the size of their membership and the amount of their entrance/initiation fees and their yearly dues. These figures shall be used for purposes of assessing the monetary penalty amount, in conjunction with any mitigating or aggravating circumstances that may apply.

Additionally it should be noted that Club licensees will also be eligible to dispose of minor disciplinary infractions by paying a fine in lieu of the institution of disciplinary proceedings, or by paying the precedent fines established under the Notice of Inspection fine schedule.

This policy took effect December 7, 1990. Any Club licensee who subject to pending disciplinary proceedings was advised of the this change in policy and was afforded the opportunity of submitting financial documentation for consideration of paying a

monetary penalty or fine. All future administrative action involving a Club licensee will be subject to this policy modification. Administrative Bulletin 2431, Item 7 is superseded and Bulletin 2453, Item 2 is modified to the extent it is inconsistent with the policy announced herein.

3. **NOTICE TO LICENSING AUTHORITIES AND LAW ENFORCEMENT PERSONNEL
RELATIVE TO DUTIES, POWERS AND REGULATIONS CONCERNING LICENSE
ISSUANCE, TRANSFER AND RENEWAL**

Periodically it is appropriate to review various provisions of the Alcoholic Beverage Control Act and regulations and compare your system of license control and enforcement oversight with the various principles and requirements that follow. This is particularly important at renewal time when all retail licenses in your community must be reviewed, reassessed for compliance with law and either renewed, renewed with Special Conditions under N.J.S.A. 33:1-32, or denied renewal.

While some of this material may be presented in greater or lesser detail to assist you in matters that may require judicial type determinations, even a cursory review should identify concepts that you should be familiar with in performing your duties.

If you have any questions, please do not hesitate to call me or my staff. Governor Jim Florio and I welcome your inquiries and appreciate your interest as a partner in effective and efficient alcoholic beverage control for the health, safety and welfare of all New Jersey residents and its visitors.

I. ISSUING AUTHORITIES' DUTIES, OBLIGATIONS AND POWERS

The governing body of a municipality, or its duly delegated municipal ABC board, has the duty to administer the issuance, transfer and renewal of all retail licenses. N.J.S.A. 33:1-19. The only exceptions in the "retail" category are Plenary Retail Transit licenses that allow sale while in transit for trains, planes, boats or limousines under N.J.S.A. 33:1-12 and any type retail license (except club licenses) where a member of the local issuing authority body has an interest, directly or indirectly, in the retail license, N.J.S.A. 33:1-20. In those cases the Director assumes jurisdiction over any issuance, renewal or transfer.

Some of the specific obligations set forth in N.J.S.A. 33:1-24 include:

- (1) acceptance and processing of applications and fees for license issuance, transfer and renewal;
- (2) investigation of all applicants to insure compliance with ABC laws and regulations and applicable local laws;
- (3) inspection of premises sought to be licensed to insure compliance with State and local laws as to permitted use and location;
- (4) conduct of appropriate public hearings, including any hearings required if there are objections filed by the public or the application may be denied;
- (5) maintenance of proper records and minutes of all activities involving Ordinance adoptions and Resolutions concerning licensing and disciplinary actions; and
- (6) enforcement of the ABC law and regulations within the municipality relating to retail licensees conduct and use on licensed premises.

To facilitate the above, the issuing authority is empowered by N.J.S.A. 33:1-35 to:

- (a) inspect and search licensed premises, any premises sought to be licensed, and the books, records, documents and papers of licensees or applicants for licenses referable to the licensed business;
- (b) require licensees or applicants for license to exhibit any of the aforesaid documentation, and be questioned under oath about their licensed business;
- (c) issue subpoenas to produce records or appear for questioning and to inspect licensed premises without search warrant for ABC reasons; and
- (d) penalize the hindering of any such investigation, inspection or search through a disciplinary proceeding pursuant to N.J.S.A. 33:1-31

II. FACTORS TO CONSIDER IN LICENSE ISSUANCE, RENEWAL OR TRANSFER

The issuing authority must investigate to see that the individuals exercising the beneficial interest in a liquor license are qualified, that the premises licensed are appropriate, that applicable regulations are observed, and that application forms are properly completed. Concerning these factors, the following should be understood.

A. Qualifications for Licensure

There are seven basic requirements for an individual to hold an interest in a liquor license, either as a sole proprietor, member of a partnership or stockholder of a corporate licensee:

1. A person must be 18 years of age or older (N.J.S.A. 9:17B-1);
2. A person cannot have been convicted of a crime involving moral turpitude. This does not include disorderly persons offenses and this disqualification may be removed under appropriate circumstances by the Director, ABC (N.J.S.A. 33:1-25 and 33:1-31.2);
3. A person must have a reputable character and would be expected to operate the licensed business in a reputable manner. This discretionary concept could give weight to prior disorderly persons offenses, known organized crime history, or a reasonable belief that the applicant is "fronting" as a licensee for some other undisclosed and usually disqualified person. Narducci & Testa v. Atlantic City, Bulletin 2305, Item 3; Zicherman v. Driscoll, 133 N.J.L. 586 (Sup. Ct. 1946);
4. Unless covered by statutory exceptions, a person may not have an interest in more than a total of two (2) retail licenses (See N.J.S.A. 33:1-12.31 for a full listing of exceptions, but the most common are restaurants, hotels and bowling alleys with more than 20 lanes);
5. A person cannot hold an existing interest in any other non-retail class of liquor license like a wholesale or supplier type license, except a hotel, and also hold or acquire a retail license (N.J.S.A. 33:1-43);

6. A person is ineligible for licensure if within the prior 2 years he had an interest in a license that was revoked, with a permanent ban if that person had an interest in licenses that were revoked twice (N.J.S.A. 33:1-31); and
7. A person cannot be a regular police officer, peace officer or any other person whose powers and duties include the enforcement of the alcoholic beverage law (N.J.A.C. 13:2-23.31).

B. Review of Licensed Premises

The following basic concepts are to be considered, for both currently licensed premises and new or expanded premises sought to be licensed, to insure consistency with applicable laws.

1. A license is required for each specific place of business, and the operation and effect of every license is confined to the licensed premises (N.J.S.A. 33:1-26). This means all areas where sale, service or solicitation of alcoholic beverages will take place must be described in the license application, whether inside a building or covering outside adjacent areas, and must be first approved by the issuing authority;
2. The licensee must have a possessory interest in the licensed premises, (Hershorn v. Estelle Manor, Bulletin 1326, Item 1). Basically that means that the licensee must either own or have a lease covering its right to control and possess the licensed premises;
3. Absent "grandfather" provisions (the license existed at the location before the Church or school) or the Church or school waives and approves the location, no license can be located within 200 feet of any church, public school or private school conducted not for profit, N.J.S.A. 33:1-76. The 200 feet is measured in the normal way a pedestrian would lawfully walk from the nearest entrance of the church or school to the nearest entrance of the premises sought to be licensed. See Karam v. West Orange ABC, 102 N.J. Super. 291 (App. Div. 1968); Presbyterian Church of Livingston v. Div. of ABC, 53 N.J. Super. 271 (App. Div. 1958);

4. No premises can be licensed in contravention of a municipal ordinance. Petrangeli v. Barrett, 33 N.J. Super. 378 (App. Div. 1954). A transfer of license can be approved, however, subject to ultimate compliance with, or variance from, local building or zoning ordinances. Holiday Inn v. Paramus, Bulletin 2315, Item 3; and
5. All local distance-between-premises ordinances must be satisfied, or the license may thereafter be subject to cancellation proceedings in consequence of an improvident transfer. Re City Hall Sandwich Shop, Inc., Bulletin 2334, Item 1.

C. Miscellaneous Selected Applicable Statutes and Regulations

1. New license issuance - when permissible to issue new licenses in a community, the procedure is governed by N.J.S.A. 33:1-19.1 through 19.6 and N.J.A.C. 13:2-2.1 et seq. Review of the holdings in W.C. Three, Inc. v. Washington Twp., 142 N.J. Super. 291 (App. Div. 1976) and Blanck v. Borough of Magnolia, 38 N.J. 484 (1962) may be of assistance in such situation.
2. Renewal of Licenses - the concept of renewal is defined in N.J.S.A. 33:1-12.26 and provides that to consider a license as "renewed", the license application must cover the immediately following license term, apply to the same premises and be issued to same holder of expiring license.

The issuing authority has the authority to accept applications to renew licenses until July 30th of any given year, even though the privilege to operate under the license expires the preceding June 30th unless extended by ABC permit. Thereafter, any late renewal (technically called a new license upon failure to timely renew) can only be authorized if a petition is filed with the Director before September 29th of such year, N.J.S.A. 33:1-12.18. Absent timely renewal or further Director's authorization by Special Ruling under that law, the license lapses.

An inactive license is a license that is not being actively used. It may still cover a licensed location or it may not have any approved licensed premises (pocket

license). If that license has not been in substantial full-time operation in connection with a licensed premises for the two immediately preceding license terms, it cannot be renewed by the municipality unless the Director, in a Special Ruling made after a hearing, finds good cause to authorize a further application for renewal. N.J.S.A. 33:1-12.39.

Attention must be given to N.J.A.C. 13:2-2.1 and the various objection, hearing, and decision making provisions and timetables covering renewal applications. Specific note is directed to the provisions of N.J.A.C. 13:2-2.9 which include the following requirements that must be set forth in any renewal Resolution. These are also repeated in N.J.A.C. 13:2-7.7 in dealing with transfer approvals.

No application can be approved unless the issuing authority affirmatively finds and certifies in its Resolution (emphasis added) that:

- (i) the submitted application form is complete in all respects;
- (ii) the applicant qualifies for licensure according to all statutory, regulatory and local governmental ABC laws and regulations; and
- (iii) the applicant has disclosed, and the issuing authority has reviewed, the source of all funds used in the purchase of the license and the licensed business (new license issuance or transfer situations); or has ascertained and reviewed the source of any additional financing obtained in the previous license term for use in the licensed business (renewal situations).

With respect to club licenses, N.J.A.C. 13:2-8.6 was revised to require that the renewal Resolution contain all of above with an additional affirmative finding in the Resolution that:

- (i) the submitted application is complete in all respects, including submission of the club member list;
- (ii) the officers and directors of the club are qualified according to all statutory,

regulatory and local governmental ABC laws and regulations; and

- (iii) the club maintains all records required by N.J.A.C. 13:2-8.8 (special events open to non-club members) and N.J.A.C. 13:2-8.12 (true books of account for receipts and disbursements).

3. Transfer of licenses - the procedure is governed by N.J.S.A. 33:1-26 and N.J.A.C. 13:2-7.1 et seq. A review of the regulations for publication, objection, hearing, decision-making, and the timetables which cover any action on transfer applications should be made to insure full notice to the public and compliance with law and regulations.

Under N.J.A.C. 13:2-7.7, any Resolution approving a transfer of license must also contain the affirmative findings as to investigation and qualification of the applicant as previously set forth concerning renewals of licenses.

D. License Application Form

The requirement to truthfully and accurately complete the license application form is a requirement of law. Any person who shall knowingly misstate a material fact, under oath, on an application is guilty of a misdemeanor. Any other fraud, misrepresentation, false and misleading statements, evasions or suppression of material facts in securing a license is grounds for suspension or revocation of license. N.J.S.A. 33:1-25.

Careful review of the application form is critical to properly insure compliance with law and regulations. The following are suggested steps that will enable you or your staff to systematically and fully review all license applications for renewal, transfer, or stockholder change.

1. The application should be first checked to make sure all questions are fully and completely answered.
2. Check to see that the appropriate municipal annual renewal license fee, or transfer application fee, and \$50.00 State application fee (certified check or money order) accompanies the application and are signed and submitted by the licensee of record.

3. Verify that the application is signed by a person who is an owner, partner, or proper corporate official identified in the application.
4. Forward the original of the license application and \$50.00 State license fee to the Licensing Bureau of the Division of Alcoholic Beverage Control.
5. Review the specific answers given to questions on the application, and you may be able to identify situations where the licensee is not accurately disclosing information. For example, the application may list the license as active and you know they are closed, or the trade name under which the licensee does business is omitted or changed.
6. Review those questions on the license application which address qualifications for licensure and further investigate answers which may disqualify a person or licensee. For example, if an application shows that an owner has been convicted of a crime or has an interest in more than two retail licenses, the licensee should be required to further explain these facts and verify their qualification to have an interest in the license.

After the application and qualifications are reviewed, the issuing authority should obtain any police recommendations or reports that deal with the applicant or concern the licensee's actions during the past license term.

The clerk must acknowledge any written objections that are filed and establish a hearing date when the application will be considered and the objector will be afforded an opportunity to be heard. If the municipality is possibly considering denial of the application, even if no written objections are filed, there is a requirement that a hearing be held with no less than five business days notice to the applicant. The hearing must be stenographically or electronically recorded.

Any action on the application must be reduced to written Resolution and served on the applicant or licensee personally or by certified mail. If the application is denied, the reasons for that action should be contained in the Resolution. All Resolutions should be sent to the Licensing Bureau of the Division on a daily basis.

Lastly, when dealing with changes that may occur during the license term to any fact contained on an existing license

application form, the licensee is required to file with the municipality amendments to the application. These changes must be filed within 10 days of the occurrence. N.J.S.A. 33:1-34 and N.J.A.C. 13:2-2.14. When the change involves a corporate licensee, publication of notice of stockholder change is required. N.J.A.C. 13:2-2.15 and 2.16. That amended application should be reviewed just as if it was an original application for renewal or transfer. While no Resolution is required, a full and complete review of qualifications must be done. If information is disclosed that would disqualify the licensee, disciplinary charges should be initiated

It is hoped that this information will be a reference guide to assist you in fulfilling the obligations and mutual goals of a fair, impartial and stringent administration and supervision of all alcoholic beverage activity in your community. In a true cooperative spirit and relying on your diligence, knowledge and experience, we can both achieve our mission and serve the best public interests.

Catherine A. Costa
Director
Division of Alcoholic Beverage Control

Dated: February 25, 1991

4. NOTICE TO RETAIL LICENSEES - MODIFICATION OF LICENSE APPLICATION FORM TO REQUIRE IDENTIFICATION OF NEW JERSEY SALES TAX CERTIFICATE OF AUTHORITY NUMBER

Notice is given that the 12 page license application used for the issuance, transfer and renewal of alcoholic beverage licenses, and the short form renewal application certification and questionnaire are being modified to reflect the requirement that the licensee or applicant include its New Jersey Sales Tax Certificate of Authority Number.

Since all licensees selling alcoholic beverages, either in original sealed containers for off-premises consumption or by the drink for on-premises consumption, must collect and remit the New Jersey 7% sales tax on those transactions, it is a requirement of law that such Certificate of Authority be possessed by all licensees. Failure to register with the Division of Taxation and

acquire a Sales Tax Certificate of Authority Number is a basis to initiate an administrative disciplinary proceeding that could lead to suspension or revocation of license.

Any questions concerning the procedure to register and obtain the Certificate of Authority should be directed to the New Jersey Division of Taxation, CN 252, Trenton, New Jersey 08646 - telephone number (609) 292-1730

It is the Division's understanding that the requirement to collect and remit sales tax applies to the holders of Club licenses and they must obtain a Certificate of Authority Number. It has also been indicated that organizations acquiring Social Affairs Permits need not obtain a certificate or collect sales tax in connection with the function. Interested parties should address any questions or verification of these policy positions directly to the Division of Taxation.

5. **NOTICE TO RETAIL LICENSEES - USE OF AND SUGGESTED FORM FOR WRITTEN AGE REPRESENTATION STATEMENT AS STATUTORY DEFENSE UNDER N.J.S.A. 33:1-77 TO A CHARGE OF SALE OF ALCOHOLIC BEVERAGES TO PERSONS UNDER THE LEGAL AGE**

One of the more frequent requests received by the Division at seminars and through other contacts at the Division offices concerns the use and form of a "Written Age Representation Statement". If the "Written Age Representation Statement" is properly utilized by a licensee at the time of a sale of alcoholic beverages to a person who subsequently is determined to be under the age of 21 years, that form can satisfy one of the elements necessary to establish an absolute defense to a charge of sale of alcoholic beverages to a person under the legal age.

Under the provisions of N.J.S.A. 33:1-77, in addition to the presentation of a photo driver's license issued by any State or a photo County ABC Identification Card, a licensee can have a prospective patron complete a written statement affirming that the patron is 21 years of age or older. This writing has generally been called a "Written Age Representation Statement", and it clearly identifies the penalties for false use of the form by a prospective patron. In conjunction with two other elements, which will be discussed later, licensees should give serious consideration to the utilization of this protective device. A suggested form for this statement is contained in full on the following page so that it can be reproduced for future use on the licensed premises.

REPRESENTATION AND STATEMENT OF AGE FOR PURCHASE
OF ALCOHOLIC BEVERAGES

I understand that misrepresentation of age to induce the sale, service or delivery of alcoholic beverages to me is cause for my arrest, prosecution and punishment which can result in:

1. payment of a fine of not less than \$100 - nor more than \$1,000;
2. possible imprisonment up to 6 months;
3. mandatory loss or deferment of driver's license privileges for 6 months;
4. participation in an alcohol education or treatment program up to 6 months.

Knowing the possible penalties for misstatement, I hereby represent and state for the purpose of inducing _____ (Name of licensee) _____ to sell, serve or deliver (Address of licensed premises)

alcoholic beverages to me, that I was born _____ (Month) _____, 19____, and am _____ years of age. (Day)

Signed

Date _____

Address _____

Other Identification Presented:

*non-photo driver's license -
Number & State

*Credit Card-Company/Number
Number and State

*Draft Registration No./Date

*Other (Specify)

Signature of Person Who
Witnessed Completion of
Statement by Patron and
Reviewed the Other type
Identification Presented

Name & Position

In dealing with the issue of underage sales, licensees should be reminded to review the proofs presented carefully and obtain additional identity verification. Obviously altered, counterfeit or forged documents cannot be relied upon. Check the physical appearance of the person with the identification presented. Be wary of identification that is designated as a "duplicate". In some cases the "duplicate" is fraudulently obtained using the photo of the underage person and the age and identification proof of the original licensee who was over 21 years of age. Remember that not all photo identification issued by the Division of Motor Vehicles is a driver's license. The same card format is used for issuing boat and motorcycle licenses and that person need not be 21 years of age.

If you as a licensee exercise vigilance and follow the required procedure, you can establish a defense to both the disorderly persons charge against the seller under N.J.S.A. 33:1-77, as well as the administrative charge against the licensee under N.J.A.C. 13:2-23.1(a). To completely establish the defense, the seller must:

- (a) be shown and examine a photo driver's license, or photo County ABC Card, or have a completed "Written Age Representation Statement" signed, and
- (b) the appearance of the purchaser was such that an ordinary prudent person would believe him or her to be of legal age to make the purchase, and
- (c) the sale was made in good faith relying upon the (a) and (b) factors noted above.

6. NOTICE TO MUNICIPAL ISSUING AUTHORITIES CONCERNING PROCEDURE FOR ISSUANCE OF NEW PLENARY RETAIL CONSUMPTION OR PLENARY RETAIL DISTRIBUTION LICENSES UNDER N.J.S.A. 33:1-19 ET SEQ.

PROCEDURE AND REQUIREMENTS FOR ISSUANCE OF NEW RETAIL LICENSES

The following guidelines are noted to assist the municipal issuing authority in the issuance of any new retail liquor license. Specific review of the provisions of N.J.S.A. 33:1-19.1 through N.J.S.A. 33:1-19.6 and N.J.A.C. 13:2-2.1 through N.J.A.C. 13:2-2.13 should be undertaken in any situation where a new license issuance is contemplated.

PRELIMINARY CONSIDERATIONS

When a municipality considers the issuance of a new plenary retail consumption or plenary retail distribution license the following should be noted:

(1) The municipality must first ascertain whether the issuance of the license is authorized under the Population Quota Law, N.J.S.A. 33:1-12.14 or the exceptions under that law, N.J.S.A. 33:1-12.15 through 33:1-12.22.22 and N.J.S.A. 33:1-19.7. Disregarding the issuance of licenses under the exceptions, which are not dependent on population but require satisfaction of other standards, the Population Quota Law provides that a municipality cannot issue any new retail consumption license "... unless and until the combined total number of such licenses existing in the municipality is fewer than one for each 3,000 of its population as shown by the last then preceding Federal census." The ratio for issuance of a new plenary retail distribution licenses is "... one for each 7,500 of its population as shown by the last then preceding Federal census."

Federal census figures are certified by the New Jersey Secretary of State Department and its certified figures govern the situation. A full 3,000 or 7,500 population is required to support issuing a new license. A fraction of population less than 3,000 or 7,500 is insufficient. In counting the number of existing licenses in a community for purposes of this law, a municipality does not count licenses issued under the Hotel/Motel or Nonprofit Musical or Theatrical Corporations exceptions.

(2) A municipality should review its existing ABC Ordinances to see if there is a numerical limit of licenses that can be issued in the community. That number limitation would have to be changed in the Ordinance.

(3) The governing body should assess and determine which of two ways the community wants to award the new license. The options are briefly identified as follows:

(a) Historical Issuance Procedure - The community advises of an intent to issue a new license and accepts applications from all interested parties. All applicants publish a public notice two times of their intent to apply for the license and their proposed licensed premises. At a public hearing, each applicant is evaluated by the issuing authority considering factors, such as, intended use, location, traffic, aesthetics, proximity to Churches and schools, land use provisions, ratable impact, community needs, parking, business experience, etc. The license is then awarded to the applicant whose

proposal would be in the best public interest. The license is issued upon payment of the annual license fee.

(b) Public Sale Option - The community advises of an intent to issue a new license and accept applications with sealed bids from all interested parties. A minimum bid requirement and other conditions and requirements for issuance may be established. The license is issued to the highest qualified bidder upon payment of the bid amount and annual license fee.

STEPS IN NEW LICENSE ISSUANCE PROCESS

1. RESOLUTION ADOPTION

The municipal governing body adopts a Resolution authorizing the issuance of a new retail license by the local issuing authority (either the governing body or local ABC Board). That Resolution will indicate the method to be used by the municipality to award the license. The balance of these procedures will assume the license is to be issued under the public sale option. Thus, the Resolution will indicate an intent to issued a new plenary retail consumption or plenary retail distribution license to the highest qualified bidder at a public sale to be conducted by the issuing authority.

This Resolution will also contain:

(a) The requirement that all bidders be qualified to have an interest in a retail alcoholic license under the standards set forth in the Alcoholic Beverage Control Act, the Rules and Regulations promulgated thereunder, and any applicable municipal ABC Ordinances.

(b) Any other requirements or specific conditions which a prospective must satisfy, such as, the requirement to operate a restaurant, public accommodation or other facility.

(c) Set forth any minimum bid requirement and bidding provisions, such as, deposit requirements, when payment of balance of bid is due, mode of payment, refunds and forfeitures, etc.

(d) If desired, indicate that the municipality reserves the right to reject all bids if the highest bid is not accepted.

(e) The municipality should indicate that it will only award the license to the person who is the highest qualified bidder. The determination of where the license will actually be sited will be determined through the normal license application process and advertisement process that is noted hereinafter after the highest bid is accepted.

2. PUBLICATION OF NOTICE

After the adoption of the enabling Resolution, the law requires the issuing authority to advertise its intention to issue a new license under the public sale option and invite bidders. In complying with this notice requirement the following provisions and procedures should be followed.

(a) The Notice should advise that the municipality, by Resolution No. _____ has determined to consider the issuance of a new license (designate type) by public sale to the highest qualified bidder and invites bids therefor.

(b) The Notice must be published in a newspaper circulating generally in the municipality no less than two times, which publications cannot be less than one week apart. The second or last notice must be published at least 30 days before the date established to open all bids from qualified bidders. The minimum time period that must be allowed for bidders to apply for the license is 25 days after the second publication.

(c) All prospective bidders for the license shall apply by submitting to the clerk of the issuing authority a full and complete twelve page ABC license application form; a separately sealed envelope with the applicants bid and any bid deposit fee; and a separate Certification of proof of compliance by the applicant that it meets any and all special conditions or requirements contained in the Notice and knows of no reason why he or she would be disqualified from having an interest in a retail license in New Jersey.

(d) The Notice will advise that all bids will be sealed. If any minimum bid amount is established by the municipality, that amount will be noted, along with any terms and conditions related to the bid process, such as deposits, returns, forfeitures, etc.

(e) Any special conditions or requirements placed upon bidders, such as, use of the new license in conjunction with a

restaurant, hotel/motel or other facility, should be set forth in the Notice.

(f) If desired, the Notice will state that the municipality reserves the right to reject all bids if the highest bid is not accepted. A sale may be postponed or canceled at any time prior to the opening of the bids.

(g) The Notice shall specify the time, place and last date that applications and bids will be accepted. Indicated therein will be the requirement that the clerk of the governing body or the secretary to the ABC Board, as the case may be, shall publicly announce those applicant who presumptively meet the qualifications for bidding as fixed by law, rules and regulations and the enabling Resolution and Notice. This public announcement must occur no less than five days prior to the date of opening the sealed bids.

(h) The time, place and date that the sealed bids will be opened must also be specified in the Notice, which as noted above, must be no sooner than five days after the public announcement of all presumptively qualified bidders. No bids will be opened from or on behalf of any bidder who does not qualify or has not submitted proof of qualification (full and complete 12 page ABC license application form and Certification of proof of compliance).

(i) At the designated time, place and date, the sealed bids would be opened and all bid amounts and the highest bid amount will be declared. If the issuing authority determines to reject all bids, they shall do so by formal Resolution. If they determine to accept the highest qualified bid, that also shall be done by Resolution under the conditions that the ultimate issuance of the license will be subject to payment of the balance of the bid price; payment of the State \$50.00 application fee and annual municipal retail license fee; satisfactory outcome of further municipal background checks to investigate the source of funds used to purchase the license; the receipt of favorable State and/or Federal criminal background checks; and the compliance with the publication, hearing and Resolution requirement under N.J.A.C. 13:2-2.1 et seq.

(j) The publication, hearing and Resolution requirements of N.J.A.C. 13:2-2.1 et seq. are applicable to the accepted highest bidder. A notice is published once a week for two weeks successively, in a newspaper printed in the English language and circulated in the municipality using the form prescribed by N.J.A.C. 13:2-2.2. Interested persons who wish

to comment on the qualification of the applicant are provided the opportunity to file written objections to the municipal clerk or ABC Board secretary. If a proposed premises is sought to be licensed that will be noted in the originally filed application and the public notice and any objections to the location can be filed with the clerk in writing. A public hearing is held if objections are received. If no objections are received, the issuing authority need not hold a hearing, but a formal Resolution approving the issuance of the license must be adopted. That Resolution must contain all the certifications required under N.J.A.C. 13:2-2.9, along with satisfaction of all other conditions or requirement set forth in the Public Sale Option Resolution. It is at this point that the license is issued and upon receipt of this Resolution, the State ABC will provide a License Certificate to the new licensee.

(k) A new license must be issued within six months after the closing date established for acceptance of applications as set forth in the Notice. If a license is not issued within such time, no license can be issued without again complying with all of the Resolution and Notice provisions of the law.

(l) Funds derived from the conduct of the sale, except the State application fee, shall be remitted to the municipal treasurer for the general use of the municipality.

GENERAL OBSERVATIONS

In awarding a new license, particularly under the Public Sale Option, a municipality must be mindful that it is the duty of the issuing authority to fully and completely investigate the applicant's qualifications for licensure and the source of funds used to purchase the license and establish the licensed business. If a particular location is to be licensed as a supplement to the bidding process, the issuing authority must further review the proposed location to insure that a proper possessory interest is held by the applicant and that the location complies with all State and Municipal laws concerning the siting of a retail license.

Under the Public Sale Option, the law indicates that no appeal shall lie to the State ABC from any action of the issuing authority, except where the grounds for an appeal is that the appellant had qualified as a bidder and had submitted a higher bid than the successful applicant.

Since the State Division of Alcoholic Beverage Control has limited jurisdiction in connection with the award of new licenses under the Public Sale Option, the above guidelines represent in most part a reiteration of provisions that would be expected for compliance with law and regulations. Interpretive questions concerning the establishment of other conditions and requirements for bidders would not be reviewed by the Division. Utilization of alternative procedures which could satisfy law and regulatory requirements can be adopted by the municipality. Presumably any challenges to the sufficiency, interpretation or contents of the enabling Resolution, Public Notice or application and bidding procedure would be reviewable in a court of plenary jurisdiction.

Where the Historical Issuing Procedure is used for awarding a new license, any challenges to the issuance or denial of an application for license would be by appeal to the Director, Division of Alcoholic Beverage Control.

PUBLICATION OF BULLETIN 2457 IS HEREBY DIRECTED THIS
15TH DAY OF MAY, 1991


CATHERINE A. COSTA
DIRECTOR