

STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

BULLETIN 2237

September 30, 1976

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STATE OF NEW JERSEY  
Department of Law and Public Safety  
DIVISION OF ALCOHOLIC BEVERAGE CONTROL  
25 Commerce Drive Cranford, N.J. 07016

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1. NEW LEGISLATION - SALE OF NOVELTY WEARING APPAREL MADE PERMISSIBLE MERCANTILE BUSINESS ON PLENARY AND SEASONAL RETAIL CONSUMPTION PREMISES AND PLENARY RETAIL DISTRIBUTION PREMISES.

On July 2, 1976, Senate Bill No. 863 was approved by the Governor, effective immediately, and thereupon became Chapter 54 of the Laws of 1976. The Act amends R.S. 33:1-12.1, 2 and 3(a) as follows:

R.S. 33:1-12.1 Plenary retail consumption license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business (except, subject to such rules and regulations established from time to time by the director, the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons, or the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages, or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages) is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages; or, in commercial bowling establishments, the retail sale or rental of bowling accessories and the retail sale from vending machines of candy, ice cream and nonalcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$200.00 and not more than \$2,000.00. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00, whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail consumption license shall be granted within its respective municipality.

R.S. 33:1-12.2 Seasonal retail consumption license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption on the licensed premises by the glass or other open receptacle, and also to sell any alcoholic beverages in original containers for consumption off the licensed premises, during the summer season from May 1 until November 14, inclusive, or during the winter season from November 15 until April 30, inclusive; but this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which a grocery, delicatessen, drug store or other mercantile business [except, subject to such rules and regulations established from time to time by the director, the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons, or the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons, or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages] is carried on, except as hereinafter provided. Subject to such rules and regulations established from time to time by the director, the holder of this license shall be permitted to sell alcoholic beverages in or upon the premises in which any of the following is carried on: the keeping of a hotel or restaurant including the sale of mercantile items incidental thereto as an accommodation to patrons; the sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit; the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this section; the sale of cigars, cigarettes, packaged crackers, chips, nuts and similar snacks and ice at retail as an accommodation to patrons; or the retail sale of nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at 75% of the fee fixed by said board or body for plenary retail consumption licenses. The governing board or body of each municipality may, by ordinance, enact that no seasonal retail consumption license shall be granted within its respective municipality.

R.S. 33:1-12.3(a). Plenary retail distribution license. The holder of this license shall be entitled, subject to rules and regulations, to sell any alcoholic beverages for consumption off the licensed premises, but only in original containers. The governing board or body of each municipality may, by ordinance, enact that this license shall not be issued to permit the sale of alcoholic beverages in or upon any premises in which any other mercantile business is carried on, except that any such ordinance, heretofore or hereafter adopted, shall not prohibit the retail sale of distillers and vintners packaged holiday merchandise prepacked as a unit with suitable glassware as gift items to be sold only as a unit, the sale of novelty wearing apparel identified with the name of the establishment licensed under the provisions of this act, cigars, cigarettes, packaged crackers, chips, nuts [ ] and similar snacks, ice, and nonalcoholic beverages as accessory beverages to alcoholic beverages. The fee for this license shall be fixed by the governing board or body of the municipality in which the licensed premises are situated, by ordinance, at not less than \$100.00 and not more than \$2,000.00. No ordinance shall be enacted which shall raise or lower the fee to be charged for this license by more than 20% from that charged in the preceding license year or \$500.00 whichever is the lesser. The governing board or body of each municipality may, by ordinance, enact that no plenary retail distribution license shall be granted within its respective municipality.

JOSEPH H. LERNER  
DIRECTOR

Dated: September 10, 1976

2. STATE REGULATIONS - AMENDMENT TO RULE 1 OF STATE REGULATION NO. 23 - MINIMUM STANDARDS OF FILL REVISED TO REFLECT NEW METRIC STANDARDS OF FILL.

The Federal Bureau of Alcohol, Tobacco and Firearms has revised its regulations to provide new metric standards of fill for wines and distilled spirits. Those applicable to wines are currently optional, but will become mandatory January 1, 1979. Those applicable to distilled spirits will become optional October 1, 1976 and mandatory January 1, 1980.

In order to conform this State's minimum standards of fill to these metric standards of fill, Rule 1 of Division Regulation No. 23 (N.J.A.C. 13:2-24.2(a)) has been amended, effective October 1, 1976. The amendment reduces the minimum standard of fill of distilled spirits from one-half pint (8 oz.) to 200 milliliters (approximately 6.8 oz.), the metric size closest to one-half pint. The amendment does not reduce the minimum standard of fill of wines, but merely states the metric equivalent of the current minimum standard of fill of 4 oz. (118 milliliter) for champagnes and sparkling wines and 6 oz. (177 milliliters) for all other wines. The amended rule, with additions indicated by underlining thus and deletions in brackets [thus], reads as follows:

STATE REGULATION NO. 23  
Minimum Standards of Fill of  
Alcoholic Beverages

Rule 1. No retail licensee, except a plenary retail transit licensee, shall purchase, accept delivery of, possess, sell or deliver any alcoholic beverage in the original container if the fill thereof is less than [one-half pint] 200 milliliters (approximately 6.8 fluid ounces), except as to the following:

(a) In wines, the minimum standard of fill shall be 177 milliliters (approximately six (6) fluid ounces), except champagnes and sparkling wines, as to which the minimum standard of fill shall be 118 milliliters (approximately four (4) fluid ounces).

(b) In beer and other malt alcoholic beverages, no minimum standard of fill is prescribed.

The new Federal metric standards of fill are set forth hereinafter in table form, with equivalent fluid ounce sizes and bottles per case. It should be noted that the smallest size in each category, 100 milliliters in wines and 50 milliliters in distilled spirits, may not be sold in this State.

METRIC STANDARDS OF FILL

Wines

(Presently optional; mandatory January 1, 1979.)

<u>Size</u>	<u>Equivalent</u>	<u>Bottles per Case</u>
3 liters	101 fl. oz.	4
1.5 liters	50.7 "	6
1 liter	33.8 "	12
750 milliliters	25.4 "	12
375 milliliters	12.7 "	24
187 milliliters	6.3 "	48
100 milliliters	3.4 "	120

Distilled Spirits

(Optional October 1, 1976; mandatory January 1, 1980.)

<u>Size</u>	<u>Equivalent</u>	<u>Bottles per Case</u>
1.75 liters	59.2 fl. oz.	6
1.00 liter	33.8 "	12
750 milliliters	25.4 "	12
500 milliliters	16.9 "	24
200 milliliters	6.8 "	
50 milliliters	1.7 "	120

JOSEPH H. LERNER  
Director

DATED: September 10, 1976

3. APPELLATE DECISIONS - JOHN DAIDONE ET AL v. LITTLE FALLS.

John Daidone, Anthony Del  
Vescova, Genero De Palma, Robert  
Kerris, A Partnership t/a Stage  
Door 23 (formerly High Suspenders  
Inn),

Appellants,

v.

Township Committee of the Township  
of Little Falls,

Respondent.

Harry P. Durkin, Esq., Attorney for Appellants  
James V. Segreto, Esq., Attorney for Respondent

On Appeal

CONCLUSIONS  
AND  
ORDER

BY THE ACTING DIRECTOR:

A hearing de novo pursuant to Rule 6 of State Regulation No. 15 was held in this Division on April 15, 1976 on appellant's Petition of Appeal from the action of the respondent, Township Committee of the Township of Little Falls (Committee), which found appellants guilty of having sold alcoholic beverages to a minor. In consequence thereof, it suspended appellants' Plenary Retail Consumption License C-2 for premises 497 Main Street, Little Falls, for thirty days. The effective dates of the suspension were stayed by Order of the Director, dated December 12, 1975.

At the said hearing, the Committee, introduced testimony of the minor, William K-- and of Police Sergeant Edward Capalbo which established that a sale of alcoholic beverages to a minor took place in the licensed premises herein.

An opportunity was afforded appellants to produce witnesses on their behalf by permitting adjournment of the hearing to a subsequent date and time.

Subsequently, however, Harry P. Durkin, Esq., attorney for appellants, sent a letter to the Director which contained information relating to a transfer of the appellants' license to them subsequent to the date of the subject infraction, in consequence of which, investigation of defenses proved futile, as stated therein:

"After a thorough investigation of this case, including interviewing witnesses, coupled with my futile attempt to interview absent

witnesses, I have concluded there is no proper or reasonable defense to the involved charge. Consequently, it is the request of the Licensee the matter be adjudicated without offering any defense...."

I therefore conclude, in view of the aforesaid statement, that the action of the municipal issuing authority should be affirmed and the suspension heretofore imposed and thereafter stayed should be reimposed.

Accordingly, it is, on this 19th day of July 1976,

ORDERED that the action of the respondent, Township Committee of the Township of Little Falls be and the same is hereby affirmed and the appeal filed herein be and the same is hereby dismissed; and it is further

ORDERED that my order dated December 12, 1975 staying the effective dates of suspension theretofore imposed by the Township Committee be and the same is hereby vacated; and it is further

ORDERED that Plenary Retail Consumption License C-2, issued by the Township Committee of the Township of Little Falls to John Daidone, Anthony Del Vescova, Genero De Palma, Robert Kerris, A Partnership t/a Stage Door 23 (formerly High Suspenders Inn) for premises 497-499 Main Street, Little Falls be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Monday, August 2, 1976 and terminating at 2:00 a.m. Wednesday, September 1, 1976.

Joseph H. Lerner  
Acting Director

4. APPELLATE DECISIONS - VARGAS v. UNION CITY.

Alejandro Vargas, )

Appellant, )

v. )

Board of Commissioners of )  
the City of Union City, )

Respondent. )

On Appeal

CONCLUSIONS  
AND  
ORDER

Erwin K. Weitz, Esq., Attorney for Appellant  
Edward J. Lynch, Esq., Attorney for Respondent  
James E. Anderson, Esq., Attorney for Objector

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of the Municipal Board of Commissioners of the City of Union City (hereinafter Board) which, on May 5, 1976, denied appellant's application for a person-to-person and place-to-place transfer of Plenary Retail Consumption License C-144, from Rosann Appicella, Administratrix of the Estate of John Appicella, deceased, to appellant, Alejandro Vargas, and from premises located at 722 Sip Street to 509 Thirty-sixth Street, Union City.

In its resolution, the Board grounded its denial of the place-to-place (apparently the person-to-person aspect of the application was not objected to) application on the grounds that the proposed location was not a suitable place for a consumption license, in that it was part of what was once a large department store, now subdivided into mercantile units of which the appellant's prospective premises was but one.

A de novo appeal was held in this Division, with full opportunity afforded the parties to introduce evidence and cross-examine witnesses, pursuant to Rule 6 of State Regulation No. 15. However, at the hearing herein, no witnesses or other evidence was introduced by any of the parties, reliance being placed upon oral argument only.

From such argument and the descriptions of the proposed location and area in which it is contained, it is apparent that on Thirty-sixth Street, in Union City, there once existed a large department store which no longer is in operation.

In the building in which it was housed, are a series of sections leased to merchants for sales of varied kinds of goods; so that, in principle, the public have some benefits akin to the existence of the prior store.

On the ground-floor of the building and contiguous to the vestibule entrance, the appellant proposes to erect and operate the subject licensed premises. A floor plan of the proposed area was submitted and approved by the Director of this Division. It contains a tiny bar accomodating five stools and the remainder of the store consists of shelves designed in the same manner as a package-goods store.

On-premises drinking of alcoholic beverages would be permitted if not encouraged, the principal object of the business appearing to be sales for off-premises consumption. The Board evaluated the benefits and detriments to the public and area and considered that the service of alcoholic beverages to be consumed on premises would not be in the best interest of the public, particularly relating such consumption to the existing "department" store being operated there.

The burden of establishing that the action of the Board in denying the transfer was erroneous and should be reversed rests with appellants. Rule 6 of State Regulation No. 15. The decision as to whether or not a license will be transferred to a particular locality resides, in the first instance, within the sound discretion of the local issuing authority. Hudson-Bergen County Retail Liquor Stores Association v. North Bergen, Bulletin 997, Item 2. Where there is an honest difference of opinion in the exercise of discretion for or against the transfer of a liquor license, the action of the issuing authority in approving or denying the transfer should not be disturbed. Paul v. Brass Rail Liquors, 31 N.J. Super. 211 (App. Div. 1954).

The transfer of a liquor license is not an inherent or automatic right. If denied on reasonable grounds, such action will be affirmed. Richmon, Inc. v. Trenton, Bulletin 1560, Item 4.

Further, "once the municipal board has decided to grant or withhold approval of a...application...its exercise of discretion ought to be accepted on review in the absence of a clear abuse or unreasonable or arbitrary exercise of its discretion...." Lyons Farms Tavern, Inc. v. Newark, 55 N.J. 292, 303 (1970).

The Director abides by the municipality's grant or denial of the application so long as its exercise or judgment and discretion was reasonable. This has been the Director's settled practice. See Fanwood v. Rocco, 33 N.J. 404 (1960).

Applying these principles to the instant matter, in the total absence of any evidence indicating that there was unreasonable or arbitrary action by the Board, or that the Board was improperly motivated, I find that there is absolutely no basis offeren upon which the Director should reverse the action of the local Board.

I find that appellant has failed to sustain his burden of establishing that the action of the Board was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15. Cf. Blue Ridge Bar & Grill, Inc. v. Frankford, Bulletin 2204, Item 1.

It is, therefore recommended that the action of the Board be affirmed, and the appeal herein be dismissed.

#### Conclusions and Order

No Exceptions to the Hearer's report were filed within time pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and recommendations of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 10th day of August 1976,

ORDERED that the action of the Board of Commissioners of the City of Union City denying appellant's application for a place-to-place transfer of Plenary Retail Consumption License C-144 to 509 Thirty-sixth Street, Union City be and the same is hereby affirmed, and the appeal herein be and the same is hereby dismissed.

Joseph H. Lerner  
Director

5. SEIZURE - FORFEITURE PROCEEDINGS - ILLICIT TRANSPORTATION OF ALCOHOLIC BEVERAGES INTO STATE - DEFENSE OF LACK OF WARRANT WITHOUT MERIT - ALCOHOLIC BEVERAGES FORFEITED.

In the Matter of the Seizure : Case No. 13,180
on January 19, 1975 of a :
quantity of alcoholic beverages : On Hearing
on Interstate Hwy. #295 in the :
Township of Logan, County of : CONCLUSIONS and ORDER
Gloucester, State of New Jersey. :

Lewis W. Siegel, Esq., of the New York Bar, Claimant, Pro Se.
Carl A. Wyhopen, Esq., Appearing for Division.

BY THE DIRECTOR:

The Hearer has filed the following Report herein:

Hearer's Report

This matter came on for hearing pursuant to the provisions of N.J.S.A. 33:1-66 and State Regulation No. 28, to determine whether a quantity of alcoholic beverages, consisting of twelve bottles of varied sizes of alcoholic beverages, as described in Schedule "A" attached hereto and made part hereof, seized on January 19, 1975 on Interstate Highway #295, Logan Township, New Jersey constitutes unlawful property, and should be forfeited.

The applicable statute, N.J.S.A. 33:1-2, provides that transportation of alcoholic beverages through New Jersey in quantities in excess of two quarts of "hard liquor", without a special permit, is a violation. N.J.S.A. 33:1-66, cited above, provides the authorization for seizure of illegal alcoholic beverages.

Claimant was driving his car through New Jersey from the Washington, D.C. area and, on Interstate Highway #295. He was stopped by a member of the State Police, as the vehicle was riding low in the rear. He refused the Trooper's request to permit examination of the of the interior of the trunk. At that time, another State Policeman arrived, and noted the vehicle was equipped with improper lights.

State Trooper Harry Rivell testified concerning the stopping of the claimant's vehicle and State Trooper Charles P. Schwartz testified that, after Trooper Rivell departed the scene with the claimant, he, Schwartz, entered the claimant's car for the purpose of inserting the ignition key when his attention was called to two boxes on the rear seat. One box was labeled "White Label Dewar Scotch Whiskey" and the other was labeled "Tradition of Fine Wines since 1881, Italian Swiss Colony". The boxes were opened and Trooper Schwartz lifted the lid and averred that the boxes contained alcoholic beverages as labeled.

The claimant testified and supported his testimony with oral argument pertaining to his belief that the Superior Court of New Jersey in Gloucester County had determined his right to carry the alcoholic beverages. He was permitted a further opportunity to submit memoranda and supportive data of his contention.

Both claimant and the State furnished extensive memoranda relative to the claimant's contentions. The claimant urged that, as the Municipal Court of Logan Township dismissed a complaint against him, such dismissal constituted res adjudicata, requiring that his claim be recognized for the reason that the seizure was illegal. The claimant's argument is without force. The cited authority, One 1958 Plymouth Sedan v. Pennsylvania, 380 U.S. 693 (1965) does not hold as the claimant indicates; the seized alcoholic beverages was never ordered returned, only the vehicle in which it was transported. The illegal alcoholic beverages are not subject to return, either as a result of the decision to dismiss by the Municipal Court or by any other principle cited by claimant.

The claimant urges an interpretation of N.J.S.A. 33:1-2 so that its effect will not be felt by transporters of alcoholic beverages "through" our State. Reference is made to the distinction made in the statute to such beverages being transported within the State and into it. Whether the alcoholic beverages were being transported into or through the State is a distinction without a difference. Such an argument is frivolous.

The claimant further contends that the seizure of the subject alcoholic beverages was the result of an unlawful search as the State Trooper admittedly had no warrant to search the claimant's vehicle. This contention is equally without merit in that the Trooper merely observed cartons identified as containing alcoholic beverages. No search had to be made. The cartons spoke for themselves.

The statute, N.J.S.A. 33:1-1 defines a container as "any container in which an alcoholic beverage has been delivered to a retail licensee". Official notice has long been taken that whiskey and the like reach a retailer in clearly marked cartons, typical of which are cartons similar to those described as being in the rear seat of claimant's vehicle. A label on a container of alcoholic beverage gives rise to a presumption that the contents of the container is alcoholic beverage fit for human consumption. N.J.S.A. 33:1-1.1. The State Trooper had both a right and duty to examine the cartons of alcoholic beverages.

The seized alcoholic beverages are illicit because they were transported into New Jersey without permit and in an amount prohibited by the statute N.J.S.A. 33:1-2. See Seizure Case No. 10,180, Bulletin 1321, Item 5; Seizure Case No. 13,253, October 24, 1975 and Seizure Case No. 12,347, Bulletin 2005, Item 6. I find that the said alcoholic beverages are illicit.

It is, therefore, recommended that the claim for the return of the said alcoholic beverages be denied and that the seized alcoholic beverages be forfeited.

Conclusions and Order

Written exceptions to the Hearer's Report were filed pursuant to Rule 4 of State Regulation No. 28.

Claimant's Exceptions contained a synthesis of his reply brief filed prior to the Report of the Hearer; hence they were considered by the Hearer prior to the preparation of that Report. I find, upon my examination and analysis, the exceptions to be lacking in merit.

Having carefully considered the entire record herein, including the exhibits, the Hearer's Report; and the exceptions filed thereto, I concur in the findings and recommendations of the Hearer, and adopt them as my conclusions herein.

Accordingly, it is, on this 2nd day of August, 1976

DETERMINED and ORDERED that the seized alcoholic beverages are unlawful property, and the same be and are hereby forfeited in accordance with the provisions of N.J.S.A. 33:1-66; the alcoholic beverages shall be retained for the use of hospitals and State, county or municipal institutions or destroyed, in whole or in part, at the direction of the Director of the Division of Alcoholic Beverage Control.

Joseph H. Lerner,  
Director

SCHEDULE "A"

12 - containers of alcoholic beverages

6. DISCIPLINARY PROCEEDINGS - ILLEGAL SUNDAY SALE - EX-PARTE HEARING - PRIOR SIMILAR VIOLATION - LICENSE SUSPENDED FOR 30 DAYS.

In the Matter of Disciplinary Proceedings against )

Lawrence M. Black )  
t/a Black's )  
1554 Maple Avenue )  
Hillside, N.J., )

Holder of Plenary Retail Distribution License D-2, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside. )

CONCLUSIONS AND ORDER

No appearance on behalf of Licensee Carl A. Wyhopen, Esq., Attorney for Division

BY THE ACTING DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded "not guilty" to the following charge:

"On Sunday, October 12, 1975, at about 1:40 p.m., you sold and delivered and allowed, permitted and suffered the sale and delivery of an alcoholic beverage, viz., a 1/2 pint bottle of Seagram's V.O. Canadian Whisky, at retail, in its original container for consumption off your licensed premises and allowed, permitted and suffered the removal of said alcoholic beverage in its original container from your licensed premises; in violation of Rule 1 of State Regulation No. 38."

At the outset of the hearing held on May 11, 1976, the Deputy Attorney General, attorney for the Division, stated that the Division was in receipt of a letter dated April 22, 1976 from Donald H. Mintz, Esq., an attorney-at-law of New Jersey, wherein he requested a postponement of this administrative hearing pending a determination of certain criminal proceedings then pending against the licensee.

In response thereto, Mr. Mintz was informed, by letter dated April 29, 1976 that, in accordance with established Division policy, actions on disciplinary proceedings are not withheld pending termination of criminal proceedings; and further, that the matter was set down peremptorily for hearing at the Division offices for May 11, 1976 at 9:30 a.m. Both letters were received in evidence.

The Deputy Attorney General explained that sometime after 10:30 a.m. on May 11, 1976, he contacted Mr. Mintz by telephone. Mr. Mintz explained that his letter of April 22, 1976 did not constitute an appearance in behalf of the licensee; nor did it mean that he actually represented the licensee.

On motion of the Deputy Attorney General, I permitted him to proceed with the hearing ex parte.

ABC Agent V testified that, pursuant to specific assignment to investigate an allegation of sales of liquor on Sundays, and accompanied by ABC Agent M (whom he left at a point of observation), he entered the licensed premises on Sunday, October 12, 1975 at 1:40 p.m. He had a "marked" ten dollar bill in his possession.

He asked the sales clerk on duty, later identified as Buinice Chavis, for a six-pack of Budweiser beer and a half-pint of Canadian V.O. Whisky. Prior to obtaining the beverages, Chavis glanced quickly at Lawrence M. Black (the licensee) who was standing in back of the other side of the L-shaped counter. Upon receiving the liquor and change of the marked currency, he left the premises and rejoined Agent M.

Shortly thereafter, accompanied by Agent M, Agent V re-entered the licensed premises, and both agents identified themselves to Chavis and Black. Agent M retrieved the marked bill.

Agent M testified that when Agent V entered the subject liquor store on October 12, 1975 he remained in the vicinity thereof. Upon Agent V's return he showed him a half-pint of Seagram's V.O. and a six-pack of beer. Both agents then entered the licensed premises, introduced themselves to Black and Chavis and summoned the local police who came to the premises.

At Agent M's request, Black opened the cash register from which the marked ten-dollar bill was retrieved. The marked ten-dollar bill and the half-pint of Seagram's V.O., which were initialed by Black at Agent M's request, were received in evidence.

Thus, I find that the Division has established the truth of the charge by a fair preponderance of the evidence, indeed, by substantial evidence.

Licensee has a prior record of suspension of license by the Director for fifteen days, effective January 5, 1976 for similar violation. Re Black, Bulletin 2216, Item 3.

It is, accordingly, further recommended that an order be entered suspending the licensed premises for fifteen

days, to which should be added fifteen days considering the recency of the prior similar violation, or a total of thirty (30) days.

Conclusions and Order

No Exceptions of the Hearer's report were filed pursuant to Rule 6 of State Regulation No. 16.

Having carefully considered the entire record herein, including the transcript of the testimony, the exhibits and the Hearer's report, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 15th day of July 1976,

ORDERED that Plenary Retail Distribution License D-2, issued by the Municipal Board of Alcoholic Beverage Control of the Township of Hillside to Lawrence M. Black, t/a Black's for premises 1554 Maple Avenue, Hillside, be and the same is hereby suspended for thirty (30) days, commencing at 2:00 a.m. Monday, July 26, 1976 and terminating at 2:00 a.m. Wednesday, August 25, 1976.

Joseph H. Lerner  
Acting Director

7. STATE LICENSES - NEW APPLICATIONS FILED.

Hoboken Beer & Soda Outlet, Inc.  
t/a Beer & Soda Outlet  
559-563 Newark Street  
Hoboken, New Jersey

Application filed September 15, 1976  
for place-to-place transfer of State  
Beverage Distributor's License SBD-63  
from 560-564 Newark Street, Hoboken,  
New Jersey.

Edward Warren Clark  
t/a Multi-Beverage Company  
RD #1, Box 133X


N. W. Corner of Route #70 & Route #571  
Manchester Township, New Jersey  
Application filed September 17, 1976  
for limited wholesale license.

United Soda Distributors of New Jersey, Inc.  
561 Route 22 West  
Hillside, New Jersey

Application filed September 23, 1976  
for state beverage distributor's  
license.

B. N. Distributors Incorporated  
85-87 Vesey Street  
Newark, New Jersey

Application filed September 29, 1976 for  
limited wholesale license.



Joseph H. Lerner  
Director