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

BULLETIN 2197 September 11, 1975

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ITEM

STATE OF NEW JERSEY
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1. COURT DECISIONS - LYONS FARMS TAVERN, INC. v. NEWARK ET AL - NEW JERSEY SUPREME COURT AFFIRMS DIRECTOR.

SUPREME COURT OF NEW JERSEY
A-83 September Term 1973

LYONS FARMS TAVERN, INC.,

Plaintiff-Respondent,

v.

MUNICIPAL BOARD OF ALCOHOLIC BEVERAGE CONTROL OF THE CITY OF NEWARK, and DEPARTMENT OF LAW AND PUBLIC SAFETY, DIVISION OF ALCOHOLIC BEVERAGE CONTROL,

Defendants-Appellants.

Argued March 18, 1974 - Decided July 10, 1975.

On certification to the Superior Court, Appellate Division.

Mr. David S. Piltzer, Deputy Attorney General, argued the cause for defendant-appellant Division of Alcoholic Beverage Control (Mr. George F. Kugler, Jr., and Mr. William F. Hyland, Attorneys General, attorneys; Mr. Piltzer on the brief).

Mr. John C. Pidgeon, Assistant Corporation Counsel, argued the cause for the defendant-appellant City of Newark (Mr. William H. Walls, Corporation Counsel, attorney; Mr. Salvatore Perillo, Assistant Corporation Counsel, on the brief).

Mr. Ladislas F. Feher argued the cause for the plaintiff-respondent.

The opinion of the Court was delivered by

CLIFFORD, J.

We granted certification to the Appellate Division on the petition of the Municipal Board of Alcoholic Beverage Control of the City of Newark (hereinafter "Board"), 64 N.J. 155 (1973), to consider the two issues presented therein: (a) whether community sentiment can be considered by an issuing authority on an application for person-to-person transfer of a plenary retail consumption license; and (b) whether in light of community sentiment conditions may be placed on the license pursuant to N.J.S.A. 33:1-32. The

Appellate Division held, in an unreported opinion, that "where a person-to-person transfer is involved, the only question to be decided is whether or not the proposed transferee qualifies as an original licensee" and that no conditions may be imposed on this transfer.

Plaintiff, Lyons Farms Tavern, Inc. (hereinafter "Lyons"), was, in 1972, operator of a bar on Clinton Place in Newark. It entered into a contract to purchase the Chancellor Delicatessen, and in connection therewith made application for a person-to-person transfer of the plenary retail consumption license issued to Chancellor Delicatessen & Restaurant, Inc. (hereinafter "Chancellor") for its premises at 378 Chancellor Avenue, Newark. In due course a public hearing was held before the Board, where a number of objectors appeared and were heard. They did not question or oppose the qualifications of Lyons Farms as a license holder; rather, they objected to what they perceived as Lyons' desire to expand the licensed premises from a delicatessen-restaurant to a primary bar operation. Respondent denied such plans, expressing its intention to continue the business as it was then being conducted. The Board denied the application for transfer.

This decision was appealed to the Director of the Division of Alcoholic Beverage Control (hereinafter "Division"), and a de novo hearing was held. One of the owners of Chancellor, the transferor, testified that he was selling because of his doctor's advice to "go out of business" on account of a heart condition. Although the premises contained a twenty-two foot bar, he described its current use as involving only approximately six feet, with five or six stools.[1] He had never committed a license violation. The stockholders of the purchaser-transferee, Lyons, were offered to prove their fitness. The major stockholder, Alex Neu, stated that the other bar which the company ran had been violation-free during the 10 years of its operation. He was questioned about the planned future operation of the Chancellor premises. In response, Mr. Neu indicated that he intended "to continue exactly as it has been operated * * * a package store with a small bar and selling sandwiches." It was to be operated "primarily as a delicatessen * * * (g)enerally in the same manner as it is conducted at present."

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1. Chancellor's license permitted the use of the entire bar, as determined (without deciding whether prior permission for such use was required) by the Division on Chancellor's earlier application. Chancellor Delicatessen v. Newark, Bulletin 2000, Item 1 (1971). As we learned at oral argument, the full twenty-two feet was used only on rare occasions, it generally being covered to give the appearance of a counter in connection with the package goods operation.

Again objectors appeared to oppose what they characterized as the expansionist tendencies of Lyons. They generally described the neighborhood's effort at self-improvement, made reference to the proximity of schools and churches, expressed opposition to the influx of liquor licenses driven into the south part of the City by urban renewal of the Central Ward, and gave voice to their apprehension that a Lyons takeover of Chancellor would "increase the output of alcohol consumption at this new place" (presumably on the assumption that the entire length of the bar would be used).

The Hearer's report focused specifically on this last stated apprehension and pointed out that the "total rejection of transfer by the Board surrounds only the anticipated extension or enlargement of the bar facilities." He recommended that the person-to-person transfer be approved subject to the condition that utilization of the bar not be expanded and that the premises continue to be operated as before. Written exceptions and answers to the report were filed, after which the Director issued his Conclusions and Order. He found that the worthiness of the applicant was not in issue, that the applicant had indicated his intention to operate the premises primarily as a delicatessen-restaurant, and permitted the transfer subject to two conditions: (1) the premises had to be operated "as a bona fide delicatessen-restaurant as defined by N.J.S.A. 33:1-1(t)" and (2) no other bar could be used except the present one, and that only to the extent of its current use, which he determined to be "approximately eight feet."

At this point Lyons apparently shifted its position. Not now being satisfied with a license burdened with these conditions, it appealed to the Appellate Division. This resulted in a reversal of the Director's decision and an order that the transfer of the license be without special conditions. We reverse and reimpose those conditions.

Appellants argue first that community sentiment may be considered in a person-to-person license transfer and that the inquiry should not be restricted solely to the fitness of an applicant. This Court has found community sentiment to be a proper consideration in place-to-place transfers, Borough of Fanwood v. Rocco, 33 N.J. 404, 412-13 (1960), and has given it effect in license renewal applications, Bd. of Comm'rs of Bayonne v. B & L Tavern, Inc., 42 N.J. 131, 134 (1964); but we have not heretofore expressly approved its consideration in person-to-person transfers.

We note that the sale of alcoholic beverages has always been subject to extraordinary regulation. E.g., Paul v. Gloucester County, [illegible] 138, 150 (1962). And although a person-to-person transfer quite logically suggests the narrowed examination of an applicant's fitness as a license holder, nevertheless it would be inimical to the legislative design to permit such a construction. See Borough of Fanwood v. Rocco, supra, 33 N.J. at 411-13. Community interest is best served by "an attentive and sympathetic attitude toward the sentiments of substantial numbers of persons in the locality." Lyons Farms Tavern, Inc. v. Municipal Bd. of A.B.C., Newark, 55 N.J. 292, 306-07 (1970). See Borough of Fanwood v. Rocco, supra, 33 N.J. at 415. Indeed, it makes little sense to hold a public hearing unless one is prepared to give due consideration to expressions from the community. Therefore, we conclude that community sentiment may properly be heard and should be given thoughtful consideration in person-to-person license transfers.

Neiden Bar & Grill, Inc. v. Municipal Bd. of A.B.C., Newark, 40 N.J.Super. 24, (App.Div. 1956), and N.J.S.A. 33:1-26, both relied on by the Appellate Division, do not compel an opposite result. The statute covers the procedure for place-to-place and person-to-person transfers of license. It provides that once a transfer applicant has demonstrated qualification as an original licensee, the issuing authority "may transfer any license issued * * *" (emphasis supplied). Implicit in the use of the emphasized expression is the

intention to impose a measure of discretion in the issuing authority, presumably including discretion to deny a transfer even though the qualification requirements of N.J.S.A. 33:1-25 are met. In addition, a holding that compliance with the technical requirements of that qualification statute automatically entitled an applicant to have the license transferred would run counter to our basic notions of an effective licensing system, whose purpose it is to give the issuing authorities sufficient discretion to protect the public interest. See Liptak v. Div. of A.B.C., 44 N.J. Super. 140, 143 (App.Div.), certif. den., 24 N.J. 222 (1957). In the face of the discretion which we find implicit in the "may transfer" language, N.J.S.A. 33:1-26 cannot be said to bar consideration of community sentiment in a person-to-person transfer.

Nor does Neiden, supra, stand for the proposition that only the transferee's qualifications under the statute may be considered. There the person-to-person transfer had been approved by both the local board and the Director. Opposition was expressed by other tavern owners who argued that the transferee was unfit because he had engaged in deceptive practices. These practices, however, had previously been reviewed and specifically proscribed by the Director, in compliance with whose ban the applicant had refrained from those practices. The court affirmed approval of the license transfer, observing that the applicant met the qualifications of an original licensee and that his earlier activities did not mark him as unfit. As the Director observes in the case before us, "the apprehended conduct in [Neiden] was already proscribed by regulations and needed no reinforcement by a special condition applicable only to the license in question." The case does not support respondent's position but does demonstrate that conduct, as distinguished from the simple qualification requirements of N.J.S.A. 33:1-25, is an appropriate area of inquiry.

If resort may be had to the feelings of the community with respect to a person-to-person transfer, we must next inquire whether the Director has the authority to give recognition to that community sentiment in the form of special conditions on the license rather than by simply denying the transfer.[2] The Director found his authority to impose conditions in this case specifically in N.J.S.A. 33:1-32, reading as follows:

> Subject to rules and regulations, each issuing authority by resolution, first approved by the commissioner, may impose any condition or conditions to the issuance of any license deemed necessary and proper to accomplish the objects of this chapter and secure compliance with the provisions hereof, and all such licenses shall become effective only upon compliance with the conditions so stated and shall be revocable for subsequent violation thereof.

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2. The propriety of the transfer itself is not before us, nor was it before the Appellate Division. The entire argument focuses on the imposition of special conditions on a person-to-persons transfer.

The Appellate Division, in denying that any such power could be derived from this statute, apparently assumed that "issuance" as used in this statute applies only to the original granting of a license, not to transfers. But elsewhere the act uses "issuance" in a sense other than "original grant." So, in N.J.S.A. 33:1-96, "renewals" are treated as a category of "issuance." Inasmuch as this is remedial legislation and should be liberally construed, e.g., N.J.S.A. 33:1-73; Borough of Fanwood v. Rocco, supra, we conclude that a transfer constitutes an "issuance" for purposes of N.J.S.A. 33:1-32. This interpretation is in keeping with the purposes of the act, among which are to limit the evils of alcohol consumption and to promote temperance and the public welfare.

This leads to the question of whether the Director, in imposing conditions on the license transfer, acted in a reasonable manner in honoring the local sentiment expressed both at the Board meeting and at the de novo hearing. Admittedly the community feeling towards the applicant was directed not at any lack of fitness, the principal condition of a person-to-person transfer, see Neiden Bar & Grill, Inc. v. Municipal Bd. of A.B.C., Newark, supra, but at the alleged predilection of Lyons to alter and enlarge the use of the premises at some future time to the detriment of the community.

If this were an appeal from an outright denial of transfer, we no doubt would look differently upon the substance of the objections since they are "mere assumptions" of how Lyons intends to conduct business on the Chancellor premises. See Neiden Bar & Grill, supra, 40 N.J.Super. at 29; but cf. Lyons Farms Tavern, Inc., supra, 55 N.J. at 302. But here the transfer was approved. The conditions which have been imposed, although not directed to an existing problem, cf. Bd. of Comm'rs of Belmar v. Div. of A.B.C., 50 N.J.Super. 423, 425 (App.Div. 1958), (license subject to conditions at a previous "trouble spot"), do work to allay fears harbored by the community that the premises would change in character from a delicatessen-restaurant to a primary bar and in use from a small to a full bar. There was ample testimony on the record from which the Director could have determined that these fears were substantial and widespread. The conditions are germane to the statutory scheme and are not arbitrary or capricious. Further, they embody no more restrictions than those which Lyons had repeatedly stated would conform to its intended mode of operation in any event; they make the applicant's express intentions binding. Cf. Bd. of Comm'rs of Bayonne v. B & L Tavern, Inc., supra, 42 N.J. at 134. Lyons is nowise foreclosed by this decision from petitioning, at the time of license renewal, to have the conditions removed from its license. The question then will become whether the public good is served by striking those conditions. See Bd. of Comm'rs of Belmar v. Div. of A.B.C., supra, wherein conditions were lifted from the license because the public need was no longer served by their continued imposition.

The judgment of the Appellate Division disallowing the imposition of special conditions on a person-to-person license transfer is reversed.

2. APPELLATE DECISIONS - H.M.B.L. INC. v. RANDOLPH TOWNSHIP ET AL.

H.M.B.L. Inc., t/a Lakeland Liquors, Inc.	:	
Appellant,	:	On Appeal
v.	:	CONCLUSIONS AND ORDER
Township Council of the Township of Randolph, and Randolph Bottle King, Inc.,	:	
Respondents.	:	

Hugh E. DeFazio, Jr., Esq., Attorney for Appellant
Kenihan & Cohen, Esqs., by Lawrence P. Cohen, Esq., Attorneys for Respondent Township of Randolph
Abe W. Wasserman, Esq., Attorney for Respondent Randolph Bottle King, Inc.

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

This is an appeal from the action of respondent Township Council of the Township of Randolph (Council) which, on February 22, 1975, by a vote of four to three, granted a person-to-person and place-to-place transfer of a plenary retail distribution license from Pauline Zudick to respondent Randolph Bottle King, Inc. (Bottle King), and from premises on Sussex Turnpike, Mt. Freedom, Randolph Township, to K-Mart Plaza, Route 10 and South Salem Street, Randolph Township.

Appellant, in its petition of appeal, contends that the action of the Council was erroneous for the following reasons:

> "(a) The transfer violated written representations previously made by the Respondent, Township of Randolph, regarding transfers or locations of liquor licenses to the proposed premises; and
>
> (b) The transfer violates Ordinance Number 25-68 of the Ordinances of the Township of Randolph. More particularly, but not limited to, said transfer violates Section 8(e) of that Ordinance which states:

> '8 e. No new license nor transfer of existing license under this ordinance shall be issued for the sale of alcoholic beverages within six hundred (600) feet of any church or school nor within fifteen hundred (1500) feet of any licensed premises for the sale of alcoholic beverages nor in any residential zone nor on a state highway within two thousand five hundred (2500) feet of any licensed premises for the sale of alcoholic beverages within this township or any other municipality.'"

Both respondents, in their answers, denied the substantive matters contained in the petition of appeal. Additionally, the Council alleged that the appellant lacks standing before the Division for the reason that it is not a citizen or taxpayer of Randolph, or has an interest in a liquor license in Randolph.

At the de novo hearing held herein, the parties were afforded full opportunity to introduce evidence and cross-examine witnesses pursuant to Rule 6 of State Regulation No. 15. The parties opted to rely upon the transcript of the hearing held by the Council to consider the subject application for transfer, in accordance with Rule 8 of State Regulation No. 15. Additionally, various pertinent exhibits were received in evidence.

It appears from an examination of transcript of the hearing held by the Council on February 22, 1975, that two objectors, namely, the appellant, the holder of a liquor license in the adjoining Borough of Victory Gardens and the Garden Chapel, a church, also situated in Victory Gardens, appeared at the hearing and articulated the reasons for their objections to the said application for transfer.

Reverend Jesse Adams, Pastor of the Garden Chapel, expressed the fears of his congregation that the proposed liquor outlet would be used for consumption of alcoholic beverages; and that, if the rear exit of the premises were to be used by the general public, it would create an undesirable atmosphere for the youth of the church.

Appellant advanced several reasons (hereinafter discussed) for objecting to the proposed transfer.

I

In the year 1970, a former Township Manager informed appellant (although no formal application was filed) that he had been authorized by the Council to represent that a liquor license would not be issued for premises in the K-Mart Shopping Center because of its proximity to a proposed church building

and to another liquor licensed premises. Additionally, the Council had denied an application similar to the subject application in December 1974.

At the meeting held by the Council on February 22, 1975, the Mayor explained that he voted to deny the previous application for transfer because only four members of the seven member governing body was present at that meeting, and his "No" vote created a deadlock. It was his desire to have the entire Council consider the matter of the subject application. At the meeting of February 22, the Mayor voted in favor of the transfer.

The fact that the Council had reversed its previous position of not favoring the transfer of a license is irrelevant to arriving at a determination on the merits herein. The Council is not bound by the principles of stare decisis or res adjudicata in the matters such as the instant matter which involves policy considerations. See Lubliner v. Bd. of Alcoholic Bev. Con. v. Paterson, 33 N.J. 428, 441 and 444 (1960).

In Lubliner, supra, Justice Jacobs in speaking for the court (p. 441) said, "...the municipal issuing authority's function in determining whether additional licenses shall be allowed in the municipality or in particular areas, is primarily a policy determination on the basis of facts which are generally undisputed. Where the municipal issuing authority reasonably entertains the opinion that it is in the public interest to do so, it is free to alter an earlier policy determination....". See also Tozzi's Tavern, Inc. v. Plainfield, 65 N.J. Super. 286 (App. Div. 1961) wherein the court held that the council's refusal to permit a change of location of a package store liquor license did not bar approval of change, one month later, by a newly elected council; and city common council members are not required to state reasons for their vote on application to change location of package store liquor license or to show good cause for changing vote on successive applications. See also, New Hampshire House, Inc. v. Summit, Bulletin 2002, Item 2, affirmed Superior Court, App. Div. 1972, opinion not approved for publication.

II

Appellant contends that the proposed transfer situs would be within six hundred feet of the aforementioned church and, would, therefore be violative of the Township's distance ordinance hereinabove referred to.

The Township Engineer, Michael J. Spillane, reported, in writing, that the distance between the proposed situs and the nearest church is 1,700 feet. There was no proof adduced in the transcript to contradict this measurement. This contention is, therefore, without merit.

Moreover, the Council, allayed the fears articulated by the Pastor by informing him that the proposed liquor establishment would not be used for on-premises consumption, and that the grant of the transfer was made expressly subject to the special condition that the rear door of the said outlet would not be used as a means of ingress by the general public.

In arriving at this determination, I need not consider whether or not the aforementioned distance ordinance is to be applied with equal force to churches outside of Township's boundaries.

III

The Township Engineer reported that the proposed liquor situs is 3,800 feet distant from the liquor licensed premises located on the State Highway. No proof or argument was submitted to the contrary. Therefore, I find and determine that the proposed transfer is not violative of that part of the said ordinance which provides that the transfer shall not be on a state highway within 2,500 feet of any other liquor licensed premises within the Township or any other municipality.

IV

The report of the Township Engineer sets forth that the proposed situs of the liquor store is 1,405 feet distant from the nearest existing liquor licensed premises which is known as The Scene, and, also, as Delray, and is located in the adjoining Borough of Victory Gardens. It is also noted that the license has not been in use for a period of six months, nor has it objected to the proposed transfer.

Appellant argues that the phrase contained in the aforesaid ordinance "within this Township or any other municipality" applies and prohibits the said transfer.

On the other hand, the respondents argue that that particular phrase applies solely to the last mentioned category of liquor licensed establishments, that is, licensed premises located on a state highway.

It is a basic rule of statutory construction that paramount consideration is attached to the intent of the legislating body. One must discern the purpose for which the statute was passed and the end it seeks to accomplish. Safeway Trails, Inc. v. Furman, 41 N.J. 467 (1964), appeal dismissed and certiori denied, 379 U.S. 14 (1964). Statutes are to be read sensibly rather than literally, and the controlling legislative intent must be interpreted as "consonant to reason and good discretion." Schierstead v. Brigantine, 29 N.J. 220, 230 (Sup. Ct. 1959); Lloyd v. Vermeulen, 22 N.J. 200, 205 (1956).

In the Lloyd case the Supreme Court referred to Judge Learned Hand's well-known remark that 'there is no surer way to misread any document than to read it literally.' Guiseppi v. Walling, 144 F. 2d 608, 624, 155 A.L.R. 761 (2 Cir. 1944), affirmed sub nom. Gemsco v. Walling, 324 U.S. 244, 65 S. Ct. 605, 89 L. Ed. 921 (1945)." See also Waters v. Quimby, 27 N.J.L. 296, 311 (Sup. Ct. 1859), affirmed 28 N.J.L. 533 (E. & A. 1859):

> "When the words of a statute are susceptible of two meanings, the one favorable, and the other hostile to its principal design, the former should prevail and control the construction. Where the words are clear, and the difficulty is made by critical exposition, that exposition should not be adopted in clear contravention of the scope and policy of the act. Few statutes would stand if tried by the strictest standards of logic, grammar, or rhetoric."

Undeniably (as pointed out by the Council in its Memorandum of Law), the subject ordinance was passed to regulate the number of licenses in Randolph Township and to protect against an overconcentration of liquor retailers within the municipality. It was not passed to protect retailers in any other municipalities, nor for the purpose of guarding against an overconcentration of liquor retailers caused by the ordinances of other municipalities. Indeed, the ordinance does not purport to regulate the licensing of retailers in Victory Gardens or any other municipality; the regulations solely pertain to licenses within its borders.

In arriving at a determination herein I am mindful of other factors. In Raines v. Trenton, Bulletin 2094, Item 3, it was brought out that the relevant ordinance of the city of Trenton (Chapter IV, Alcoholic Beverage Control of the Revised General Ordinances of the City of Trenton - 1968), Sec. 4.3, provides as follows:

> "No plenary retail...distribution license... shall be...transferred to premises within 500 feet of any other premises licensed...." (Underscoring added.)

In construing this ordinance, the Director held, as follows:

> "As in the case of statutes, the guide in construing an ordinance is to learn and give effect to the legislative intention. Wright v. Vogt., 7 N.J. 1, 5 (1951)."

It is clear that the ordinance in question is the ordinance of the City of Trenton; and, viewed in pari māteria, it intends to be restrictive to licensees within its own municipality. It is inconceivable that, in the adoption of the ordinance, its framers intended references to licensed premises in adjoining municipalities. See also, Zicaro v. Newark, Bulletin 1444, Item 2.

I have also considered the fact that the construction to be accorded to the ordinance was considered by the Council in arriving at its determination. The transcript reveals that both attorneys for the appellant and the Council advanced their respective interpretations of the subject ordinance and that some of the Council members were, thereby, influenced. Obviously, the majority members were of the opinion that the phrase in the ordinance "within this Township or any other municipality" referred to the last antecedent subject which refers to liquor licensees located within 2,500 feet on a state highway.

In Service Armament Co. v. Hyland, 131 N.J. Super. 38, 48-49 (App. Div. 1974), the Appellate Division made the following observation:

> "In Offhouse v. State Board of Education, 131 N.J.L. 391 (1944), app. dism. 323 U.S. 667, 65 S. Ct. 68, 89 L. Ed. 542 (1944), reh. den. 323 U.S. 814, 65 S. Ct. 114, 89 L. Ed. 648 (1944), our former Supreme Court commented:
>
> > 'Contemporary exposition may be considered, and is ordinarily accorded great weight, where the language of a municipal regulation is of doubtful import and is not made plain by the context. The meaning attributed to the rule soon after its adoption by the authority charged with its enforcement is generally the best construction; and it will be accepted unless clearly wrong, especially where it has received the acquiescence of those affected by its terms. [at 395].' "

In deciding questions of interpretation, unreasonable constructions should be avoided if a reasonable construction consistent with the indicated purpose is equally possible. Clifton v. Bd. of Taxation, 28 N.J. 411 (1959).

I find that the Council's determination is a more reasonable interpretation, consistent with the generally accepted purposes of such ordinances, viz., that the Board intended that transfers of licenses not be made (1) to within

600 feet of a church or school (2) to within 1,500 feet of an existing licensee (3) to a residential zone; and (4) to within 2,500 feet of an existing licensee operating on a state highway. This final restriction would apply regardless of the location of existing licensee. The final qualification would serve to prevent heavy consumption by persons using the state highways where more traffic at higher speed is likely to exist. Then, and only then, could one take extraterritorial licensees into consideration.

V

Appellant further alleges that the grant of the proposed transfer would result in an economic hardship to it. An issuing authority is not obligated to consider whether the financial interest of any pre-existing licensee will be promoted or harmed in its determination whether to grant a liquor license application. See Paulison Liquors, Inc. v. Clifton, Bulletin 2162, Item 3 and cases cited therein. It is a well established principle that, in any conflict between a licensee's financial concern and the public interest, the latter must prevail. Smith v. Bosco, 66 N.J. Super. 165 (App. Div. 1961); Marilyn Corporation v. Paterson, Bulletin 2126, Item 2.

VI

In arriving at a determination herein I am also mindful of the principle enunciated in Common Council of Hightstown v. Hedy's Bar, 86 N.J. Super. 561, 562-563 (App. Div. 1965) as follows:

> "The standards of review controlling the Director and the court on appeal are set out in Borough of Fanwood v. Rocco, 33 N.J. 404 (1960), affirming 59 N.J. Super. 306 (App. Div. 1960). The court there pointed out that under New Jersey's system of liquor control the municipality has the original power to pass on an application for an alcoholic beverage license or the transfer thereof. However, its action is subject to appeal to the Director of the Alcoholic Beverage Control Division. On such appeal the Director conducts a de novo hearing and makes the necessary factual and legal determinations on the record before him.
>
> * * *
>
> Under his settled practice, the Director abides by the municipality's grant or denial

> of the application so long as its exercise of judgement and discretion was reasonable... However, where the municipal action was unreasonable...or improperly grounded... the Director will grant such relief or take such action as is appropriate." (Citations omitted; at pages 414-415)

See also Hudson Bergen County Retail Liquor Stores Assn. v. Hoboken, 135 N.J.L. 502, 511. (E. & A. 1947); Fanwood v. Rocco, 59 N.J. Super. 306 (App. Div. 1960) aff. 33 N.J. 404 (1960).

VII

From my examination of the entire record herein, including the transcript, the exhibits and the argument of counsel, I conclude that the Council has understood its full responsibility and has acted circumspectly, and in the reasonable exercise of its discretion. I, therefore, find that appellant has failed to sustain the burden of establishing that the action of the Council was erroneous and should be reversed, as required by Rule 6 of State Regulation No. 15.

Accordingly, I recommend that the action of the Council be affirmed and that the appeal be dismissed.

I further recommend that the grant of the application for transfer be made expressly subject, however, to the special condition that the rear door of the licensed premises shall not be used by the general public for ingress or egress in conjunction with retail sales; that said door shall not be equipped with a door knob or similar device on the exterior thereof; and that the said door shall be used for emergency safety purposes only.

Conclusions and Order

Written exceptions to the Hearer's report, with supportive argument, were filed by the attorneys for appellant, and answer to the said exceptions was filed by the attorney for the respondent Randolph Bottle King, Inc., pursuant to Rule 14 of State Regulation No. 15.

Having carefully considered the entire record herein, including the transcripts of the testimony, the exhibits, the argument of counsel, the Hearer's report, and the exceptions thereto, which I find have either been satisfactorily resolved in the said Hearer's report, or are lacking in merit, I concur in the findings and conclusions of the Hearer and adopt his recommendations.

Accordingly, it is, on this 16th day of July 1975,

ORDERED that the action of the respondent Township Council of the Township of Randolph be and the same is hereby affirmed, expressly subject to the following special conditions:

(a) that the rear door of the licensed premises shall not be used by the general public for ingress or egress in conjunction with retail sales;

(b) that said door shall not be equipped with a door knob or similar device on the exterior thereof; and

(c) that the said door shall be used for emergency safety purposes only;

and it is further

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

LEONARD D. RONCO
DIRECTOR

3. STATE LICENSES - NEW APPLICATIONS FILED.

United Vintners Inc.
One Colony Road
Jersey City, New Jersey
Application filed September 2, 1975
for place-to-place transfer of
Plenary Wholesale License W-13 from
Building 173, Marsh & Export Streets,
Port Newark, New Jersey.

Hoboken Beer & Soda Outlet, Inc.
t/a Beer & Soda Outlet
560-564 Newark Street
Hoboken, New Jersey
Application filed September 8, 1975
for person-to-person and place-to-place
transfer of State Beverage Distributor's
License SBD-63 from Jersey Beverages, Inc.,
161 Oliver Street, Newark, New Jersey.

Leonard D. Ronco
Director