

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

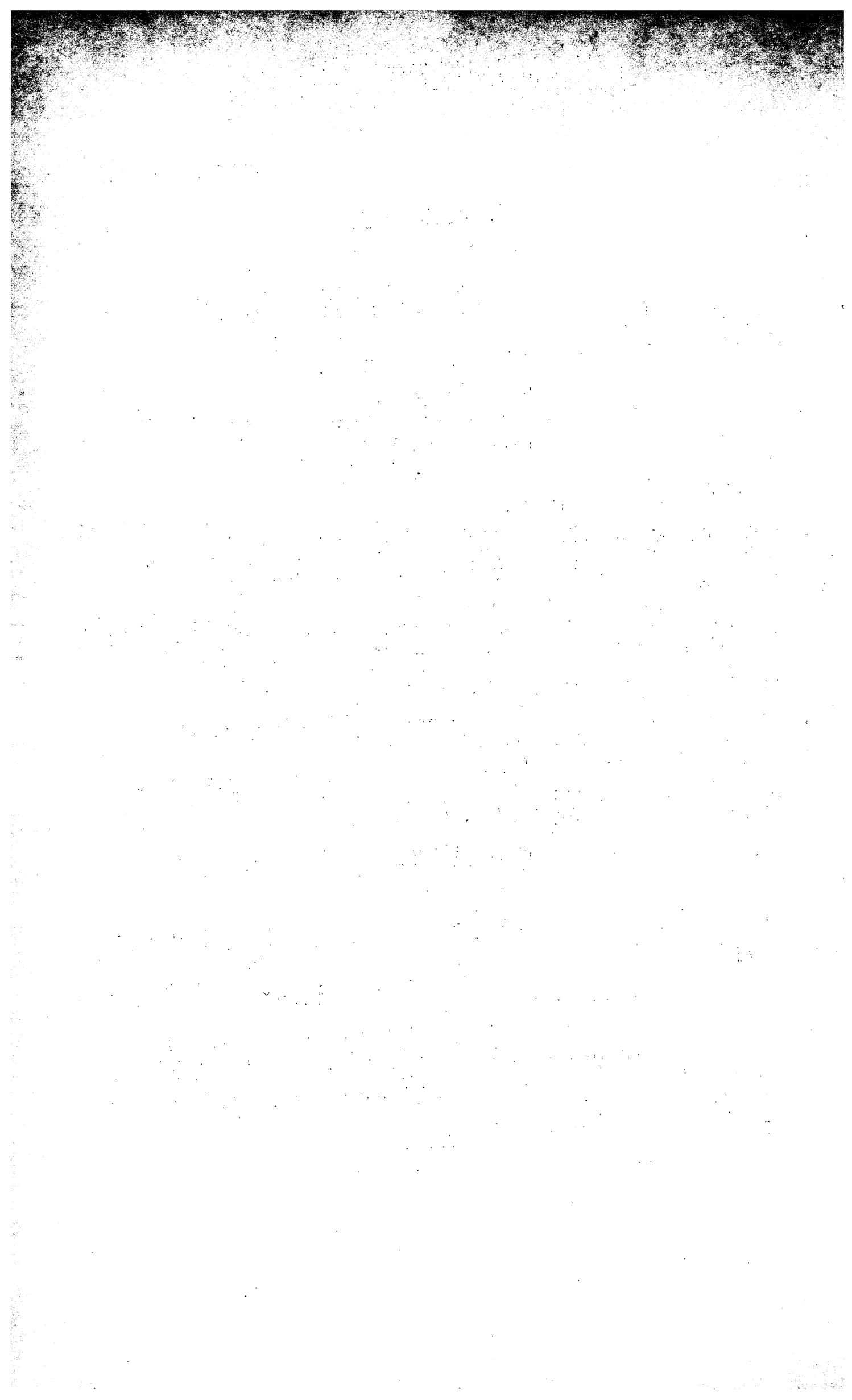
BULLETIN 909

JUNE 19, 1951.

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

BULLETIN 909

JUNE 19, 1951.

1. NEW LEGISLATION - AMENDMENT OF PLENARY RETAIL DISTRIBUTION AND LIMITED RETAIL DISTRIBUTION LICENSE PARAGRAPHS OF REVISED STATUTES, 33:1-12.

Assembly Bill No. 113 (Third Official Copy Reprint) was approved by Governor Driscoll on June 5, 1951 and thereupon became Chapter 163 of the Laws of 1951. The Act makes no change in the plenary retail consumption, seasonal retail consumption, plenary retail transit and club license provisions of Revised Statutes, 33:1-12. The Act's changes are those effected in Paragraphs (3)a and (3)b of Revised Statutes, 33:1-12 by the addition of the language herein underscored:

"Plenary retail distribution license. 3a. 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 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 one hundred dollars (\$100.00), and not more than two thousand dollars (\$2,000.00). 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.

"Limited retail distribution license. 3b. The holder of this license shall be entitled, subject to rules and regulations, to sell any unchilled, brewed, malt alcoholic beverages in quantities of not less than seventy-two fluid ounces for consumption off the licensed premises; but only in original containers; provided, however, that this license shall be issued only for premises operated and conducted by the licensee as a bona fide grocery store, meat market, meat and grocery store, delicatessen, or other type of bona fide food store at which groceries or other foodstuffs are sold at retail; and provided further, that this license shall not be issued except for premises at which the sale of groceries or other foodstuffs is the primary and principal business and at which the sale of alcoholic beverages is merely incidental and subordinate thereto. The fee for this license shall be fixed by the governing body or board of the municipality in which the licensed premises are situated, by ordinance, at not less than twenty-five dollars (\$25.00) and not more than fifty dollars (\$50.00). The governing board or body of each municipality may, by ordinance, enact that no limited retail distribution license shall be granted within its respective municipality."

ERWIN B. HOCK  
Director.

Dated: June 8, 1951.

2. COURT DECISIONS - MANNO ET AL. v. CLIFTON.

THE ALCOHOLIC BEVERAGE LAW GOVERNS THE PROCEDURE OF ALL ACTIONS TAKEN BY MUNICIPAL ISSUING AUTHORITIES PURSUANT TO SUCH STATUTE.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
A-81-50

CHRISTINE MANNO and CLARIBEL )  
ELFREY, trading as EL ZEBRA, )  
Plaintiffs-Appellants, )

-vs- )

CITY OF CLIFTON and WILLIAM A. )  
MILLER, Municipal Manager of the )  
CITY OF CLIFTON, )  
Defendants-Respondents. )

-----)

Argued, May 21, 1951; decided May 25, 1951.

Before Judges Freund, Donges and Proctor.

Mr. Samuel Heller argued the cause for the plaintiffs-appellants (Mr. William R. Brogan, of counsel).

Mr. John G. Dluhy argued the cause for the defendants-respondents.

The opinion of the Court was delivered by

FREUND, S.J.A.D.

The plaintiffs were charged with violation of the provisions of R.S. 33:1-77 and Rule No. 1 of State Regulations No. 20 of the Division of Alcoholic Beverage Control. A hearing on the charges was held by the Municipal Council of the City of Clifton, consisting of seven members, five of whom were present at the hearing. By a vote of three to two, the quorum of the Municipal Council found the plaintiffs guilty and ordered suspended for ten days the plenary retail consumption license previously issued to them.

The plaintiffs then filed a complaint in this Court seeking an injunction restraining the defendants from interfering with the license and that the defendants' resolution of suspension be declared null and void. Motions for summary judgment were made by both parties. After hearing judgment was entered dismissing the complaint, and the plaintiffs appeal.

The appellants argue that by virtue of R.S. 40:81-20 the affirmative vote of a majority of all seven members of the Municipal Council was necessary to suspend the license issued to the plaintiffs. Certainly, R.S. 40:81-20 is applicable to any act or measure taken by the governing body under the Municipal Manager Act when exercising the powers granted to it by R.S. 40:81-1 et seq. However, the statute ought not be construed so as to circumscribe other actions of the council. The common law rule which requires for valid action the affirmative vote of a mere majority of a quorum will prevail in the absence of a statutory provision. McQuillin, 3rd Ed., Vol. 4, Sec. 13.29, Page 482. The legislative intent to limit the restrictions of R.S. 40:81-20 to cover only such municipal action as is taken under the Municipal Manager Act is obvious from the insertion in the statute of the words "except as otherwise provided by law."

In the instant case, the Municipal Council was not exercising any power granted to it by the Manager Act; it was acting pursuant

to the provisions of the Alcoholic Beverage Control Act, R.S. 33:1-1 et seq., from which statute a municipality derives its power as the "other issuing authority", R.S. 33:1-19. The state-wide policy of the Legislature as evidenced by the Alcoholic Beverage Control Act governs the procedure applicable to municipal bodies acting as the "other issuing authority." The act contains no provision requiring a majority vote of all members for valid action. Accordingly, the common law rule applies. Hutchinson v. Belmar, 61 N.J.L. 443, 449, (Sup. 1898), affirmed 62 N.J.L. 450, (E. & A. 1898). Housman v. Earle, 98 N.J.L. 379, (Sup. 1922). Matthews v. Asbury Park, 113 N.J.L. 205, (Sup. 1934).

There being no statutory restriction when acting under the provisions of R.S. 33:1-19, the Municipal Council of the City of Clifton was not required to pass the resolution of suspension by an affirmative vote of a majority of its seven members; the affirmative vote of a majority of the quorum present was sufficient for valid action.

Since the foregoing conclusion is dispositive of the appeal, it is unnecessary to consider whether the appellants should have exhausted their administrative remedies.

The judgment is affirmed.

3. APPELLATE DECISIONS - JOYCE v. WASHINGTON TOWNSHIP (WARREN COUNTY) AND THATCHER.

REGINALD JOYCE,

Appellant;

-vs-

TOWNSHIP COMMITTEE OF WASHINGTON TOWNSHIP, WARREN COUNTY, and CATHERINE THATCHER,

Respondents. )

ON APPEAL

CONCLUSIONS AND ORDER

Crummy & Consodine, Esqs., by Andrew B. Crummy, Esq., Attorneys for Appellant.  
Wilbur M. Rush, Esq., Attorney for Respondent Township Committee.  
Henry W. Eckel, Jr., Esq., Attorney for Respondent Catherine Thatcher.

BY THE DIRECTOR:

This is an appeal from respondent Committee's action granting, on December 5, 1950, application of respondent Thatcher for transfer of a plenary retail consumption license, heretofore granted to Joseph Altieri, Jr., and from premises on Route No. 24 to proposed premises on Mine Hill Road, Bowerstown, Washington Township, Warren County.

A 1948-1949 plenary retail consumption license was held by John Altieri, Daniel Altieri and Joseph Altieri, Jr., t/a Altieri's Restaurant, for premises on Route No. 24. In March of 1949 the licensed building was completely destroyed by fire. By resolution, respondent Committee (1) granted, subject to a completion-of-premises special condition, a transfer of the 1948-1949 license to an adjacent house; (2) authorized such transfer, effective as of June 29, 1949, for the sole purpose of permitting a 1949-1950 renewal; (3) granted a 1949-1950 renewal, subject to a completion-of-premises special condition; (4) authorized issuance of the 1949-1950 license for the sole purpose of permitting a 1950-1951 renewal; and (5) granted a 1950-1951 renewal (in the name of Joseph Altieri, Jr., John and Daniel having withdrawn from interest) subject to a completion-of-premises special condition.

On August 1, 1950, respondent Committee denied Catherine Thatcher's application for transfer of license from Joseph Altieri, Jr. to herself and to premises to be located on Mine Hill Road, Bowerstown. The denial was by unanimous vote of Committeemen Schuler, Kries and McDonough. On appeal from the denial respondent Committee's action was affirmed. (Thatcher v. Washington Township, Bulletin 889, Item 1.) (Hereinafter, that case will be referred to as the First Appeal and the appeal herein will be referred to as the Present Appeal.)

The completion-of-premises special condition, imposed by a resolution of June 5, 1950 upon the granting of the Altieri license application for 1950-1951, was not complied with. By respective resolutions of December 5, 1950, respondent Committee (1) authorized issuance of the 1950-1951 license to Joseph Altieri, Jr. for the sole purpose of permitting transfer of the license; and (2) granted Catherine Thatcher's application for transfer of the license to her and to premises to be located on Mine Hill Road, Bowerstown, subject to the special condition that the proposed Bowerstown premises shall first be completed in accordance with "the specifications (sic) on file with the application". (A plan or sketch was filed showing location and footage of a proposed barroom, bar, lounge and dining room, kitchen, etc., but no specifications showing type of building, construction, etc. were ever filed.) On the first of these resolutions of December 5, 1950, Committeemen Kries and McDonough voted Yes and Committeeman Schuler voted No. On the second resolution Committeemen Kries and McDonough voted Yes while Committeeman Schuler abstained from voting.

Item II of the Memorandum of Law submitted on behalf of respondent Thatcher in the Present Appeal sets forth:

"The application of Catherine Thatcher was denied on August 1, 1950, for the sole reason that the Committee was advised that there was no license in being capable of transfer, and their granting of a second application of Catherine Thatcher on December 5, 1950, after a license was capable of transfer does not constitute a reconsideration or reversal of its previous actions."

In the "Third Separate Defense" in respondent Committee's Answer to the Petition of Appeal herein, it is stated that the granting of respondent Thatcher's application "was totally unrelated to any previous application or action thereon".

As will hereinafter be made plain the denial taken up on the First Appeal was not, on the record, based solely upon the non-existence of a license capable of transfer. As to the proposition that the application in the Present Appeal was a new and separate application there is, of course, no question or legal doubt. But it cannot soundly be said that the merits and respondent Committee's actions in connection therewith in the First and Present Appeals must or should be considered as unrelated.

The "Second Separate Defense" in respondent Committee's Answer to the Petition of Appeal herein reads:

"On or about November 15, 1950, the Commissioner (Director) of Alcoholic Beverage Control handed down an opinion dismissing an appeal heretofore filed by said Catherine Thatcher from a decision of this respondent rejecting a previous application by said Catherine Thatcher, which said opinion states:

"Respondent, however, would not have been without authority to grant an application for person-to-person and place-to-place transfer if, prior to such granting,

it had passed a resolution authorizing actual issuance of the 1950-1951 license to Joseph Altieri, Jr. for the sole purpose of permitting a transfer.'

"In conformity with the suggestion contained in said opinion, respondent issued the license to one Joseph Altieri, Jr. solely for the purposes of transfer and thereafter authorized the transfer of said license to respondent Catherine Thatcher." (Underscoring added.)

Of course the Answer's hereinabove-quoted portion of the Conclusions and Order in the First Appeal was in no sense, as the Committee must have known, a "suggestion" that the indicated resolution be adopted. Respondent Committee's Answer omitted any reference to the following statement in the Conclusions and Order (immediately following the portion quoted just above from the Answer): "Of course, respondent was under no legal compulsion to pass the indicated resolution and grant appellant's application." In the Petition of Appeal and the Answer thereto in the First Appeal, there appeared the likelihood of confusion or misunderstanding on both sides with respect to whether jurisdiction to grant the application might have existed if the "sole purpose" resolution had first been adopted. My object, in the quoted portion of my Conclusions and Order, was merely to make the jurisdictional point clear in this regard.

In my Conclusions and Order in the First Appeal it was stated:

"It appears from the testimony of Mr. Levi Kries, a member of respondent Committee, that appellant's application was unanimously denied for the reason (in addition to that set forth in the denying resolution and respondent's Answer herein) that the Committee members felt there was no community need for a license at appellant's premises located in the Bowerstown section of Washington Township."

As noted, Committeeman Kries, who appeared and testified at the hearings on the First Appeal and the Present Appeal, voted No on Catherine Thatcher's first application and Yes on the second application. Committeeman McDonough, who did not appear at the hearing on the First Appeal but who appeared and testified at the hearing on the Present Appeal, voted No on the first application and Yes on the second. Committeeman Schuler, who appeared at neither hearing, voted No on the first application and abstained from voting on the second.

At the hearing on the First Appeal, Committeeman Kries testified as follows -- Question: "Did the Committee feel that there was any community need for the license to be transferred to the Log Cabin Inn in Bowerstown?" Answer: "They did not." At that hearing respondent Committee's Attorney stated: "I believe Mr. Kries' testimony together with the original minutes would speak eloquently as if all the Committee members were here. Their testimony would only be cumulative."

In the Present Appeal, in answer to the Question: "You definitely say you believe there is a community need for a license in this location?", Committeeman Kries testified: "I do." When asked: "Had you considered community need in the prior application, that is the one on August 1, 1950?", Mr. Kries answered: "No." When asked on cross-examination: "Did you tell your counsel just now that you did not consider community need in August, 1950?", Mr. Kries answered: "I did not." Then, when asked: "Well, did you consider community need in August 1950?", Mr. Kries answered: "No sir, I didn't think we had to."

When asked in the Present Appeal: "You specifically, as Township Committeeman, find a community need in this part of the community for a saloon?", Mr. McDonough replied: "No sir." Then -- Question: "You didn't?"; Answer: "I didn't find any necessity or community need." Then Mr. McDonough was asked: "Why did you vote for it if you didn't find there was community need in this part of town? Why did you vote for this transfer?" Mr. McDonough replied: "Why did I vote? I voted because I thought the man (sic) had a legal right to set up business there. It was a legal right." But on this very point my Conclusions and Order in the First Appeal quoted the clear, succinct statement in Re Campbell, Bulletin 682, Item 13:

"No one has a 'right' to....a license transfer. A retail license is, at most, a privilege, authorized by the State to be conferred, but which the municipal issuing authority may deny in the exercise of a sound discretion. (See Meehan v. Jersey City, 73 N.J.L. 382.) It follows that it is not mandatory for a municipal issuing authority to..... grant a transfer to an applicant simply because he is not disqualified under the law -- Revised Statutes, 33:1-25..."

In the Present Appeal stress was laid, in the testimony of Committeemen Kries and McDonough, upon the jurisdictional difference in the situations obtaining in August when the first application was denied and in December when the second application was granted. The effort in this regard was to reconcile the change in the votes upon the respective applications on the single basis of the fact that the Altieri license was not legally transferable in August (since a resolution effecting actual issuance of that license for the purpose of permitting its transfer had not then been adopted) but was legally transferable in December after the "sole-purpose-of-transfer" resolution had been passed. However, as herein indicated, it is abundantly clear that far more is involved than the strict jurisdictional point.

In the Conclusions and Order in the First Appeal it was stated: "It appears...that numerous written objections to the granting of appellant's application were filed with the Township Committee, and that approximately thirty-two persons appeared in objection at the local hearing held pursuant to Rule 8 of State Regulations No. 6. At the hearing herein no testimony, save that of appellant, was presented to demonstrate public need for a license in the Bowerstown section. On the general merits I do not find, from the evidence before me, that respondent abused its discretionary power in denying appellant's application."

At the hearing on the Present Appeal, respondent Thatcher, her husband and one tavern owner, President of the Warren County Tavern Association, testified that there was public need for a license at the location sought. At the local hearing on objections to the granting of the second application, letters of objection signed by sixteen residents of Bowerstown were read to the Committee.

On the First Appeal Committeeman Kries was asked, on cross-examination: "...at the time the Committee voted...your decision to deny the application was not influenced by the number of objectors, is that correct?" Mr. Kries answered: "That's right." On the Present Appeal Committeeman Kries was asked, on direct examination: "Did you seriously consider the community objection on August 1, 1950?" He answered: "I did. There were thirty-two objectors at the time. In December 5, there were sixteen I believe."

At the hearing on the Present Appeal respondent Thatcher was asked: "Now, you know what conditions were in Bowerstown in August, 1950?" Mrs. Thatcher answered: "That's right." Then she was asked:

"What difference was there in the community need between August of 1950 and December of 1950, if any?" She answered: "Well, as far as I am concerned there was no difference. I couldn't help it if they didn't, I mean if it couldn't be given to us at that time. I can't help it if those men said there was no need at that time. I feel there was a need then as there is now...There is no difference."

On the record before me, involving as it does the same applicant, the same premises, the same membership on the Committee, and no change in the merits, the switch in position on the part of two of the Committeemen cannot, on the full record, be deemed justifiable and sound. The alleged reasons for the switch simply do not hold up and that is true despite the absence of evidence of improper motivation. I find that the granting herein appealed from was arbitrary and in abuse of respondent Committee's discretionary authority. Respondent Committee's action will, therefore, be reversed.

(The Division's records show that the transfer became effective as of April 12, 1951, during the pendency of this appeal.)

Accordingly, it is, on this 6th day of June, 1951,

ORDERED that the action of respondent Committee granting application for transfer of Plenary Retail Consumption License C-2 to respondent Thatcher, and from place to place, be and the same is hereby reversed and such transfer declared null and void, and that all operations thereunder cease forthwith.

ERWIN B. HOCK  
Director.

4. DISCIPLINARY PROCEEDINGS - FAILURE TO HAVE LICENSED PREMISES CLOSED DURING PROHIBITED HOURS IN VIOLATION OF LOCAL REGULATION - HINDERING INVESTIGATION - LICENSE SUSPENDED FOR 25 DAYS.

In the Matter of Disciplinary Proceedings against )

JOHN SADOFSKI and JULIA SADOFSKI )  
T/a JOHN & JULIE'S BAR AND GRILL )  
32 Main Street )  
South River, N. J., )

CONCLUSIONS  
AND ORDERS

Holder of Plenary Retail Consumption License C-9, issued by the Borough Council of the Borough of South River. )

-----  
Benjamin Kleinberg, Esq., Attorney for Defendant-licensees.  
Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendants pleaded not guilty to charges alleging that they (1) failed to have their entire licensed premises closed on Sunday between the hour of 2:00 a.m. and 2:30 a.m., in violation of an ordinance of the Borough Council of the Borough of South River; and (2) hindered and failed to facilitate an investigation then being conducted by agents of the State Division of Alcoholic Beverage Control thereon at said time, in violation of R. S. 33:1-35.

The evidence at the hearing herein discloses that on Sunday, March 11, 1951, from 2:15 to 2:30 a.m., three patrons or customers of the licensed business were present in the licensed premises. No sale or consumption of alcoholic beverages was then taking place. The door was closed -- locked, and the light dimly lit.

The ordinance, as amended, effective December 26, 1944, and in effect at least until March 26, 1951, provides in part: "No plenary retail consumption licensee shall sell....any alcoholic beverage on licensed premises....on Sundays, between the hours of 2:00 A.M. and 1:00 P.M." (exceptions therein not pertinent hereto), and further "During the hours that sales are hereinabove prohibited, the entire licensed premises shall be closed."

All the witnesses agreed as to the presence of three customers or patrons on the licensed premises after 2:00 a.m. and before 1:00 p.m. on the Sunday in question. The ABC agents testified that they, arriving at the licensed premises at about 2:15 a.m. on March 11, 1951, knocked loudly at the front door. No one paid any attention to them, although they called out loudly "ABC let us in" and could see John Sadofski behind the bar apparently cleaning up. One agent then went to the back door, a wooden door with glass in the upper sash, the entrance to the kitchen, knocking and calling until John Sadofski, apparently at the call of one Andy, a clean-up man, entered the kitchen from the barroom adjoining and standing about eight feet away, told the agent "we are closed". Paying no attention to the identification folder pressed against the upper panel of the door by the agent, displaying a card bearing "ABC" in letters of at least 3/4 of an inch high, he turned away without attempting either to open the door or to go closer so that he could determine the identity of the men so patently endeavoring to gain an entrance.

After about 15 minutes and after the arrival of a police sergeant on routine patrol, the front door was opened. At about the same time an officer at police headquarters was talking to a patrolman concerning a 'phone call made to police headquarters about 2:25 a.m. by the licensee Julia Sadofski. This evidence is further corroborated for the period from about 2:20 until approximately 2:30 a.m. by the local police officers.

In construing a similar ordinance it has been held that closing and locking the doors is not enough -- patrons must be off the premises. See Town House v. Montclair, Bulletin 792, Item 3. Since the presence of three patrons on the licensed premises after 2:00 a.m. is admitted, I find the defendants guilty of charge 1.

Defendants testifying in the main admit the 15 minute delay and seek to excuse it by denying that they knew who was endeavoring to obtain admission, and further alleging that a robbery of their tavern about five or six months prior to March 11 made them cautious. Clearly, if the licensees did not learn the identity of the agents it was because they refused to hear and to see. Going to the door would not require opening it until satisfied that those seeking admission were entitled thereto. In fairness to the licensees it should be said that they cooperated fully with the agents after they were admitted to the licensed premises. I find defendants guilty as to charge 2.

Defendants have no prior adjudicated record. I shall suspend defendants' license on charge (1) for fifteen days, Re Sudol, Bulletin 900, Item 7. Under the circumstances of this case I shall suspend defendants' license on charge (2) for an additional period of ten days.

Accordingly, it is, on this 5th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-9, issued for the 1950-51 licensing period by the Borough Council of the Borough of South River to John Sadofski and Julia Sadofski, t/a John & Julie's Bar and Grill, 32 Main Street, South River, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 11, 1951; and it is further

ORDERED that if any license be issued to these licensees, or any other person, for the premises in question for the 1951-52 licensing period, such license shall be under suspension until 2:00 a.m. July 6, 1951.

ERWIN B. HOCK  
Director.

- 5. WHOLESALE LICENSEE - REFUSAL OF RECTIFIER AND DISTRIBUTOR TO SELL ALCOHOLIC BEVERAGES TO WHOLESALER FOUND TO BE NEITHER DISCRIMINATORY NOR ARBITRARY UNDER CIRCUMSTANCES OF CASE - PETITION FOR ORDER UNDER PROVISIONS OF R. S. 33:1-93.3 DENIED.

In the Matter of a Petition by )

PHILLIP HOFFMAN )  
 T/a THE HOFFMAN IMPORT AND )  
 DISTRIBUTING COMPANY )  
 34 Exchange Place )  
 Jersey City, N. J., )

ON PETITION  
CONCLUSIONS

Pursuant to the Provisions of  
R.S. 33:1-93.1 to R.S. 33:1-93.5 )  
inclusive (P.L. 1942, c. 264). )

----- )  
 Drenk & Walton, Esqs., by George H. Walton, Esq. and Louis B. LeDuc, )  
 Esq., Attorneys for Petitioner. )  
 Osborne, Cornish & Schock, Esqs., by Emanuel P. Scheck, Esq., )  
 Attorneys for Park & Tilford Distillers Corporation. )

BY THE DIRECTOR:

The petitioner seeks relief under the provisions of P.L. 1942, c. 264 (R.S. 33:1-93.1 to 93.5) which prohibits discrimination by distillers in the sale of alcoholic beverages to wholesale licensees.

The essential facts are undisputed and may be simply stated. For more than ten years prior to 1949, Park & Tilford Import Corporation, a distiller of alcoholic beverages, predecessor of the present respondent, Park & Tilford Distillers Corporation, sold its products directly to retailers in this state pursuant to a New Jersey wholesale license. During that period its distribution covered the entire state, with the exception of one other wholesaler located in Monmouth County. Difficulties encountered in effecting efficient deliveries of its products caused the respondent in 1949 to appoint several wholesalers as its representatives in the central, southern and western portions of the state. It retained for itself, however, the exclusive distribution of its products in the northerly counties.

In December 1949, the respondent authorized the petitioner to handle the sale of its products in Hudson County. This authorization was never reduced to writing. It is conceded that no time period was fixed for its duration, and I am satisfied from the evidence that the authorization was on a "trial basis" only. In December 1950, pursuant to a change of policy decided upon by the management of the present respondent, this authorization was cancelled and respondent thereafter refused to honor several orders placed with it by the petitioner. At the same time it also revoked its arrangements with two other wholesalers -- one for Hudson County and the other for Passaic County -- and once again preempted the entire northern portion of the state for itself.

The sole issue is whether the respondent's refusal to sell its products to the petitioner is "arbitrary" within the meaning of R.S. 33:1-93.2.

It may be said, parenthetically, that I am not concerned with the question whether the petitioner may have any remedy in the civil courts against the respondent for any alleged breach of the contractual arrangements between them. That is not within my province. I am limited by the terms of the statute (R.S. 33:1-93.1 to 93.5) to a determination of whether the "refusal to sell is arbitrary or not". A careful perusal of the record convinces me that the respondent's refusal to sell its products to the petitioner, and other wholesalers similarly situated, emanated from a bona fide decision of its management that its best business policy necessitated that it handle exclusively the distribution of its products in the northerly counties of this state. That is a decision which must be left to the respondent and where, as here, no unlawful discrimination appears against the petitioner and the refusal to sell is motivated as aforesaid, the law affords him no relief at my hands.

Accordingly, it is, on this 4th day of June, 1951,

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

ERWIN B. HOCK  
Director.

6. DISCIPLINARY PROCEEDINGS - SALE DURING PROHIBITED HOURS (MUNICIPAL ELECTION DAY) - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MAE GUADAGNO )  
T/a SILVER MOON )  
456 Avenue C )  
Bayonne, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consumption License C-143, issued by the Board of Commissioners of the City of Bayonne. )

-----  
Mae Guadagno, Defendant-licensee, Pro Se.  
Vincent T. Flanagan, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that on Tuesday, May 8, 1951, while the polls were open for voting at a municipal election held in the City of Bayonne, she sold and permitted the consumption of alcoholic beverages on her licensed premises, in violation of Rule 2 of State Regulations No. 20.

The file herein discloses that when ABC agents entered defendant's premises on May 8, 1951, at 12:30 p.m., they observed one man consuming beer and two other men consuming wine in the rear room of defendant's premises.

I find defendant guilty as charged.

The licensee has no prior record. I shall suspend her license for a period of fifteen days, with a remission of five days for the plea, leaving a net suspension of ten days. Re Ganley, Bulletin 715, Item 10.

Accordingly, it is, on this 25th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-143, issued by the Board of Commissioners of the City of Bayonne to Mae Guadagno, t/a Silver Moon, for premises 456 Avenue C, Bayonne, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. June 4, 1951, and terminating at 2:00 a.m. June 14, 1951.

ERWIN B. HOCK  
Director

7. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MELODY CLUB, INC. )  
T/a MIDDLESEX HOTEL )  
120-122 Main Street )  
Woodbridge, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Woodbridge. )  
----- )

Melody Club, Inc., Defendant-licensee, by Philip Pollen, President. Edward F. Ambrose, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to a charge alleging that it possessed on its licensed premises a tap connected to a barrel of beer, which tap did not bear a marker truly indicating the name or brand of the beer being drawn through it, in violation of Rule 26 of State Regulations No. 20.

An ABC agent on routine inspection of defendant's licensed premises on May 7, 1951, found that beer was being drawn from a half-barrel of "Schmidt's" beer through a spigot or tap labeled "Dobler".

Defendant has no prior adjudicated record. I shall suspend the license for three days. Remitting one day because of the plea will leave a net suspension of two days. Re Messeka, Bulletin 904, Item 8.

Accordingly, it is, on this 28th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-3, issued by the Township Committee of the Township of Woodbridge to Melody Club, Inc., t/a Middlesex Hotel, 120-122 Main Street, Woodbridge, be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. June 4, 1951, and terminating at 2:00 a.m. June 6, 1951.

ERWIN B. HOCK  
Director.

8. DISCIPLINARY PROCEEDINGS - MISLABELED BEER TAP - LICENSE SUSPENDED FOR 3 DAYS, LESS 1 FOR PLEA.

In the Matter of Disciplinary Proceedings against )

MILDRED E. FOSTER )  
T/a FOSTER'S BAR )  
312 Whitehead Road )  
Hamilton Township (Mercer Co.) )  
P. O. Trenton, N. J., )

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Hamilton. )

Mildred E. Foster, Defendant-licensee, Pro Se.  
William F. Wood, Esq., appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

The defendant has pleaded guilty to a charge alleging that she possessed on her licensed premises beer taps which did not bear markers truly indicating the names or brands of the manufacturers of such malt alcoholic beverages, in violation of Rule 26 of State Regulations No. 20.

During the course of a routine inspection of defendant's licensed premises on April 26, 1951, an ABC agent found that a barrel of Ballantine beer was connected to a tap labeled "Krueger", and a barrel of Krueger beer was connected to a tap bearing no name label thereon.

Defendant has no previous adjudicated record. I shall impose the minimum three-day penalty, less one day for the plea, leaving a net suspension of two days. Re Caldwell and Wallace, Bulletin 852, Item 5.

Accordingly, it is, on this 28th day of May, 1951,

ORDERED that Plenary Retail Consumption License C-25, issued by the Township Committee of the Township of Hamilton to Mildred E. Foster, t/a Foster's Bar, for premises 312 Whitehead Road, Hamilton Township (Mercer Co.), be and the same is hereby suspended for a period of two (2) days, commencing at 2:00 a.m. June 4, 1951, and terminating at 2:00 a.m. June 6, 1951;

ERWIN B. HOCK  
Director.

9. DISCIPLINARY PROCEEDINGS - PRIOR SUSPENSION FOR BALANCE OF TERM LIFTED UPON CORRECTION OF ILLEGAL SITUATION - SUSPENSION OF 25 DAYS SERVED - SUSPENSION LIFTED.

In the Matter of Disciplinary Proceedings against )

PIER HOTEL, INC. )  
 T/a PIER HOTEL )  
 40-38 First Avenue )  
 Atlantic Highlands, N. J., )

ON PETITION  
 O R D E R

Holder of Plenary Retail Consumption License C-12, issued by the Borough Council of the Borough of Atlantic Highlands. )  
 ----- )

Roberts, Pillsbury, Carton & Sorenson, Esqs., Attorneys for Petitioner.

BY THE DIRECTOR:

By order dated January 24, 1951, defendant's license was suspended for the balance of its term, effective at 2:00 a.m. January 31, 1951, with leave to file a petition for relief upon correction of the illegal situation. In said order it was provided that in no event would relief be given prior to the expiration of at least twenty-five days from the date upon which the suspension became effective. Re Pier Hotel, Inc., Bulletin 897, Item 4.

The suspension imposed herein resulted from the fact that defendant had leased the liquor business conducted under its license to one Stephen Bodolo. The petition filed herein, which is duly verified by Bertha Hauser, Secretary of Pier Hotel, Inc., sets forth that on May 28, 1951, a judgment that defendant herein is entitled to possession of the premises in question was entered in the Superior Court of New Jersey, Law Division, Monmouth County, in an action entitled Pier Hotel, Inc. v. Stephen Bodolo and Elizabeth Bodolo. A true copy of the judgment is attached to said petition. The verified petition further recites that, immediately after the entry of the judgment, Stephen Bodolo surrendered possession of the premises to Pier Hotel, Inc., which is now in the possession and control of said premises, and that it is the petitioner's intention to operate the hotel hereafter, including the bar and liquor business, as soon as the suspension herein is lifted.

From the facts set forth in the verified petition, it appears that the illegal situation has been corrected and, since more than twenty-five days have expired from the date upon which the suspension herein became effective, I shall grant the request of the petitioner to lift said suspension, effective immediately.

Accordingly, it is, on this 1st day of June, 1951,

ORDERED that Plenary Retail Consumption License C-12, issued by the Borough Council of the Borough of Atlantic Highlands to Pier Hotel, Inc., t/a Pier Hotel, for premises 40-38 First Avenue, Atlantic Highlands, be and the same is hereby restored to full force and operation, effective immediately.

ERWIN B. HOCK  
 Director.

10. APPELLATE DECISIONS - THE ALL COSSACKS STANITZA OF NEW JERSEY FRATERNAL & BENEVOLENT ASSOCIATION v. HOWELL TOWNSHIP.

THE ALL COSSACKS STANITZA OF NEW JERSEY FRATERNAL & BENEVOLENT ASSOCIATION, )  
 )  
 Appellant, )  
 -vs- )  
 TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HOWELL, )  
 )  
 Respondent. )

ON APPEAL  
CONCLUSIONS AND ORDER

-----  
 Alexander Levchuk, Esq., Attorney for Appellant.  
 Bernard H. Weiser, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from the respondent's denial of a club license to the appellant for premises located on Oakland Road, Howell Township.

The denial of the application was predicated upon the appellant's past misconduct in connection with the operation of the premises sought to be licensed. These premises are located in a residential neighborhood such as is usually found in a rural community, and about a dozen homes are located in the adjacent area.

A petition of the neighboring residents objecting to the issuance of the license was presented to the respondent. These protests stem from meetings and social affairs held at the club premises on Thursday nights, on many Saturday nights and on at least four other special occasions during each year. The record indicates that these affairs frequently last until three or four o'clock in the morning, and are attended with loud singing and boisterous noise; that whiskey and beer bottles and other refuse are thrown onto neighboring property; that automobiles are parked over the roadway without regard to passing traffic and blocking nearby driveways; that teen-aged children of the appellant's members annoy the neighbors by trespassing upon their property; that the persons attending these affairs use an adjoining property as a toilet.

In a determination of whether an applicant is worthy of receiving a liquor license, an issuing authority may properly consider the past conduct of the applicant at the premises sought to be licensed. Where, as here, the record substantially supports an adverse determination to that effect, it cannot be said that the issuing authority has abused the discretion, initially lodged in it under the Alcoholic Beverage Law, to determine the fitness of the applicant for a liquor license. Majestic Friends Club, Inc. v. Montclair, Bulletin 639, Item 9.

The action of the respondent is affirmed.

Accordingly, it is, on this 6th day of June, 1951,

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

ERWIN B. HOCK  
Director.

11. DISCIPLINARY PROCEEDINGS - FALSE ANSWERS IN APPLICATION AS TO RESIDENCE OF STOCKHOLDERS AND SUPPRESSION OF MATERIAL FACT AS TO AMOUNT OF STOCK HELD BY STOCKHOLDERS - LICENSE SUSPENDED FOR BALANCE OF TERM WITH LEAVE TO APPLY TO LIFT AFTER 30 DAYS UPON CORRECTION OF ILLEGAL SITUATION.

In the Matter of Disciplinary )  
Proceedings against )

LAZY K BAR RANCH, INC. )  
T/a LAZY K BAR RANCH )  
Route S-31, Culvers Lake )  
Frankford Township )  
P.O. Branchville, N. J., )

CONCLUSIONS  
AND ORDER

Holder of Plenary Retail Consump- )  
tion License C-5, issued by the )  
Township Committee of Frankford )  
Township. )

----- )  
Mackerley and Friedman, Esqs., by Frank Dolan, Esq., Attorneys for )  
Defendant-licensee.

William F. Wood, Esq., appearing for Division of Alcoholic Beverage )  
Control.

BY THE DIRECTOR:

Defendant has pleaded not guilty to the following charges:

"1. In your application dated May 20, 1950, filed with the Frankford Township Committee, upon which you obtained your current plenary retail consumption license, you failed to answer Question 22, which calls for the 'Names and residences of all stockholders holding one (1) or more per cent of the issued and outstanding stock of the applicant corporation', thereby evading and suppressing the material fact that Joseph Del Negro, residing at 137-A 22nd Street, Brooklyn, New York, and Ralph Marino, residing at 1022 Bay Ridge Parkway, Brooklyn, New York, were each real and beneficial owners of 50% of your outstanding stock; such evasion and suppression being in violation of R.S. 33:1-25.

"2. In your aforesaid application, you, in answer to Question 20 and 21, falsely stated the residences of Joseph Del Negro and Lucy Del Negro (listed therein as your president and secretary-treasurer, respectively, and as members of your Board of Directors) as Frankford Township, Culvers Lake, New Jersey and you also, in answer to Question 27, which asks: 'Are you and all persons mentioned in this application actual and bona fide residents of the State of New Jersey at the present time?', falsely stated 'Yes -- with the exception of Ralph Marino...', whereas in truth and fact Joseph Del Negro and Lucy Del Negro resided at such time at 137-A 22nd Street, Brooklyn, New York; said false statements being in violation of R.S. 33:1-25."

The evidence herein discloses that in July 1949 Joseph Del Negro and Ralph Marino became the beneficial owners of all of the stock of defendant corporation pursuant to an agreement entered into between them and the former stockholders of said corporation. In its application filed with the local issuing authority for renewal of its license for the present licensing year, defendant failed to answer Question 22, which requires the applicant to set forth the names and residences of all stockholders holding one (1) or more percent. of the outstanding stock of the applicant corporation, although the answers to Questions 20 and 21 disclosed that the officers and directors of the applicant corporation were Joseph Del Negro, Lucy Del Negro and Ralph Marino. In the answers to Questions 20 and 21, the residence of Joseph Del Negro and Lucy Del Negro was set forth as "Frankford Twp. Culver Lake, N.J." and the address of Ralph Marino was set forth as "1122 Bay Ridge Park Way, Brooklyn, N. Y."

It is alleged that Question 22 was unanswered because, at the time of making the above mentioned application, there was question whether Ralph Marino had an interest in the corporation's stock since the corporate books were kept by an attorney who was away on vacation.

The evidence shows that Ralph Marino was at no time entitled to hold more than ten per centum of the stock of defendant corporation because he was never a resident of the State of New Jersey. The evidence further indicates that, at all times mentioned herein, Joseph Del Negro and Lucy Del Negro resided at 137-A 22nd Street, Brooklyn, New York. The fact that they spent some time during the summers of 1949 and 1950 in Frankford Township, New Jersey, is not sufficient to make them residents of the State of New Jersey because at all times they maintained their home in Brooklyn and returned there at the end of the summer season. Their children attend school in Brooklyn. They have never voted in New Jersey but are registered to vote in the State of New York. Their automobile license was issued in the State of New York. Under these circumstances, I conclude that neither Joseph Del Negro nor Lucy Del Negro was a bona fide resident of New Jersey and, hence, both are ineligible to hold more than ten percent. of the stock of defendant corporation. R.S. 33:1-25.

Under the circumstances, I have no alternative except to suspend defendant's license for the balance of its term. If hereafter the illegal situation is corrected, application may be made to me for the lifting of the suspension, but in no event will an order lifting the suspension be entered prior to the expiration of thirty days from the effective date hereof. Re Midvale, Bulletin 843, Item 2.

Accordingly, it is, on this 7th day of June, 1951,

ORDERED that Plenary Retail Consumption License C-5, heretofore issued by the Township Committee of Frankford Township to Lazy K Bar Ranch, Inc., t/a Lazy K Bar Ranch, for premises on Route S-31, Culvers Lake, Frankford Township, be and the same is hereby suspended for the balance of its term, effective at 2:00 a.m. June 11, 1951; and it is further

ORDERED that any renewal of said license shall remain under suspension until entry of a further order herein upon an application made to me for the lifting of the suspension.

ERWIN B. HOCK  
Director.

12. STATE LICENSES - NEW APPLICATIONS FILED.

R. S. Motor Lines Inc.  
2504 Laura St., Jacksonville, Fla.  
Application filed June 11, 1951 for Transportation License.

Mente Bros., Inc.  
15th St. and Lafayette Ave., Kenilworth, N.J.  
Application filed June 19, 1951 for 1950-51 Transportation License.

*Erwin B. Hock*  
Director.