

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

BULLETIN 1075

AUGUST 10, 1955.

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1. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

Nicholas Chipko
t/a Chipko's
467 Communipaw Avenue
Jersey City 4, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption
License C-50 (for the 1954-55 and
1955-56 licensing years), issued by
the Municipal Board of Alcoholic
Beverage Control of the City of
Jersey City
-----)

Nicholas Chipko, Defendant-licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage
Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that (1) on Sunday, May 29, 1955, he sold one 1/2 pint bottle of alcoholic beverages in an original container for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; (2) on said date, at about 12:45 p.m., he conducted his licensed business in violation of a local ordinance; (3) on said date, at about 12:45 p.m., he suffered and permitted persons other than his actual employees and agents in and upon his licensed premises in violation of a local ordinance; (4) on Sunday, May 29, 1955, he sold one 1/2 pint bottle of alcoholic beverages in other than original container for consumption off the licensed premises, in violation of R. S. 33:1-2.

Charges 1 and 4 relate to a single transaction and will be considered together. The file herein discloses that at about 12:45 p.m. on Sunday, May 29, 1955, two ABC agents observed a man, who then had no packages in his possession, as he entered the side door of the licensed premises. Shortly thereafter the same man came out with a package containing two 1/2 pint bottles of "Old Mr. Boston Registered Reserve Liqueur XXX Extra Dry." One bottle was unopened and the other bottle had been opened and a small portion of its contents was missing therefrom. The agents entered the licensed premises with the man and identified themselves to the licensee. From the aforesaid facts it is evident that defendant was guilty not only of Charges 1 and 4 but also Charges 2 and 3.

Defendant has a prior record. Effective February 9, 1953, the then Director suspended his license for a net period of ten days after he had pleaded non vult to a charge alleging that he had sold an alcoholic beverage in its original container for off-premises consumption on Sunday, in violation of Rule 1 of State Regulations No. 38. Re Chipko, Bulletin 957, Item 5. Since Charges 1 and 4 refer to a single transaction, I would ordinarily suspend his license for a minimum period of fifteen days on both of these charges (Cf: Re Koch & Cohen, Bulletin 770, Item 2; Re Stevens Tavern, Inc., Bulletin 952, Item 9). However, since this is a substantially similar violation, occurring within the past five years, I shall suspend defendant's license herein for a period of thirty days because of the violations set forth in Charges 1 and 4. I shall suspend his license for an additional period of fifteen days because of the violations set forth in Charges 2 and 3 (Re Dlugolencki, Bulletin 1068, Item 7), thus making a total suspension of forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of forty days.

Accordingly, it is, on this 11th day of July, 1955,

ORDERED that Plenary Retail Consumption License C-50 for the 1955-56 licensing year issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Nicholas Chipko, t/a Chipko's, for premises 467 Communipaw Avenue, Jersey City, be and the same is hereby suspended for forty (40) days, commencing at 2:00 a.m., July 20, 1955 and terminating at 2:00 a.m., August 29, 1955.

William Howe Davis,
Director.

2. DISCIPLINARY PROCEEDINGS - FAILURE TO KEEP LICENSED PREMISES OPEN TO PUBLIC VIEW, IN VIOLATION OF LOCAL ORDINANCE - PERMITTING PERSONS OTHER THAN THE LICENSEE AND EMPLOYEES ON LICENSED PREMISES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL ORDINANCE - STORING ALCOHOLIC BEVERAGES ON PREMISES OTHER THAN LICENSED PREMISES - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ROBERT E. GERTZ
t/a Valhalla Hall
303-305 Palisade Avenue
Jersey City 7, New Jersey

CONCLUSIONS

AND

ORDER

Holder of Plenary Retail Consumption
License C-449 (for the 1954-55 and
1955-56 licensing years), issued by
the Municipal Board of Alcoholic
Beverage Control of the City of Jersey
City.

Robert E. Gertz, Defendant-licensee, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded non vult to charges alleging that he (1) failed to remove shades, screens and other obstacles so as to permit a clear view of the bar inside his licensed premises; (2) per-

mitted persons other than himself or actual employees and agents upon his licensed premises during prohibited hours; both in violation of a local ordinance; and (3) stored alcoholic beverages on premises other than his licensed premises, in violation of Rule 25 of State Regulations No. 20.

The file herein discloses that at about 10:45 a.m., Sunday, May 15, 1955, ABC agents visited the vicinity of defendant's licensed premises and were unable to see the barroom therein because the front window blinds were tightly closed. Stationing themselves at a vantage point they observed several men enter a door to the side of the main entrance. At about 12:30 p.m., one of the agents joined several men who gained admission through said door and followed them through a lobby into a meeting hall wherein he observed at various tables some fifteen men consuming alcoholic beverages.

When the licensee refused to serve the agent a "shot" of whiskey, the agent identified himself and seized from the assembled group beer and whiskey for evidential purposes. Both agents made an inspection of the licensed premises and its surroundings and found beer and liquor stored in places which are not part of defendant's licensed premises.

Defendant has no prior adjudicated record. Under all the circumstances of the case, I shall suspend defendant's license for a period of twenty-five days. Five days will be remitted for the plea entered herein leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of July 1955,

ORDERED that Plenary Retail Consumption license C-449, issued for the 1955-56 licensing year by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Robert E. Gertz, for premises 303-305 Palisade Avenue, Jersey City, be and the same is hereby suspended for twenty (20) days, commencing at 2:00 a.m., July 19, 1955 and terminating at 2:00 a.m., August 8, 1955.

William Howe Davis,
Director.

3. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - SALE AT LESS THAN PRICE LISTED IN THE MINIMUM CONSUMER RESALE PRICE LIST - PRIOR RECORD NOT CONSIDERED - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

PHILIP & MAX MARECH,
128 Howard Street,
Newark, New Jersey,

Holders of Plenary Retail Consump-
tion License C-130 (for the 1954-55
and 1955-56 licensing years), issued
by the Municipal Board of Alcoholic
Beverage Control of the City of Newark.

CONCLUSIONS

AND

ORDER

Philip & Max Marech, Defendant-licensees, Pro se.
Edward F. Ambrose, Esq., Appearing for Division of Alcoholic
Beverage Control.

BY THE DIRECTOR:

Defendants have pleaded non vult to charges alleging that

(1) on Wednesday, June 8, 1955, at about 10:30 p.m., they sold one pint bottle of an alcoholic beverage in other than its original container for consumption off the licensed premises, in violation of R. S. 33:1-2, and (2) on said occasion they sold an alcoholic beverage at less than the price thereof listed in the Minimum Resale Price List, in violation of Rule 5 of State Regulations No. 30.

The file herein discloses that two ABC agents were in defendant's licensed premises on the evening of June 8, 1955. At about 10:30 p.m. one of the agents told Max Marech that he and his companion were leaving and wanted a pint of Fleischmann's whiskey to take with them. Max Marech took a pint bottle of Fleischmann's Preferred Blended Whiskey from a cabinet behind the bar, handed the bottle to the agent and charged him \$2.65 for the bottle. The agents observed that the seal on the bottle had been broken at the time of the sale. The agents left the premises with the bottle but returned a moment later and identified themselves to Max Marech. The minimum consumer resale price (effective April 1, 1955) of the item in question was \$2.66.

Defendants, as partners, have no prior adjudicated record. Effective April 12, 1943, the license then held by Philip Marech and Kate Marech was suspended by the local issuing authority for five days for selling alcoholic beverages to minors and, again, effective May 10, 1943, a license held by the same licensees was suspended by the local issuing authority for fifteen days on a similar charge (see Bulletin 575, Item 12). Since both of these violations occurred more than ten years ago, they will not be considered in fixing penalty herein. I shall suspend defendants' license for fifteen days on charge (1) and for an additional ten days on charge (2). Re Gambino, Bulletin 1060, Item 5. Five days will be remitted for the plea entered herein, leaving a net suspension of twenty days.

Accordingly, it is, on this 11th day of July, 1955,

ORDERED, that plenary retail consumption license C-130 for the 1955-56 licensing year, issued by the Municipal Board of Alcoholic Beverage Control of the City of Newark to Philip & Max Marech, trading as M & M Bar, for premises 128 Howard Street, Newark, be and the same is hereby suspended for twenty (20) days, commencing at 2 a.m. July 19, 1955 and terminating at 2 a.m. August 8, 1955.

William Howe Davis,
Director.

4. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES FOR OFF-PREMISES CONSUMPTION IN OTHER THAN ORIGINAL CONTAINER - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

JOHN BUNKS,
t/a Bunk's Cafe,
1024 Baltic Avenue,
Atlantic City, New Jersey,

CONCLUSIONS

and

ORDER

Holder of Plenary Retail Consump-
tion License C-6 (for the 1954-55
and 1955-56 licensing years), issued
by the Board of Commissioners of the
City of Atlantic City.

John Bunks, Defendant-licensee, Pro se.

Dora P. Rothschild, Appearing for Division of Alcoholic Beverage
Control

BY THE DIRECTOR:

Defendant has pleaded non vult to a charge alleging that at about 10:50 p.m. June 7, 1955, he sold for off-premises consumption an alcoholic beverage in other than its original container in violation of R.S. 33:1-2.

The file herein discloses that at about 10:50 p.m. Tuesday, June 7, 1955, an ABC agent entered defendant's licensed premises and requested a pint bottle of wine to take out. The bartender, before handing over the bottle, cut the seal on the bottle and poured a small quantity of the contents in a glass, informing the agent that such ritual was mandatory before the purchase could be taken off the premises. The agent paid 60¢, the price asked; was handed the re-capped bottle of wine, and departed. Contacting two other agents who had remained outside, the trio re-entered the premises and made known their identities to the bartender, who identified himself as the licensee's son and verbally admitted the aforesaid violation.

Defendant has no prior adjudicated record. I shall suspend defendant's license for the minimum period of fifteen days (Re Hodes, Bulletin 1039, Item 6). Five days will be remitted for the plea entered herein, leaving a net suspension of ten days.

Accordingly, it is, on this 11th day of July, 1955

ORDERED that plenary retail consumption license C-6 for the 1955-56 licensing year, issued by the Board of Commissioners of the City of Atlantic City to John Bunks, t/a Bunk's Cafe, for premises 1024 Baltic Avenue, Atlantic City, be and the same is hereby suspended for ten (10) days, commencing at 7 a.m. July 18, 1955, and terminating at 7 a.m. July 28, 1955.

William Howe Davis,
Director.

5. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF RULE 1 OF STATE REGULATIONS NO. 38 - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS, IN VIOLATION OF LOCAL REGULATIONS - LICENSE SUSPENDED FOR 20 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary
Proceedings against

ERNEST REIMER
114 Old Bergen Road
Jersey City 5, New Jersey

Holder of Plenary Retail Distribution
License D-76, (for the 1954-55 licensing
year) issued by the Municipal Board of
Alcoholic Beverage Control of the City
of Jersey City; and transferred to and
renewed for the 1955-56 licensing year
during the pendency of these proceedings by

ERNEST REIMER AND JOHANNA REIMER

for the same premises

Ernest Reimer, Defendant-Licensee, Pro se.
Dora P. Rothschild, Appearing for Division of Alcoholic Beverage Control.

BY THE DIRECTOR:

Defendant has pleaded guilty to charges alleging that (1) on Sunday, May 15, 1955, he sold alcoholic beverages in original containers for off-premises consumption, in violation of Rule 1 of State Regulations No. 38; and (2) on said date he sold said alcoholic beverages during prohibited hours, in violation of a local regulation.

The file herein discloses that at 11:20 a.m., Sunday, May 15, 1955, an ABC agent purchased from the licensee herein six 12-oz. cans of beer for off-premises consumption. The local regulation prohibits the sale of alcoholic beverages between the hours of 2:00 a.m. and 1:00 p.m. on Sundays; and State Regulations No. 38 prohibit the sale of alcoholic beverages in original containers for off-premises consumption on Sundays.

Defendant has no prior adjudicated record. I shall suspend his license for a period of twenty days, less five for the plea entered herein, leaving a net suspension of fifteen days. Re Dangles, Bulletin 1028, Item 2.

Accordingly, it is, on this 11th day of July 1955,

ORDERED that Plenary Retail Distribution License D-76 (for the 1955-56 licensing year) issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Ernest Reimer and Johanna Reimer, for 114 Old Bergen Road, Jersey City, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m., July 18, 1955 and terminating at 9:00 a.m., August 2, 1955.

William Howe Davis,
Director.

6.

ACTIVITY REPORT FOR JUNE 1955**ARRESTS:**

Total number of persons arrested - - - - -	31
Licensees and employees - - - - -	10
Bootleggers - - - - -	21

SEIZURES:

Still - over 50 gallons - - - - -	2
- 50 gallons or under - - - - -	2
Mash - gallons - - - - -	750.00
Distilled alcoholic beverages - gallons - - - - -	14.38
Wine - gallons - - - - -	3.38
Brewed malt alcoholic beverages - gallons - - - - -	23.45

RETAIL LICENSEES:

Premises inspected - - - - -	1,130
Premises where alcoholic beverages were gauged - - - - -	519
Bottles gauged - - - - -	9,922
Premises where violations were found - - - - -	75
Violations found - - - - -	93

Type of violations found:

Unqualified employees - - - - -	22	Reg. #38 sign not posted - - - - -	3
Other mercantile business - - - - -	9	Prohibited signs - - - - -	2
Disposal permit necessary - - - - -	9	Probable fronts - - - - -	1
Gambling devices - - - - -	4	Other violations - - - - -	43

STATE LICENSEES

Premises inspected - - - - -	1
License applications investigated - - - - -	539

COMPLAINTS:

Complaints assigned for investigation - - - - -	465
Investigations completed - - - - -	338
Investigations pending - - - - -	236

LABORATORY:

Analyses made - - - - -	139
Refills from licensed premises - bottles - - - - -	1
Bottles from unlicensed premises - - - - -	40

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - -	44
Persons fingerprinted for non-criminal purposes - - - - -	377
Identification contacts made with other enforcement agencies - - - - -	284
Motor vehicle identifications via N. J. State Police teletype - - - - -	5

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - -	6
Violations involved:	
Sale to minors - - - - -	3
Sale during prohibited hours - - - - -	2
Sale to intoxicated person - - - - -	1
Sale to non-members by club - - - - -	1
Cases instituted at Division - - - - -	27*
Violations involved:	
Sale to minors - - - - -	7
Sale beyond scope of license - - - - -	5
Sale during prohibited hours - - - - -	4
Fraud and front - - - - -	4
Permitting immoral activity on premises - - - - -	3
Sale below minimum resale price - - - - -	3
Permitting lottery (numbers, 50-50 club) on premises - - - - -	2
Conducting business as a nuisance - - - - -	2
Permitting bookmaking on premises - - - - -	1
Delivery without bona fide invoice - - - - -	1
Soliciting from house to house - - - - -	1
Sale to intoxicated person - - - - -	1
Licensee working while intoxicated - - - - -	1
Sale to non-members by club - - - - -	1
Failure to close premises during prohibited hours - - - - -	1
Hindering investigation - - - - -	

*Includes one cancellation proceeding--license improvidently issued to club not bona fide.

Cases brought by municipalities on own initiative and reported to Division - - - - -	9
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Violations involved:

Sale to minors - - - - -	3
Permitting bookmaking on premises - - - - -	3
Sale during prohibited hours - - - - -	2
Permitting brawl on premises - - - - -	1

HEARINGS HELD AT DIVISION:

Total number of hearings held - - - - -	52
Appeals - - - - -	9
Disciplinary proceedings - - - - -	25
Eligibility - - - - -	7
Seizures - - - - -	8
Applications for license - - - - -	3

STATE LICENSES AND PERMITS ISSUED:

Total number issued - - - - -	1,270
Licenses - - - - -	3
Employment permits - - - - -	396
Solicitors' " - - - - -	36
Disposal " - - - - -	126
Social affair permits - - - - -	360
Miscellaneous - - - - -	118
Transportation insignia - - - - -	123
Transportation certificates - - - - -	68

WILLIAM HOWE DAVIS
DIRECTOR

DATED: July 7, 1955

7. DISQUALIFICATION - FALSE STATEMENT IN APPLICATION FOR SOLICITOR'S PERMIT - APPLICATION TO LIFT DISQUALIFICATION GRANTED TO BECOME EFFECTIVE 90 DAYS AFTER FILING PETITION HEREIN.

In the Matter of an Application)
to Remove Disqualification because)
of a Conviction, Pursuant to)
R. S. 33:1-31.2.)

CONCLUSIONS

Case No. 1223.)

AND

ORDER

BY THE DIRECTOR:

On January 19, 1926, when 16 years of age, petitioner was sentenced by a Superior Court Judge of another state to a term of 1 to 10 years in a state reformatory, as a result of his plea of guilty to the crime of unlawfully taking an automobile. On December 28, 1931 he was transferred to a state prison where he remained until being discharged therefrom on May 26, 1933. On April 15, 1942 petitioner pleaded non vult to the crime of attempted breaking and entering (burglary) and as a result thereof he was sentenced to 12 months in a county penitentiary. The operation of the sentence was suspended and petitioner was placed on probation for three years. The crime of attempted breaking and entering (burglary) involves the element of moral turpitude. Cf. Re Case No. 724, Bulletin 841, Item 4. In view of this, it will not be necessary to determine whether petitioner's conviction of unlawfully taking an automobile involves that element.

At the hearing herein, three persons (a superintendent of mails, a retired engineer and a truck driver) testified that they have known petitioner six or more years and that he bears a good reputation for being a law-abiding person. The Chief of Police of the municipality in which petitioner resides has reported that there are no complaints or investigations presently pending involving the petitioner.

I would have no hesitancy in granting relief except that petitioner filed an application for a solicitor's permit and a questionnaire with this Division in which he denied that he had ever been convicted of a crime. In explanation of the untruthful answer given by petitioner regarding his criminal record, he testified that he did not wish to have his co-workers know that he had a criminal record. I can understand his feeling in the matter but I cannot overlook his untruthfulness under oath.

I shall, however, grant his petition but shall withhold relief until ninety days after April 18, 1955, the date upon which he filed his petition herein. Cf. Case No. 857, Bulletin 885, Item 10.

Accordingly, it is, on this 12th day of July 1955,

ORDERED that petitioner's statutory disqualification because of the convictions described herein be and the same is hereby removed, in accordance with the provisions of R. S. 33:1-31.2, effective July 17, 1955.

William Howe Davis,
Director

8. APPELLATE DECISIONS - MOSCHERA v. PLUMSTED.

Thomas P. Moschera,)

Appellant,)

v.)

On Appeal

Township Committee of the)
Township of Plumsted,)

CONCLUSIONS and ORDER

Respondent.)
-----)

Robert H. Doherty, Jr., Esq., Attorney for Appellant.

Percy Camp, Esq., Attorney for Respondent.

BY THE DIRECTOR:

This is an appeal from respondent's denial of appellant's application for a new plenary retail distribution license (for the 1954-55 licensing year) for premises located at the corner of Main and East Main Streets, New Egypt.

The Township Committee, consisting of Albert Johnson, Chairman, Kenneth Potter and Dayton Hopkins, was present when the application was acted upon, and the denial thereof was by the vote of Albert Johnson and Kenneth Potter. Dayton Hopkins did not vote on this subject or on the adoption of the ordinance hereinafter referred to because his mother was the holder of a plenary retail consumption license in the Township.

The population of the Township, according to the 1950 Federal census, was 2,093. Albert Johnson has been a member of the Township Committee for over six years. Kenneth Potter has been a member of the Township Committee for over seventeen years. There are three plenary retail consumption licenses in the municipality, each authorized to sell alcoholic beverages for on-premises and off-premises consumption. The appellant sought to obtain a license solely for off-premises consumption (a package store).

The appellant filed his application on March 9, 1955. The local ordinance then in effect provided for the issuance of not more than one plenary retail distribution license. None had been issued. At a regular meeting of the Township Committee on March 14, 1955, an ordinance was introduced amending the first-mentioned ordinance by deleting the authority to issue the one distribution license. At a regular meeting of the Township Committee on April 11, 1955, appellant's application and the amended ordinance came up for final consideration. The Methodist Church of New Egypt, by letter, objected to the granting of a license to appellant and stated that it favored the passage of the amendment to the ordinance. The Pastor of the Plumsted Presbyterian Church of New Egypt, by letter on its behalf, likewise voiced its objection to the granting of a license to appellant. Two petitions were presented by the Presbyterian Church, signed by twenty-two persons who likewise opposed the issuance of the license to appellant. The appellant presented a petition signed by four hundred ninety-nine persons opposing final adoption of the amended ordinance. The petition did not specifically state whether the petitioners favored or opposed the issuance of the license to appellant.

Chairman Johnson and Committeeman Potter voted to deny the

application by adopting the following resolution:

"WHEREAS, prior to the filing of a new application for a Plenary Retail Distribution License by Mr. Thomas P. Moschera, the Township Committee directed Solicitor Percy Camp to draw up an amendment to the Township Liquor Ordinance eliminating the possibility of a Package License being issued in the Township, and

"WHEREAS, while said application of Moschera's is the first of this type filed, the Township Committee has, during the past several years, consistently refused assurance to a large number of persons seeking a Package License that any application filed by them would be favorably considered; therefore, denial of this application cannot be considered discriminatory, and

"WHEREAS, three (3) Plenary Retail Consumption Licenses, with the privilege of selling package goods, is considered adequate for the needs of the Township, and

"WHEREAS, it is the opinion of the majority of the Committee that at least as large a number of persons oppose as favor a package store; and that such a store is neither a necessity nor would it be a desirable asset to the community:

"NOW, THEREFORE, BE IT RESOLVED BY THE TOWNSHIP COMMITTEE OF PLUMSTED TOWNSHIP (not less than two-thirds of all members affirmatively concurring) that the new application of Thomas P. Moschera for a Plenary Retail Distribution License for premises located at the corner of Main and East Main Streets in New Egypt be and the same is hereby denied.

*****"

Immediately thereafter Chairman Johnson and Committeeman Potter voted for the final adoption of the amended ordinance, the pertinent portion of which reads:

"SECTION 1: The Ordinance, title of which is quoted in the title hereof, shall be and is hereby amended by the deletion therein of the authority to issue one (1) Plenary Retail Distribution License. The purpose of this Ordinance is to eliminate the possibility of issuing one (1) Plenary Retail Distribution License authorized in this Municipality.

*****"

The resolution whereby this ordinance was adopted reads as follows:

"WHEREAS, public interest in the establishment of a package store in the Township has never been evidenced by any petition or formal request to the Township Committee during the past number of years, prior to the filing of an application for a Package License by Thomas P. Moschera, and

"WHEREAS, it is the majority opinion of the Committee that the Petition circulated and filed by Mr. Moschera is not a positive indication of public opinion, since, in weighing the fact that 499 persons became interested in a package store

at this time, it must be assumed that a large percentage of these people have a passive rather than an active interest, and

"WHEREAS, the Committee has heretofore deliberated the matter of a Package License thoroughly and has arrived at the conclusion that a package store is not a necessity, and that it is to the best interest of the community to eliminate the possibility of such a store.

"NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Plumsted, (not less than two-thirds of all members of the Governing Body affirmatively concurring) that the foregoing Ordinance to Amend an Ordinance be and the same is finally passed as read ***."

The gist of appellant's complaint at the action of the Township Committee in denying his application is that it abused its discretion by disregarding public sentiment in favor of a package store and thus compelling the residents of the locality to patronize a tavern if they desired to purchase alcoholic beverages for home consumption.

In determining whether a plenary retail distribution license should be issued, a local issuing authority may properly take into consideration the number of retail consumption licenses existing in the vicinity. Hyman v. Howell Township, Bulletin 1039, Item 3. The contention that it is unreasonable to compel persons to patronize taverns to purchase bottled alcoholic beverages for off-premises consumption has been rejected time and again. Boody v. Gloucester, Bulletin 300, Item 11; Thompson v. Mount Olive Township, Bulletin 986, Item 1; Hyman v. Howell Township, supra.

The fact that issuance of the plenary retail distribution license was not prohibited by State law or local ordinance does not mean that applicant had a "right" to a license -- that his application must be granted. Haines v. Pemberton Township, Bulletin 869, Item 12.

The number and type of licenses which should be permitted in a locality is within the sound discretion of the issuing authority and my function, on appeal, is not to substitute my opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of my personal views. Guarino v. Newark and Suppa, Bulletin 1069, Item 2.

The weight to be accorded to petitions for or against granting of a license is entirely within the discretion of the issuing authority. Haines v. Pemberton Township, Supra.

Chairman Johnson and Committeeman Potter testified at the hearing herein that it has long been the policy in the Township that no plenary retail distribution license should be granted and that, in their opinion, there is no public need in the Township for the license sought.

A plenary retail distribution license cannot lawfully be issued in the Township in the face of the present ordinance prohibiting

such issuance. Richardson v. Montgomery Township, Bulletin 898, Item 1. In determining this appeal I must consider the ordinance as it now exists. Bock Tavern, Inc. v. Newark, Bulletin 952, Item 1; Dorio v. East Amwell Township and Colligan, Bulletin 965, Item 3; Cohen v. Wrightstown, Bulletin 1064, Item 1. Furthermore, as to the decision of the Township Committee that there is no public need for the type of license applied for, the burden resting upon the appellant of proving respondent's action to have been an unreasonable or abusive exercise of its discretionary authority has not been sustained. I shall, therefore, affirm the action of the Township Committee. Szalobryt v. Washington Township, Bulletin 875, Item 1.

Accordingly, it is, on this 19th day of July, 1955,

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

William Howe Davis
Director

9. APPELLATE DECISIONS - CIMAROSA v. MAYWOOD AND MAYWOOD INN CORP.

John A. Cimarosa,)	
)	
Appellant,)	
)	On Appeal
v.)	
)	
Mayor and Council of the)	CONCLUSIONS and ORDER
Borough of Maywood, and)	
Maywood Inn Corp.,)	
Respondents.	- - - - -)	

John A. Cimarosa, Appellant Pro se.
Burke, Sheridan & Hourigan, Esqs., by Robert L. Garibaldi, Esq.,
Attorneys for Respondent Maywood Inn Corp.
Joseph Melillo, Esq., Attorney for Respondent Mayor and Council.

BY THE DIRECTOR:

This is an appeal from the action of respondent Mayor and Council on March 30, 1955, whereby it granted a second application filed by respondent Maywood Inn Corp. to transfer its plenary retail consumption license from 105 Grove Street to 122 West Pleasant Avenue, Maywood.

On February 17, 1955, I reversed a prior action of respondent Mayor and Council whereby it approved the first application filed by respondent Maywood Inn Corp. for a similar transfer of its license. Pearce v. Maywood et al., Bulletin 1052, Item 1. Thereafter I denied an application filed by the Mayor and Council for a rehearing in said case. However, the matter is not "res adjudicata" since each application must be considered on its own merits. Bradford v. Paulsboro,

Bulletin 410, Item 3.

In the Pearce case it appeared that, in May 1954, the Mayor and Council denied an application filed by Cornelius and Ida Bowens for a transfer of their license from 105 Grove Street to 211 West Pleasant Avenue for the following reasons:

- "1. Children would be required to pass in close proximity to the proposed premises on their way to and from school.
- "2. Approximately 150 residents of the area objected to the proposed transfer of the license.
- "3. A serious traffic condition would result from the transfer of the license to the proposed premises as there are no sidewalks and the street is narrow.
- "4. Residential homes in the area would depreciate in value by virtue of the proposed transfer.
- "5. The proposed building to which the transfer is requested is inadequate and unsuitable for the purpose."

After said license had been transferred from the Bowens to Maywood Inn Corp., the latter applied to the Mayor and Council for a transfer of its license from 105 Grove Street to 122 West Pleasant Avenue and, on October 5, 1954, that application was unanimously approved by the Mayor and Council, which was then composed of the same members who had previously denied the Bowens application. At the hearing held in the Pearce case the appellant and three witnesses testified that they opposed the transfer of the license to 122 West Pleasant Avenue for substantially the same reasons (except Reason 5) which had been given by the Mayor and Council when it denied the transfer to 211 West Pleasant Avenue. The two premises mentioned are approximately fifteen hundred feet apart. At said hearing it was stipulated that six other persons then present were prepared to testify on behalf of appellant. At said hearing no residents appeared in person or by petition favoring the application filed by Maywood Inn Corp., and no one was called to testify on behalf of the Mayor and Council. Hence, there was no evidence presented to explain why the same members of the local issuing authority approved, in October 1954, an application which, upon the evidence then presented, appeared to be similar to the application which they had denied in May 1954. Under the circumstances, I concluded that the Mayor and Council had abused its discretion and acted in an unreasonable manner and, hence, I reversed its action. Pearce v. Maywood et al., supra.

When the second application for transfer to 122 West Pleasant Avenue was granted on March 30, 1955, the Mayor and Council was composed of the same members as in October 1954, except that Mr. Jackson had replaced one of the former members. A transcript of the hearing held on March 30, 1955, by the local issuing authority, pursuant to Rules 6 and 7 of State Regulations No. 2, has been introduced into evidence in this case. Therefrom it appears that forty-one persons appeared and objected to the transfer; that a petition containing the names of about two hundred nineteen people favoring the transfer and a petition containing the names of about one hundred sixty-nine people opposing the transfer were received in evidence. Therefrom it also appears that, at the conclusion of the hearing, Councilmen Becker, deQuintal, McAtee and Moyle (all of whom had voted to approve the first application filed by Maywood Inn Corp.) voted in favor of a resolution to grant the

pending application. Committeeman Jackson voted "definitely no" on said resolution. Committeeman Layton made the following statement:

"I voted for the transfer of this liquor license a few months back for two reasons; One, to take it out of a residential area and second, I thought it would benefit the town as a whole with the combination cocktail lounge and restaurant. However, after listening to the testimony here tonight, especially with regards to what Mr. Davis had to say in his opinion to us, I feel that if the Mayor and Council decide to transfer this liquor license again, it will be rejected by Mr. Davis again. I feel that through that, we will be spending more time and money through the borough and in addition to the people objecting themselves and also more time and money will be spent on something that will be thrown out and I figure it is hopeless to proceed here and make a decision to transfer this liquor license."

At the hearing held herein appellant and four witnesses, all of whom reside on side streets near 122 West Pleasant Avenue, testified that they were opposed to the transfer for substantially the same reasons given by the witnesses for appellant in the Pearce case. Nine other persons (three of whom live on West Pleasant Avenue and six of whom reside on nearby side streets) also appeared and it was stipulated that, if called to testify, their evidence would be substantially the same as the witnesses' mentioned above.

At the hearing held herein Councilmen Becker, deQuintal, McAtee and Moyle and Mayor Bratt appeared and testified on behalf of respondent Mayor and Council. Councilman Becker testified that he has been a Councilman for twenty-seven years; that he voted against the Bowens transfer because that section of West Pleasant Avenue is residential despite the fact that it is zoned for business and because the Bowens premises were unsuitable for a licensed business and lacked parking facilities. He further testified that he voted in favor of both applications filed by Maywood Inn Corp. because its proposed premises are in a business area, because the very wide street will afford adequate parking, and because there is need for a restaurant of the type proposed by the applicant. Councilman deQuintal testified that he has been a Councilman for four years; that he "has been very intimately connected with youth programs for many years" and "that any questions concerning juveniles getting involved with any tavern presently situated in Maywood have been nil." He further testified that he voted for both applications filed by Maywood Inn Corp. because the premises are in a business area and the establishment of a restaurant would benefit the people of Maywood. Councilman McAtee testified that he has been a Councilman since January 1, 1954; that he voted against the Bowens application because he considered the "premises very undesirable" and voted for both applications filed by Maywood Inn Corp. because it would be a "distinct advantage of the people of the community to have a high-class restaurant in the neighborhood." Councilman Moyle testified that he has been a Councilman for four years; that he voted against the Bowens application because that area "had developed into a residential area" and voted in favor of both applications filed by Maywood Inn Corp. because its premises are in "an area which is firmly established as business." Mr. Moyle, who is a real estate broker, expressed the opinion that the transfer in question would not depreciate the value of surrounding property.

Mayor Bratt testified that he presided at the meeting held on March 30, 1955, and that four Councilmen voted in favor of the

resolution to grant the transfer and two Councilmen voted against said resolution. Although the Mayor has no vote, he testified that he favored the denial of the Bowens application and the granting of both applications filed by Maywood Inn Corp. because the latter's premises are in the business district and because there are ample parking facilities on that section of West Pleasant Avenue.

After oral argument had been heard herein, I personally visited the area to which the license was transferred. This visit was made pursuant to a request made by the attorneys for the respective parties. While the building at 122 West Pleasant Avenue is within a few hundred feet of a residential section (which is zoned for business) and backs up on other homes, it is in the heart of a business district which now contains many stores and which is still developing and expanding. Moreover, in this case I have been impressed by the testimony of the municipal officials who appeared and explained the reason for their actions on these various applications. I can give little weight to appellant's contention that the transfer will result in an undue concentration of licenses because, while three plenary retail distribution licenses have been issued for premises on West Pleasant Avenue, only one plenary retail consumption license has been issued on said avenue for premises about two and one-half blocks from the premises to which this license has been transferred.

It has long been held that the question of whether or not a license should be permitted in a particular area or in a particular location is a matter within the sound discretion of the local issuing authority, and that the Director's function on appeal is not to substitute his opinion for that of the issuing authority but, rather, to determine whether reasonable cause exists for its opinion and, if so, to affirm irrespective of his personal views. Rafalowski v. Trenton, Bulletin 155, Item 8; Northend Tavern, Inc. v. Northvale et al., Bulletin 493, Item 5; Baker v. Newark et al., Bulletin 1018, Item 1; Meyer & Steinberg v. Camden et al., Bulletin 1054, Item 1.

The burden of establishing that the respondent's action was erroneous and should be reversed rests with the appellant. Rule 6 of State Regulations No. 15. After considering most carefully all of the evidence and all of the facts and circumstances in this case, I find that appellant has failed to sustain the burden in finding that respondent's action was erroneous and should be reversed. Parkerson v. Hopewell et al., Bulletin 1037, Item 2; Mellas et al. v. West Orange et al., Bulletin 1047, Item 2; Meyer and Steinberg v. Camden et al., *supra*; Prior and Kesse v. Clifton et al., Bulletin 1072, Item 2.

Accordingly, it is, on this 19th day of July, 1955,

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

William Howe Davis
Director

10. DISQUALIFICATION - RECEIVING STOLEN GOODS - FIVE YEARS' GOOD
CONDUCT - APPLICATION TO LIFT GRANTED.

In the Matter of an Application)
to Remove Disqualification be-)
cause of a Conviction, Pursuant)
to R. S. 33:1-31.2.)

CONCLUSIONS

and
ORDER

Case No. 1238.)
-----)

BY THE DIRECTOR:

Applicant's fingerprint returns show that in 1935 he was convicted in another State of receiving stolen goods and was placed on probation for three years; in 1947 he was fined \$12.50 on a charge of disorderly conduct. The crime of receiving stolen goods involves the element of moral turpitude (Re Case No. 620, Bulletin 880, Item 10) and precludes applicant from engaging in the alcoholic beverage industry in this State until the disqualification is removed.

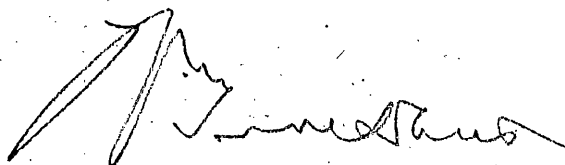
At the hearing herein applicant testified that he is forty-five years of age, married and the father of three children; that he has an invalid wife and desires to engage in the alcoholic beverage industry in this State; that since 1935 he has not been convicted of any crime and has had no difficulty with the law since 1947. The Police Department of the city wherein applicant resides reports no complaints or investigations presently pending against him.

Three witnesses (a magistrate, a union business manager, and a laundry salesman) appeared on applicant's behalf and testified as to their acquaintance with him for over ten years and respecting his reputation as a law-abiding citizen in his community for more than five years last past.

Upon the evidence presented I find that applicant has been law-abiding for more than five years last past, and I conclude that his association with the alcoholic beverage industry in this State will not be contrary to the public interest.

Accordingly, it is, on this 27th day of July, 1955,

ORDERED that applicant's statutory disqualification, because of the conviction described herein, be and the same is hereby removed in accordance with the provisions of R.S. 33:1-31.2.



WILLIAM HOWE DAVIS,
Director.