

STATE OF NEW JERSEY
 DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
 1060 Broad Street Newark 2, N. J.

BULLETIN 770

JULY 8, 1947.

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STATE OF NEW JERSEY
DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL
1060 Broad Street Newark 2, N. J.

BULLETIN 770

JULY 8, 1947.

1. APPELLATE DECISIONS - TURF CLUB BAR, INC. v. ASBURY PARK.

TURF CLUB BAR, INC.,)
Appellant,)
-vs-) ON APPEAL
MAYOR AND CITY COUNCIL OF THE) CONCLUSIONS AND ORDER
CITY OF ASBURY PARK,)
Respondent)

Stout and O'Hagan, Esqs., by Richard R. Stout, Esq. and Philip Newman, Esq., Attorneys for Appellant.
E. Alexander Edelstein, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from respondent's denial of an application to transfer Plenary Retail Consumption License C-29 from John W. Moore to appellant, Turf Club Bar, Inc. The premises in question are located at 1125 Springwood Avenue, Asbury Park.

The resolution denying the transfer sets forth that the transfer was denied on the following grounds:

"That reputable witnesses appeared and testified at the hearing that the applicants had some connection with the operators of other taverns in the City of Asbury Park and had interest in these taverns, which taverns were operated in an objectionable manner according to testimony of these witnesses.

"Felt that the applicants would operate these premises in the same objectionable manner and also felt that there was some connection and interest between the applicants and other individuals operating taverns within City of Asbury Park."

Turf Club, Bar, Inc. is composed of the following individuals:

Leo Karp (who holds 25% of the stock);
Sol Konvitz (who holds 25% of the stock);
Fannie Konvitz (wife of Sol Konvitz; who holds 50% of the stock).

The evidence herein shows that Philip Konvitz, who is a brother of Sol Konvitz, is president of Palace Bar Inc., which holds a plenary retail consumption license for premises at 1100 Springwood Avenue, Asbury Park, and that Philip Konvitz is also the president of a corporation which holds a plenary retail consumption license for premises known as the Hampton Inn located in Neptune Township. Sol Konvitz has been employed for the past two years as manager of the latter premises. There is no evidence that any of the stockholders of Turf Club Bar, Inc. has any interest in any other licensed premises except, as stated above, that Sol Konvitz has been employed as manager of Hampton Inn. There is also testimony that no persons other than the three stockholders mentioned above have any interest in Turf Club Bar, Inc. Nevertheless, the question remains as to whether or not the respondent was justified in believing that the appellant might operate the premises at 1125 Springwood Avenue in an objectionable manner.

At the hearing held herein, one objector testified that the reputation of the Hampton Inn is "not very good", and another objector testified that its reputation is "bad". Two objectors testified that in September 1946 an insurance agent was badly cut while he was in the vicinity of the Hampton Inn. The Chief of Police of Neptune Township, who testified that he had received no complaints concerning the operation of the Hampton Inn, nevertheless testified as follows:

"Q Do you have any record of any violation or any offense such as a stabbing of a man at the Hampton Inn?

"A Offhand I don't have the date with me, but there was some cutting there last Fall; I don't know the name, I don't know the date, but it was on the outside of the place."

One of the objectors testified:

"My objection was that the Turf Club was already bad enough and the new crowd that's going in around there, the saloon would be still worse."

None of the appellant corporation's stockholders is disqualified by the statute from holding an alcoholic beverage license. But no one has a right to the transfer of a license. The issuing authority may grant or deny a transfer application in the exercise of a reasonable discretion. Furthermore, it is entirely competent for a municipal issuing authority to confine its selection of licensees to those who have clearly demonstrated that they are worthy persons to receive the privilege of a license. Hodanish v. Trenton, Bulletin 121, Item 6; Clark v. West Orange, Bulletin 631, Item 7; Re Bielicky, Bulletin 704, Item 5. A determination that just cause exists for denial of an application should, on appeal, be given considerable weight. Orofino v. Millburn, Bulletin 45, Item 15.

The appellant failed to satisfy the respondent that the public interest would be best served in granting the transfer applied for. There is nothing in the record before me indicating in any way that the respondent's refusal to grant the transfer was inspired by improper motives.

Certainly, where a municipal authority has reason to believe that one of its retail licensees may be operating the licensed business in an objectionable manner and in violation of any provision of the Alcoholic Beverage Law or of rules and regulations, it should take prompt action with respect to the bringing of disciplinary proceedings against the licensee. R. S. 33:1-24. This appeal, however, has to do only with respondent's denial of the appellant's transfer application, and I am unable to find from the record that the appellant had sustained the burden of proof to show that the respondent's action was an unreasonable or abusive exercise of its discretionary power.

For the reasons set forth herein, the respondent's action will be affirmed.

Accordingly, it is, on this 26th day of June, 1947,

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

ERWIN B. HOCK
Commissioner.

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

In the Matter of Disciplinary Proceedings against

DANIEL KOCH & MORRIS COHEN
47 Bridge Street
Paterson 1, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Distribution License D-68 for the fiscal years 1946-47 and 1947-48, issued by the Board of Alcoholic Beverage Control of the City of Paterson.

Daniel Koch & Morris Cohen, Defendant-licensees, Pro Se.
Emerson A. Tschupp, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendants plead non vult to charges alleging that they sold and delivered alcoholic beverages during prohibited hours on Sunday, June 8, 1947, in violation of Section 2 of a municipal resolution and Rule 1 of State Regulations No. 38.

The sale and delivery of alcoholic beverages is prohibited between 3:00 a.m. and 1:00 p.m. on Sundays by Section 2 of a local resolution passed by the Board of Aldermen of the City of Paterson on June 28, 1935, as amended June 30, 1939. The sale and delivery on Sundays of alcoholic beverages in original containers for off-premises consumption is prohibited by Rule 1 of State Regulations No. 38.

On June 8, 1947, at about 10:15 a.m., an agent of the Department of Alcoholic Beverage Control purchased six cans of beer from an employee of the licensees. The contention of one of defendants that he did not personally participate in the sale which resulted in the violation is no defense. Re Barrale, Bulletin 705, Item 5.

Defendants have no previous adjudicated record. Inasmuch as the single offense constitutes a violation of both the municipal resolution and the State Regulation, I shall suspend the license for twenty days on both charges, less a remission of five days for the plea entered herein, or a net suspension of fifteen days. Re Wasiluk, Bulletin 608, Item 10.

Although this proceeding was instituted during the licensing year 1946-47, it does not abate but remains fully effective against the renewal license for the 1947-48 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 1st day of July, 1947,

ORDERED that Plenary Retail Distribution License D-68, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Daniel Koch and Morris Cohen, for premises 47 Bridge Street, Paterson, be and the same is hereby suspended for a period of fifteen (15) days, commencing at 9:00 a.m. July 7, 1947, and terminating at 9:00 a.m. July 22, 1947.

ERWIN B. HOCK
Commissioner.

3. DISCIPLINARY PROCEEDINGS - CLUB LICENSEES - SALE OF ALCOHOLIC BEVERAGES DURING PROHIBITED HOURS IN VIOLATION OF LOCAL ORDINANCE - POSSESSION OF SLOT MACHINES - FALSE STATEMENT IN APPLICATION - PRIOR RECORD - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

CORP. MATHEWS-PURNELL POST 518)
VETERANS OF FOREIGN WARS)
2712 Hayes Avenue)
Camden, N. J.,)

CONCLUSIONS AND ORDER

Holder of Club License CB-35 for the,)
fiscal year 1946-47, and CB-17 for)
the fiscal year 1947-48, issued by)
the Municipal Board of Alcoholic)
Beverage Control of the City of)
Camden.)

Defendant-licensee, by William S. Mountney, Commander.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant has pleaded non vult to charges alleging (1) sale of alcoholic beverages on Sunday after 2:00 a.m., in violation of the provisions of a local (Camden City) ordinance; (2) possession on licensed premises of slot machines (gambling devices), in violation of Rule 8 of State Regulations No. 20; and (3) falsely answering "No" to a question in the application for its 1946-47 license, in violation of R. S. 33:1-25.

On Sunday, March 30, 1947, two investigators of the State Department of Alcoholic Beverage Control, after observing from the exterior of the club's licensed premises evidence of considerable activity therein, at about 11:50 a.m. secured entrance to the first floor of the building and after identifying themselves were admitted to the barroom. There they observed about twenty men, some drinking alcoholic beverages and others playing the slot machines located in a niche in the wall.

A Camden City ordinance, adopted December 27, 1934, and in force ever since, provides as follows, Section 5:

"No alcoholic beverages shall be sold, served or delivered nor shall any licensee suffer or permit the sale, service or delivery of any alcoholic beverages upon the licensed premises, directly or indirectly, between the hours of 2 A.M. and 7 A.M. any weekday or between 2 A.M. on any Sunday and 7 A.M. of the following Monday; ***"

Rule 8 of State Regulations No. 20 provides as follows:

"No licensee shall possess, allow, permit or suffer on or about the licensed premises any slot machine or device in the nature of a slot machine which may be used for the purpose of playing for money or other valuable thing."

An examination of the application filed by defendant with the local issuing authority in securing its 1946-47 license discloses that Question No. 36 which asks, "Did the club ever hold an alcoholic beverage license which was surrendered, suspended or revoked?", was answered by defendant with the word "No". Factually, defendant's license was suspended on charges similar to those alleged in the first two sections of the current charges for three days, commencing October 17, 1938, by the local issuing authority.

The minimum penalty for an hours violation is fifteen days, Re Madison Lodge B.P.O. Elks #1465, Bulletin 623, Item 14; for possession of slot machines ten days, Re Phil Sheridan Knights of Columbus Bldg. Assn., Bulletin 670, Item 11; and for failure to disclose a previous suspension five days, Re Henry, Bulletin 749, Item 9. Ordinarily I would not consider a prior suspension imposed more than eight years ago in aggravation of a current violation where the offenses are dissimilar. Here, however, the previous suspension was imposed for identical violations, viz., hours and slot machines. Thus, even though the licensee's record has been clear for nine years, the repetition of the offenses constitutes aggravation. Under all of the circumstances I shall suspend the defendant's license for a period of forty-five days, of which five days will be remitted for the plea of non vult.

Accordingly, it is, on this 1st day of July, 1947,

ORDERED that Club License CB-17, issued by the Municipal Board of Alcoholic Beverage Control of the City of Camden to Corp. Mathews-Purnell Post 518, Veterans of Foreign Wars, 2712 Hayes Avenue, Camden, be and the same is hereby suspended for a period of forty (40) days, commencing at 7:00 a.m. July 7, 1947, and terminating at 7:00 a.m. August 16, 1947.

ERWIN B. HOCK
Commissioner.

4. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MODESTINO MATARAZZO)
534 East 18th Street)
Paterson 4, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-269, issued by the Board of Alcoholic Beverage Control of the City of Paterson.)
- - - - -)

Murner & Murner, Esqs., by James J. Murner, Esq., Attorneys for Defendant-licensee.
Emerson A. Tschupp, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleaded non vult to a charge alleging that, on May 20, 1947, he possessed illicit alcoholic beverages at his licensed premises, to wit, two 4/5 quart bottles of "Blended Scotch Whisky Johnnie Walker Black Label", both of which were not genuine as labeled, in violation of R. S. 33:1-50.

The defendant's record is clear of any prior adjudicated violations. The usual fifteen-day penalty will be imposed, less five days for the plea, leaving a net suspension of ten days. Cf. Club Diana, a corporation, Bulletin 763, Item 3.

Accordingly, it is, on this 30th day of June, 1947,

ORDERED that Plenary Retail Consumption License C-269, issued by the Board of Alcoholic Beverage Control of the City of Paterson to Modestino Matarazzo, for premises 534 East 18th Street, Paterson, be and the same is hereby suspended for a period of ten (10) days, commencing at 3:00 a.m. July 7, 1947, and terminating at 3:00 a.m. July 17, 1947.

ERWIN B. HOCK

5. DISCIPLINARY PROCEEDINGS - PURCHASE OF ALCOHOLIC BEVERAGES BY RETAILER OTHER THAN FROM NEW JERSEY MANUFACTURER OR WHOLESALER IN VIOLATION OF RULE 15 OF STATE REGULATIONS NO. 20 - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN D. JOHNSON and PAUL O. MARQUARDT T/a JERSEY TAVERN 549 So. Broadway Gloucester City, N. J.,

Holder of Plenary Retail Consumption License C-27 for the fiscal year 1946-47, and transferred during the pendency of these proceedings in said year to

CONCLUSIONS AND ORDER

JERSEY TAVERN, INC., (for the same premises),

and renewed by the said Jersey Tavern, Inc., holder of Plenary Retail Consumption License C-35 for the fiscal year 1947-48, issued by the Mayor and Common Council of the City of Gloucester City.

Bennett, Bennett & Wingate, Esqs., by Leon A. Wingate, Jr., Attorneys for Defendant-licensees. William F. Wood, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant-licensees plead non vult to the following charges:

"1. On or about March 17, 1947 you, New Jersey retail licensees, without authority of special permit, purchased alcoholic beverages from a person who was not the holder of the New Jersey manufacturer's or wholesaler's license, in that you purchased from John W. Wilson, a non-licensee, one case of twelve 4/5 quart bottles of Seagram's Seven Crown Blended Whiskey, which alcoholic beverages had been stolen; such purchase being in violation of Rule 15 of State Regulations No. 20.

"2. On the aforesaid date and continuously thereafter until on or about March 21, 1947, you possessed and had custody of illicit alcoholic beverages in that during such time you kept and stored on your licensed premises the aforesaid case of whiskey, all such alcoholic beverages being illicit under R. S. 33:1-1(i) since they had been transported in this State by and purchased from a person not licensed to transport or sell alcoholic beverages; your possession and custody of said alcoholic beverages being in violation of R. S. 33:1-50."

The file in the instant case discloses that one of the licensees purchased a case of whiskey from a person who had previous thereto stolen or misappropriated same from his employer. Paul O. Marquardt, one of the partners in the liquor establishment, contends that he accepted the case of whiskey in question as security for a loan. He further alleges that he placed the case of whiskey in a closet in the service room of the licensed premises where he kept his stock of liquors and had intentions of returning the whiskey when the loan had been repaid to him. Marquardt alleges that he could not account for the fact that the whiskey had been removed from the carton and placed on a shelf in the licensed premises.

I am not greatly impressed with the explanation given by Marquardt.

Defendants have no previous adjudicated record. Under the circumstances, I shall suspend the license for a period of sixty days, less a remission of five days for the plea entered herein, or a net suspension of fifty-five days. Re Bovino, Bulletin 678, Item 15.

Although these proceedings were instituted during the 1946-47 licensing period, they do not abate but remain fully effective against the renewal license for the 1947-48 fiscal year. State Regulations No. 16.

Accordingly, it is, on this 1st day of July, 1947,

ORDERED that Plenary Retail Consumption License C-35, issued for the fiscal year 1947-48 by the Mayor and Common Council of the City of Gloucester City to Jersey Tavern, Inc., for premises at 549 So. Broadway, Gloucester City, be and the same is hereby suspended for a period of fifty-five (55) days, commencing at 2:00 a.m. July 7, 1947, and terminating at 2:00 a.m. August 31, 1947.

ERWIN B. HOCK
Commissioner.

6. PLENARY AND SEASONAL RETAIL CONSUMPTION LICENSEES - OTHER MERCANTILE BUSINESS - PRACTICE OF PHOTOGRAPHERS TAKING SNAPSHOTS OF PATRONS AT TAVERNS OR NIGHT CLUBS AND PATRONS PAYING THEREFOR NOT PROHIBITED BY THE ALCOHOLIC BEVERAGE LAW.

July 1, 1947

Louis Josephson, Esc.
City Counsel
Trenton, N. J.

My dear Mr. Josephson:

I have carefully considered your letter of June 13th.

You ask whether it is permissible for a photographer to circulate among the customers at taverns or night clubs for the purpose of taking a snapshot or picture, then and there, of any patron who desires, with the photographer charging the patron a fee and mailing the print, when developed, to the patron's address.

Taverns and all similar establishments (i.e., where the general public is served alcoholic beverages for consumption on the premises) are covered by plenary or seasonal retail consumption licenses. Under the Alcoholic Beverage Law, holders of these licenses are prohibited from conducting any "mercantile business" at the licensed premises except the sale of alcoholic beverages, the sale of non-alcoholic accessory beverages, the sale of cigars and cigarettes as an accommodation to patrons, and a restaurant and/or hotel business. See R. S. 33:1-12(1), (2).

The Department has already ruled that the statutory limitation on "mercantile" businesses relates only to the buying and selling of goods or merchandise or the dealing in the purchase and sale of commodities. See Re Perlstein, Bulletin 122, Item 6; Re Walker, Bulletin 203, Item 15.

I find it difficult to believe that patrons who have their snapshots taken while dining or drinking at taverns or night clubs are actually interested in buying photographs as such, or that the transaction should be viewed as the sale of a commodity or item of merchandise. Rather, it partakes of a professional or recreational service to contribute to the gaiety of the occasion.

Hence, there is substantial doubt in my mind as to whether the statute intends to interdict this practice. I understand that the practice is well known in taverns and night clubs outside the state and that it has already evidenced itself at similar places in New Jersey. While this fact does not make the practice legitimate if it is actually prohibited by the statute, nevertheless, in a case of doubt, the fact that it has become or is being accepted by custom as a reasonable incident to the conduct of a tavern or night club should be given appropriate weight. Cf. Re Kulik, Bulletin 635, Item 8.

Weighing all factors, and seeking to keep within the fair intentment of the statute, I conclude that the statutory restriction in question does not bar the above described practice of taking and selling snapshots of dining or drinking patrons who give their consent. This does not, of course, limit any municipality from adopting an appropriate ordinance prohibiting this practice, and does not limit the power of the Department to adopt, should it become necessary, a regulation prohibiting the practice throughout the State.

Nor does the foregoing disturb the Department's ruling in Re Moore, Bulletin 512, Item 7, that photo-taking and vending machines are prohibited at plenary or seasonal retail consumption premises. I do not believe that the considerations above mentioned apply to the case of such a machine.

Very truly yours,
ERWIN B. HOCK
Commissioner.

7. DISCIPLINARY PROCEEDINGS - SALE OF ALCOHOLIC BEVERAGES BELOW FAIR TRADE MINIMUM IN VIOLATION OF RULE 6 OF STATE REGULATIONS NO. 30 - THIRD SIMILAR VIOLATION - LICENSE SUSPENDED FOR 45 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

GUS STEIN)
T/a MARKET WINES & LIQUORS)
110 Market Street)
Passaic, N. J.,)

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-124 for the 1946-47 fiscal year and now holder of License C-124 for the current fiscal year, both issued by the Board of Commissioners of the City of Passaic.)

Gus Stein, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

Defendant pleads non vult to a charge alleging that he sold a one-half gallon jug of Garrett's American Sauterne Wine below the established Fair Trade price, in violation of Rule 6 of State Regulations No. 30.

On May 10, 1947, an employee of defendant-licensee sold the product in question to an ABC agent for the sum of \$1.75, whereas the minimum retail price of said item, as established in Bulletin 751, effective March 3, 1947, was \$2.12.

Defendant has a previous adjudicated record. Effective May 12, 1941, defendant's license was suspended by the State Commissioner of the Department of Alcoholic Beverage Control for ten days (Re Stein,

Bulletin 458, Item 1), and again, effective February 23, 1943, defendant's license was suspended by the State Commissioner for fifteen days (Re Stein, Bulletin 555, Item 5), both suspensions resulting from violations of the Fair Trade regulations. In view of the fact that this is a third similar violation, I shall suspend defendant's license for forty-five days. Five days will be remitted for the plea entered herein, leaving a net suspension of the license for forty days.

Any further violation of this nature by the defendant may very well result in the outright revocation of his license.

Accordingly, it is, on this 2nd day of July, 1947,

ORDERED that Plenary Retail Consumption License C-124 for the current fiscal year, issued by the Board of Commissioners of the City of Passaic to Gus Stein, t/a Market Wines & Liquors, for premises 110 Market Street, Passaic, be and the same is hereby suspended for a period of forty (40) days, commencing at 3:00 a.m. July 7, 1947, and terminating at 3:00 a.m. August 16, 1947.

ERWIN B. HOCK
Commissioner.

8. DISCIPLINARY PROCEEDINGS - ILLICIT LIQUOR - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against

JOHN ZAKTANSKY
181 New Brunswick Avenue
Perth Amboy, N. J.,

CONCLUSIONS
AND ORDER

Holder of Plenary Retail Consumption License C-32 for the 1946-47 and 1947-48 licensing years, issued by the Board of Commissioners of the City of Perth Amboy.

John Zaktansky, Defendant-licensee, Pro Se.
Edward F. Ambrose, Esq., appearing for Department of Alcoholic Beverage Control.

BY THE COMMISSIONER:

The defendant pleads non vult to a charge alleging that, on April 28, 1947, he possessed five bottles of illicit alcoholic beverages, to wit, two 4/5 quart bottles labeled "Calvert Reserve Blended Whiskey" and three 4/5 quart bottles labeled "Schenley Reserve Blended Whiskey", all of which contained alcoholic beverages not genuine as labeled, in violation of R. S. 33:1-50.

The bottles in question were seized by an agent of the Alcohol Tax Unit, Internal Revenue Service, Federal Treasury Department, on April 28, 1947. Subsequent analyses by the Federal Chemist disclosed that the bottles had been wholly or partly refilled with an alcoholic beverage other than that described on the labels and that the contents thereof were not genuine as labeled.

Defendant's contention that he did not personally participate in nor did he have knowledge of the violation is no defense. Re Barrale, Bulletin 705, Item 5.

Defendant has no previous adjudicated record. I shall, therefore, suspend the license for a period of twenty-five days, less a remission of five days for the plea entered herein, leaving a net suspension of twenty days. Re Visaggi, Bulletin 747, Item 6.

The law in this state, however, is to the contrary. It has been settled by our Court of Errors and Appeals that an appellate authority is controlled by the law which prevails at the time such authority renders its decision. Westinghouse Electric Corp. v. United Electrical, etc., 139 N. J. Eq. 97, 105, 106.

In a well-considered Supreme Court opinion written by Justice Perskie, Socony-Vacuum Oil Co., Inc. v. Mt. Holly Twp., 135 N. J. L. 112, reference is made to the pertinent cases in this State and the conclusion is there reached that "there can no longer be any question as of the time when the status of the applicable law controls. It is neither the status of the law prevailing at the time of the application for the permit nor the status of the law prevailing at the time of the application or allowance of the rule to show cause. It is the status of the law prevailing at the time of the decision by the court that is controlling."

As in the instant matter, the Socony-Vacuum case involved a change in the law following a denial of a permit by an administrative agency. With particular reference to such a situation, the Court said (p. 118):

"And just as a change in the law between a nisi prius and an appellate decision requires the appellate court to apply the changed law, so, by like token, a change of law pending an administrative hearing or act must be followed in relation, as here, to a permit for the doing of a future act. Otherwise the administrative body, here the building inspector whose acts are subject to appeal to or review by this court, would issue a permit contrary to the existing legislation. Cf. Ziffrin v. United States, 318 U. S. 73, 78; 87 L. Ed. 621, 625."

A case which is strikingly similar to the one at bar is that of Appeal of Spankard, 10 A. 2d 899 (Pa. Super. Ct.). There, the limitation law, effective June 24, 1939, prohibited the issuance of a liquor license which had been denied by the Pennsylvania Liquor Control Board on June 13, 1939. The appeal from such denial was heard by the Quarter Sessions Court on June 28, 1939, four days after the statute became effective, and the appeal was dismissed because of the limitation provision of the statute, even though the Court expressly stated that "we would have been disposed to reverse the Liquor Control Board and order them to issue a license in this case on the merits had the case been heard prior to June 24, 1939." The contention was there made, as it is raised by the appellant in this case, that applications pending with the issuing authority prior to the effective date of the statute should be saved from its operation since, otherwise, the law would be applied retroactively. In disposing of this contention, the Court said (p. 902):

"Appellant contends that the Act should not apply to applications for license which were pending and undisposed of on the effective date of the Act, which was, 'immediately upon final enactment'; but the statute makes no such exception. It expressly forbids the granting of any such new license, after June 24, 1939, in excess of the ratio fixed by the Act, and includes no saving clause affecting pending applications.

"Appellant further contends that it is a settled rule of statutory construction, recognized by the Statutory Construction Act (Act of May 28, 1937, P. L. 1019, sec. 56, 46 P. S. § 556) that 'No law shall be construed to be retroactive unless clearly and manifestly so intended by the Legislature'. But the construction of the court below does not give any retroactive effect to the statute; it only does what the Act expressly provides, it puts the Act into immediate effect upon final enactment."

Moreover, the history of the legislation in this state provides an additional answer to the appellant's argument and is clearly indicative of the legislative intent. The original statute (P. L. 1946, c. 147) contained a provision excepting applications filed prior to its effective date. When that statute was declared null and void by the Supreme Court (134 N. J. L., p. 529), the present statute was enacted without inclusion of any such saving exception.

The further argument made by the appellant regarding the constitutionality of the statute may not be considered herein. Such issue rests with the courts and an administrative agency must accept a legislative act as constitutional until a contrary declaration is made by a qualified judicial body. Schwartz v. Essex Co. Bd. of Taxation, 129 N. J. L. 129.

Since the respondent no longer has any statutory authority to issue the license applied for until the ratio of distribution licenses is less than one for each 3,000 of population, it follows that its action in denying the application must be affirmed.

Accordingly, it is, on this 3rd day of July, 1947,

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

ERWIN B. HOCK
Commissioner.

10. STATE LICENSES - NEW APPLICATION FILED

Horlacher Brewing Company
311 Gordon St.
Allentown, Pa.

Application for Limited Wholesale License filed July 1, 1947.

ERWIN B. HOCK
Commissioner.

11. ACTIVITY REPORT FOR JUNE, 1947

ARRESTS:

Licensees and employees - - - - - 1 Bootleggers - - - - - 3
 Total number of persons arrested - - - - - 4

SEIZURES:

Motor vehicles - trucks - - - - - 1
 Brewed malt beverages - gallons - - - - - 10.48
 Illicit alcohol - gallons - - - - - .23
 Wine - gallons - - - - - 83.46

RETAIL LICENSEES:

Total number of premises inspected - - - - - 1097
 Total number of premises where alcoholic beverages were gauged - - - - - 570
 Total number of bottles gauged - - - - - 3687
 Total number of premises where violations were found - - - - - 82
 Total number of violations found - - - - - 103
 Type of violations found:
 Regulations No. 38 sign not posted - - - - 29
 Illicit liquor - bottles - - - - - 23
 Unqualified employees - - - - - 12
 Other mercantile business - - - - - 12
 Probable fronts - - - - - 5
 Improper beer taps - - - - - 5
 Gambling devices - - - - - 1
 Price pamphlet not displayed - - - - - 1
 Disposal permit necessary - - - - - 1
 Other violations - - - - - 13

STATE LICENSEES:

License applications investigated - - - - - 612

COMPLAINTS:

Complaints assigned for investigation - - - - - 318
 Complaints investigated, reviewed and closed - - - - - 341
 Investigations completed - not closed administratively - - - - - 10
 Investigations assigned, not yet completed - - - - - 240

LABORATORY:

Analyses made - - - - - 130
 "Shake-up" cases (alcohol, water and artificial color) - - - - - bottles 7
 Liquor found to be not genuine as labeled - - - - - bottles 16

IDENTIFICATION BUREAU:

Criminal fingerprint identifications made - - - - - 13
 Persons fingerprinted for non-criminal purposes - - - - - 313
 Identification contacts made with other enforcement agencies - - - - - 265
 Motor vehicle identifications via N.J.State Police Teletype - - - - - 4

DISCIPLINARY PROCEEDINGS:

Cases transmitted to municipalities - - - - - 22
 Violations involved:
 Sale during prohibited hours - - - - - 8
 Sale to minors - - - - - 6
 Sale on Election Day - - - - - 3
 Mislabeling beer taps - - - - - 2
 Unqualified employees - - - - - 2
 Permitting bookmaking on premises - - - - - 1
 Permitting gambling (dice) - - - - - 1
 Cases instituted at Department (1 case* also involves cancellation proceedings) - - - - - 8
 Violations involved:
 Illicit liquor - - - - - 3
 Fraud and front - - - - - 2*
 Sale during prohibited hours - - - - - 1
 Sale to minors - - - - - 1
 Sale under Fair Trade price - - - - - 1
 Cases brought by municipalities on own initiative and reported to Department - - - - - 3
 Violations involved:
 Sale to minors - - - - - 2
 Permitting brawl on premises - - - - - 1
 Permitting known criminal on premises - - - - - 1
 Conducting business as a nuisance - - - - - 1

CANCELLATION PROCEEDINGS:

Cases instituted by Department - - - - - 2
 Violations involved:
 Licensee unqualified as to citizenship - 1
 Premises not qualified - other mercantile business conducted thereon - - - - - 1

HEARINGS HELD AT DEPARTMENT:

Total number of hearings held - - - - - 64
 Appeals - - - - - 23
 Disciplinary proceedings - - - - - 17
 Eligibility - - - - - 9
 Seizures - - - - - 2
 Applications for license - - - - - 7
 Tax Revocations - - - - - 6

PERMITS ISSUED:

Total number of permits issued - - - - - 788
 Employment - - - - - 153
 Solicitors - - - - - 77
 Social affairs - - - - - 362
 Disposal of alcoholic beverages - - - - - 124
 Miscellaneous - - - - - 72

ERWIN B. HOCK,
 Commissioner.

12. APPELLATE DECISIONS - BASIL V. RAMSEY

Samuel W. Basil,)
)
 Appellant,)
)
 v.)
)
 Borough Council of the)
 Borough of Ramsey,)
)
 Respondent.)
 -----)

On Appeal

CONCLUSIONS and ORDER

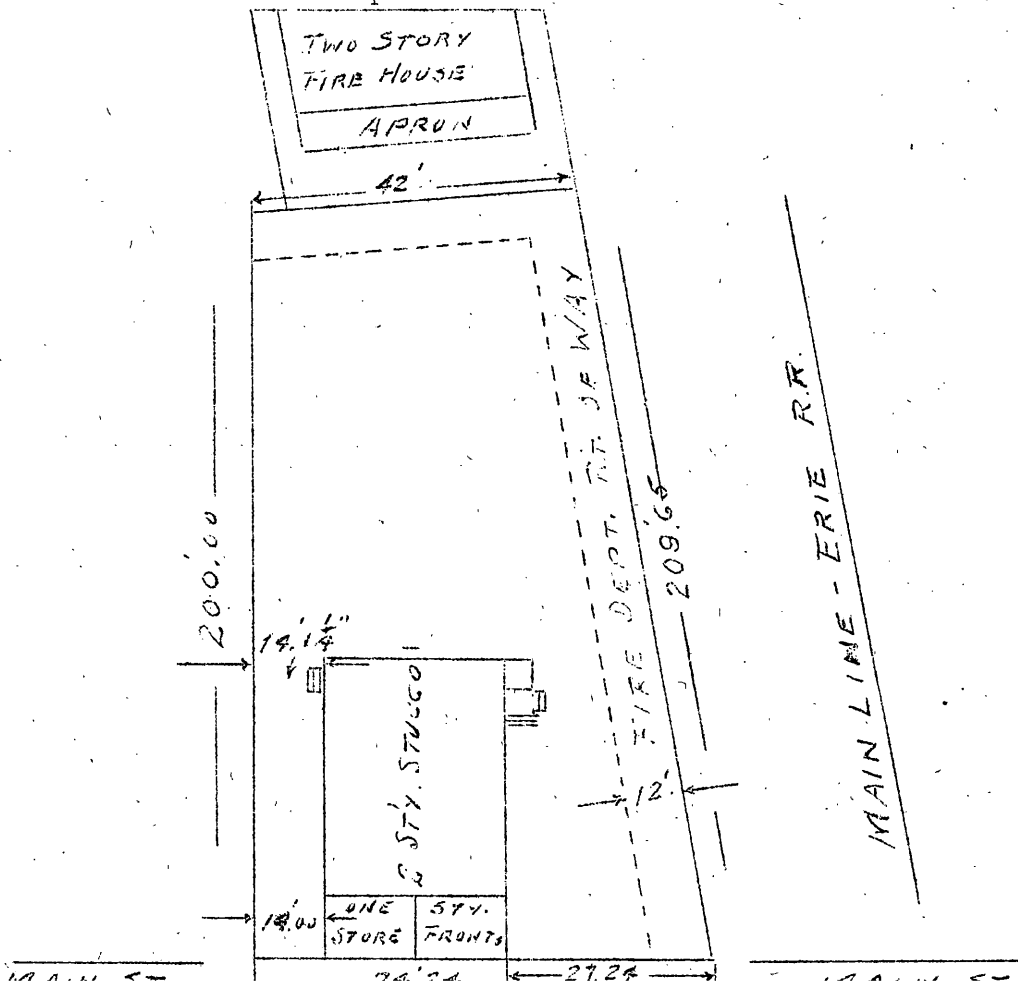
Weber and Muth, Esqs., by James M. Muth, Esq., Attorneys for Appellant.
Romeo R. Napolitano, Esq., Attorney for Respondent.

BY THE COMMISSIONER:

This is an appeal from the action of respondent whereby it denied appellant's application to transfer his plenary retail consumption license, issued for the fiscal year 1946-47, from 92 East Main Street to 5-7 West Main Street, Ramsey.

The answer sets forth in effect that the application was denied because the granting thereof would create a traffic hazard, particularly because it "would most likely result in the blocking of fire apparatus, which would put life and property in jeopardy."

The following sketch shows the location of the fire-house and the location of the premises to which the transfer is sought:



Although the Fire Department has only a twelve foot right of way adjoining the railroad property, it appears that, for a period of more than twenty years, the Fire Department has in fact used the entire strip of land between the building sought to be licensed and the railroad, and that there is no means of egress and ingress for the fire apparatus except along the right of way and the adjacent land between the right of way and the appellant's building. Percy A. Ackerson, Chief of the Fire Department of the Borough of Ramsey, testified that in his opinion the granting of the transfer would put the Fire Department in peril in regard to getting the engines out on Main Street in response to calls. Mayor Herring also testified that the Fire Department would be put in jeopardy if the transfer of the license were granted.

Appellant has produced evidence which shows that two small stores have been located on the ground floor of the building at 5-7 West Main Street, and that many years ago the second floor of the building was used for manufacturing purposes, although in recent years it appears to have been used principally for storage. Appellant has also shown that the members of the Fire Department occasionally park their cars in the space between his building and the railroad, and that a police car is occasionally parked in that space. The Chief of the Fire Department admitted that there had been no difficulty in the past but, considering the size of the fire apparatus in general use today, I cannot say that his fears as to the future are unreasonable if patrons of the licensed premises should, perchance, park their automobiles in the space of land between appellant's building and the railroad. At the present time there appears to be no other portion of appellant's premises upon which his patrons could park their cars, and the nearest parking lot is on the opposite side of the railroad.

The mere fact that West Main Street is a heavily traveled thoroughfare would scarcely be a sufficient reason for denying the transfer. Randall v. Camden, Bulletin 420, Item 7. However, since no one is entitled to a transfer as a matter of right, I cannot say that

respondent abused its discretion in denying the transfer because the parking of cars by appellant's customers might interfere with the fire apparatus. When the fire alarm is sounded, minutes are precious and even a slight delay to remove a patron's car might result in a tragedy.

The members of the Borough Council were evenly divided as to whether or not this transfer should be granted, and the deciding vote was cast by Mayor Herring. There is nothing in the evidence to indicate that he was improperly motivated or that he acted from any motive other than what he conceived to be the best interests of the Borough. His statement that appellant might apply to the Commissioner for relief upon appeal does not indicate improper motivation. For the reasons aforesaid, the action of respondent is affirmed.

Accordingly, it is, on this 3rd day of July, 1947,

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 S. Hoek
Commissioner.