Amada

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1900 March 16, 1970

TABLE OF CONTENTS

ITEM

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark, N.J. 07102

BULLETIN 1900 March 16, 1970

1. COURT DECISIONS - PATERSON TAVERN & GRILL OWNERS ASSN., INC. v. HAWTHORNE.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-1776-68

PATERSON TAVERN & GRILL OWNERS ASSN., INC., a non-profit corporation of New Jersey, et al,

Plaintiffs-Appellants,

v.

___ N.J. Super. ___

THE BOROUGH OF HAWTHORNE, a municipal corporation, et al,

Defendants-Respondents

Argued December 22, 1969 - Decided February 6, 1970

Before Judges Kilkenny, Labrecque and Leonard.

On appeal from Superior Court of New Jersey, Law Division, Passaic County.

Mr. William J. Rosenberg argued the cause for appellants (Mr. George L. Harrison and Mr. Harold Goldman on the brief).

Mr. Douglas C. Borchard, Jr., argued the cause for respondents (Messrs. Evans, Hand, Allabough & Amoresano, attorneys).

The opinion of the court was delivered by

KILKENNY, P.J.A.D.

Plaintiff appeals from the "whole" of the final judgment entered in the law Division on June 24, 1969, whereby it was adjudged that Ordinance No. 1137 of the Borough of Hawthorne is valid, with the exception of the word "improper" in Section 1 thereof, which word was held to be vague and invalid.

But for that single-word exception, plaintiff's motion for summary judgment was denied and defendants' cross-motion for summary judgment was granted. There is no cross-appeal by defendants.

Ordinance No. 1137 was adopted on November 6, 1968. It is entitled: "An ordinance concerning employment of females on alcoholic beverage licensed premises, and further concerning indecent performances on such premises." It contains ten sections, but our concern is with the first six only which

proscribe specified activities and conduct in or on licensed premises. Section 7 fixes the penalty for each day's violation at not more than $200. Section 8 provides for severability so that a declaration of invalidity of any provision shall not affect the remaining separable provisions. Section 9 repeals inconsistent provisions in other ordinances to the extent of their inconsistency. Section 10 provides that the ordinance shall take effect immediately upon final passage and publication according to law.

The legal standing of Paterson Tavern & Grill Owners' Association, a non-profit corporation of New Jersey, to challenge the validity of this Hawthorne ordinance has not been raised on this appeal by defendants. We refrain from raising that issue, sua sponte, because the co-plaintiff Harry Shortway, trading as Shortway's Barn, is a licensed tavern owner conducting his place of business in Hawthorne. He, therefore, is affected by its provisions and has standing.

I.

Section 1 of the ordinance prohibits the employment of any person "to perform dancing or other entertainment in or upon the licensed premises *** in a lewd, licentious, lascivious or improper manner." With the vague word "improper" correctly stricken therefrom by the trial court, we agree that the remainder of the prohibition is valid.

Plaintiffs argue that the words "lewd, licentious, lascivious" are too vague and "catch-all," thus failing to comport with due process because they do not sufficiently establish adequate guidelines for one to follow in determining what he may or may not do.

Our Supreme Court found no infirmity in the use of the word "lewd," without any further definition of the term in N.J.S.A. 2A:115-1; nor with "lascivious," in N.J.S.A.2A:115-4. See Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472 (1956). That case is dispositive of plaintiffs' contention as to this aspect, so far as this subordinate appellate tribunal is concerned. As to the word "licentious," the rule of sui generis controls its meaning, appearing as it does between "lewd" and "lascivious" in the phraseology employed.

II.

Section 2 prohibits a licensee from allowing any person to appear upon the licensed premises "in any act, scene, sketch, or other form of entertainment including dancing for the benefit of patrons with either or both breasts or the lower part of the torso uncovered or so thinly covered or draped so as to appear uncovered."

Here again, plaintiffs make the argument of "vagueness." The use of the disjunctive "either or both breasts *** uncovered" has reference undoubtedly to the female breast. That portion of the female anatomy needs no further description. It is recongizable by infants; and tavern owners are presumably well aware of the legislative intent. The ordinance seeks to ban from Hawthorne's taverns and other licensed premises the "topless" and "bottomless" entertainer or dancer. The community has a right to protect itself against this kind of an immoral atmosphere which exists elsewhere in the United States. Such so-called

"entertainment" is nothing more or less than an appeal to the prurient interest. It is bait to bring customers to the bar and hold them there, for the obvious purpose of increasing the sale of alcoholic beverages. It may be validly curbed, as Hawthorne provides in its ordinance.

Nor do we find sufficient vagueness in the ban of the specified part of the human body "so thinly covered or draped so as to appear uncovered." The use of thin, transparent coverings can be practically as much of an exposure as when one is totally exposed. The evil is the same. Any tavern owner can readily avoid risk of violating this portion of the section by requiring entertainers to cover the specified parts with sufficient material of fully opaque quality. It is so accomplished in T.V. performances. The giving of an "illusion of nudeness" was deemed sufficiently precise and clear in Adams Newark Theatre Co., supra, 22 N.J. at 479.

The reference to the need of adequately covering "the lower part of the torso" is sufficient without a more elaborate definition of the portion of human anatomy comprehended. Courts have taken judicial notice of the extent of the human "torso," and even of its average and maximum length. See Hunter v. N.Y.Ont.and Western R.R. Co., 116 N.Y. 615, 621, 23 N.E. 9 (Ct. App.1884). The torso is the trunk of the human body, usually measured from the end of the spine without relation to the extremities. While more blunt descriptive language might have been used, there is no mistaking the legislative intent, especially in the light of the title of this ordinance, concerned as it is with "indecent performances" on licensed premises.

III.

Section 3 bans waitresses and other employees who come in contact with patrons "to appear in the presence of such patrons with either or both breasts or the lower part of the torso uncovered or so thinly covered or draped so as to appear uncovered." In brief, the "topless" or "bottomless" waitress or employee is restricted in the same manner and to the same degree as is the tavern entertainer. We find this section valid for the same reasons expressed above in our discussion of Section 2. "They were promulgated to prevent moral contamination which the municipality feared was imminent. In substance, they contribute to the general moral welfare of its citizens and should not be declared invalid." That statement from Adams Newark Theatre Co., supra, 22 N.J. at 480, is equally applicable herein.

IV.

Section 4 provides: "No licensee shall engage, employ, allow, permit or use entertainers under the age of twenty-one (21) years." This limitation is apparently based upon the legal prohibition in our State against the sale of alcoholic beverages to persons under the age of 21 years. But drinking alcoholic beverages and working as an entertainer in licensed premises are not necessarily related.

We take judicial notice of the fact that many nationally famous entertainers are under the age of 21 years. Banning them from earning a living in their chosen field, merely because of their age, while subjecting those over 18 to service in the armed forces, appears to be patently unreasonable. This section of the

ordinance is deemed to be invalid in that it unreasonably denies persons the opportunity to earn a livelihood, prohibits licensees from engaging their services for entertainment purposes only fosters no obvious good and curbs no threatened evil. Other provisions of the ordinance already preclude lewd performances by them, and our labor laws and A.B.C. regulations also further limit and regulate their engagements and performances.

V.

Section 5 prohibits licensees from permitting or suffering "any female person to perform for hire, and for the entertainment of patrons, any dances, ballet, acrobatics or public performances of any kind, in which body movement constitutes the principal or integral part of such performance." (Emphasis added). Excepted from the prohibition are the "playing musical instruments as a member of a band." We need not consider this exception. We address ourselves solely to the italicized portion of the section, supra.

The challenged portion of this section is too broad in scope. It would ban "any female person" to perform for hire and for the entertainment of patrons the most innocent Anniversary Waltz at a golden wedding celebration. Ballet, a very popular form of entertainment, would be prohibited, as would be time-honored acrobatics, Indian club juggling, or any kind of public performance which involves principally "body movement." There is no similar prohibition as to male entertainers and no valid reason exists for the distinction under this section. We may guess at a legitimate intent and purpose in banning "body movement" by "female entertainers," but the excessively comprehensive language employed would expose to the penalties of the ordinance the most innocent conduct. We hold this provision in Section 5 to be invalid.

VI.

Section VI prohibits a licensee from employing "any female bartender." Expressly exempted from the prohibition are:

(a) any female licensee from tending her own bar; and

(b) any individual male licensee from employing his wife as bartender.

Plaintiffs claim that this section is repugnant to existing laws, giving females the right to equal opportunities of employment. Reference is made to 42 U.S.C.A. § 2000 e-2(a) and N.J.S.A. 10:1-1. We are mindful of the recent decision by our courts in Gallagher et al v. City of Bayonne, 106 N.J. Super. 401 (App.Div. 1969), affirming 102 N.J.Super. 77 (Ch. Div. 1968), and affirmed 55 N.J. 159 (1969), declaring invalid a municipal ordinance which prohibited the serving of liquor in the city's taverns to women "at the bar." In brief, plaintiffs maintain that a prohibition against employing "female bartenders," with the two exceptions noted, unlawfully discriminates against women, denies them equal protection under the law and violates their rightsunder federal and state laws.

Plaintiffs concede that "there may be areas of

employment in which one might prefer not to have women employed." There may be a legitimate discrimination in the employment field where there is a reasonable and rational basis for the discrimination. Thus, the refusal to employ women in an all-male Turkish bath establishment is justifiable because of the over-riding public policy of safeguarding decency and morality. Individual rights must yield to the police powers, properly exercised in the interest of the public health, morals, safety and general welfare.

Equal protection of the law does not foreclose classification, so long as there is a reasonable basis in relation to the specific objective of the legislation. Nor is it enough to demonstrate that the legislative object might have been more fully achieved by another, more expansive classification, as for example, in the instant case, not making exception where one is a female owner or wife of an individual owner. N.J.Restaurant Assn. v. Holderman, 24 N.J. 295 (1957). The legislature may recognize degrees of harm and hit the evil where it is most felt. Id. at 300.

Our Supreme Court was faced with this specific issue--the legal sufficiency of a municipal ordinance prohibiting, with certain exceptions, female bartenders--in Guill v. Mayor and Council of City of Hoboken, 21 N.J. 574 (1956). It held that the ordinance did not contain an inherently arbitrary or unreal classification, did not constitute an unlawful exercise of police power, and did not deny equal protection of the laws. Unless and until our Supreme Court decides otherwise, that decision is binding upon us. For the reasons expressed therein, we find Section 6 valid. See, too, Goesaert v. Cleary, 335 U.S. 464 (1948), upon which our Supreme Court relied in Guill, supra, in which the same conclusion was reached, despite the "vast changes in the social and legal position of women."

The judgment under review, except as modified herein, is affirmed. No costs.

2. APPELLATE DECISIONS - 300 PACIFIC CORPORATION v. ATLANTIC CITY.

300 PACIFIC CORPORATION t/a ADELPHIA BAR,	)	
Appellant,	)	ON APPEAL ORDER
v.	)	
BOARD OF COMMISSIONERS OF THE CITY OF ATLANTIC CITY,	)	
Respondent.	)	

Edwin H. Helfant, Esq., Attorney for Appellant
Murray Fredericks, Esq., by Chaim H. Sandler, Esq., Attorney for Respondent

BY THE DIRECTOR:

Appellant appeals from an order of suspension of its plenary retail consumption license for premises 300 Pacific Avenue, Atlantic City, for a period of three hundred days effective May 8, 1969, in accordance with resolution of the Board of Commissioners dated May 8, 1969.

Prior to hearing, the appellant's attorney advised me (by letter dated January 20, 1970) that the appeal was withdrawn.

Accordingly, it is, on this 26th day of January 1970,

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

RICHARD C. McDONOUGH
DIRECTOR

3. DISCIPLINARY PROCEEDINGS - PERMITTING LEWDNESS ON LICENSED PREMISES - LICENSE SUSPENDED FOR 30 DAYS.

Aff'd App Div 1955-1 see

In the Matter of Disciplinary Proceedings against	)	
CLUB "D" LANE, INC. t/a Club "D" Lane 2005 East Linden Avenue Linden, N. J.	)	CONCLUSIONS AND ORDER No publication
Holder of Plenary Retail Consumption License C-12, issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden.	)	

Donald W. Rinaldo, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

The Hearer has filed the following report herein:

Hearer's Report

Licensee pleaded not guilty to the following charge:

> "On January 14 and 15, 1969, you allowed, permitted and suffered lewdness and immoral activity in and upon your licensed premises, viz., in that you allowed, permitted and suffered female persons to perform on your licensed premises for the entertainment of your customers and patrons in a lewd, indecent and immoral manner; in violation of Rule 5 of State Regulation No. 20."

Four Divison agents participated in the investigation which culminated in the lodging of the charge.

Agent D testified that he entered the licensed premises on January 14, 1969, at approximately 11:50 a.m. and sat almost midway at a long oval-shaped bar approximately seven or eight feet distant from a raised platform inside the bar. Three males (one of whom was identified as Michael A. Chrone, secretary-treasurer of the corporate licensee) were tending bar. The patronage, consisting of approximately one hundred seventy-five males and two females, remained unchanged throughout the visit. Two go-go dancers performed on the platform at the center section of the bar. One of the performers (a brunette) was identified as Terry. The other performer (a blonde) was identified as Ericka. The

females alternated continuously on the platforms throughout the agent's stay. Upon entry, Terry was on the stage. She was attired in "black patent-leather high heel shoes, black fish-net theatrical length hose, black sequin bikini-style pants, black sequined pasties approximately two inches in diameter which covered her nipples of her breasts, and in addition she had on a black lace bib which was tied around her neck and hung down to approximately the solar plexus area of her body." He described the lace as "transparent black lace." He further testified, "Her [Terry's] breasts were bare with the exception of the two-inch pasties which covered the nipples and the black lace bib which hung from around her neck." Terry's breasts hung free, they swayed back and forth and Terry at times "would accentuate the breasts, and she shook them and swayed them from side to side and caused them to shake and vibrate."

From the time that Agent D entered the premises at 11:50 a.m. to the time that he left at 12:45 p.m. he observed Terry perform twice. Her attire on each occasion was the same. He characterized the routine as a "typical go-go type dance, interspersed here and there with some bumps and grinds."

Referring to Ericka, Agent D saw her perform once. Referring to her attire he testified as follows:

"Q What was her attire?
A She wore white shoes, high-heel type shoes, no stockings, green sequined-type bikini pants --
Q What was the extent of those pants?
A The front was cut about the same as Terry's; however the rear was nothing more than about an inch or inch and a half strip going from the waist down between the buttocks, about completely exposing her buttocks. She wore silver sequined pasties about two inches in diameter. She wore a black net veil which hung down from her shoulders around like to about the juncture of her rib cage.

* * * * *

Q What was your view of the upper part of her body?
A Her breasts were bare with the exception of the silver pasties which covered the nipples and the diaphanous black veil which hung from her shoulders.
Q Did that veil obscure your view in any way?
A None whatsoever.
Q How about the bib Terry had on? Did that obscure your view?
A No, sir. The breasts were plainly visible."

Her dance routine was similar to Terry's. It appeared to the agent that "while many of the customers were eating and drinking I would say their attention was more on the go-go girls than on the sandwiches."

On January 15, 1969, ABC Agents D, M, S and Da participated in the investigation of the licensed premises. Agents D and M entered the licensed premises on that day at 12:30 p.m. and, because the barroom was extremely crowded, they sat against the wall about midway at the bar. After a lapse of approximately twenty minutes, Agents D and M took their positions formerly occupied by two patrons who departed from the premises, almost opposite the go-go platform used that day. The patronage

consisted of approximately two hundred males. Three bartenders, including Chrone, were tending bar.

Agent D observed Terry performing on the platform. He described her dress and performance as being the same as that of the day previous. Terry completed her routine at 1:15 p.m. and returned to the platform at 1:30. She changed from black lace to a pink transparent-type top. He observed Terry's bare breasts except for the black pasties which covered the nipples. Ericka did not perform on January 15, 1969.

Agent D characterized Terry's and Ericka's performances as "topless go-go girls."

Agent D observed Agents S and Da enter the barroom at approximately 1:45 p.m. and position themselves at the far end of the bar about eighteen or twenty feet distant from where he was seated. At approximately 2:20 p.m., Agents D and M proceeded to the office area and identified themselves to Chrone and his wife, the latter being also employed in the premises. Agents S and Da remained at the bar. Upon informing Chrone that Terry's performance was what was commonly known as a "topless go-go dance", Chrone replied that "he had started the topless go-go girls on December 18, 1968, that Terry was one of the first, if not the first, girl that he had working there as a topless go-go girl; and that prior to commencing with this performance that he had checked with both the local authorities and with some one at the New Jersey Division of Alcoholic Beverage Control and was informed by both agencies that there were no rules or regulations prohibiting topless go-go girls, so that on the strength of this he had instituted these performances daily."

The pasties, the black lace and pink net worn by Terry over her breasts were received in evidence.

On cross examination Agent D testified as follows:

"Q As to the dancing in and of itself on January 14 and 15, 1969 in the Club 'D' Lane, is that not substantially the same as most go-go dancing which is now being conducted throughout the state of New Jersey at licensed premises?
A Yes.
Q Is the only thing different about it the attire of the girls basically?
A Well, the attire and, again, the accentuating of the bare breasts.
Q What was the accentuating? How did this come about?
A Since there was no bra of any kind restricting the movement of the breasts, in addition to the normal shaking and vibrating that accompanied the dance it was my opinion that there were times during each dancer's performance that she specifically leaned forward and allowed their breasts to shake from side to side, accentuated movement of their breasts.
Q Is regular go-go dancing that which is accompanied by these? Don't the girls bend forward and backward and side to side?
A Yes, they do, but their breast movements are restricted with a bra."

It was stipulated that the testimony of Agent M, who had accompanied Agent D in the investigation of the licensed premises on January 15, 1969, would be substantially the same as the testimony offered by Agent D.

Agent S testified that, accompanied by Agent Da, he entered the licensed premises on January 15, 1969, at approximately 1:45 p.m. They seated themselves at the far end of the bar. He saw ABC Agents D and M seated midway at the bar. He observed Terry perform on the platform inside the bar from the time he entered to approximately 2:50 p.m. His description of Terry's attire and dance coincided with Agent D's testimony relating thereto. At approximately 2:20 p.m. he observed Agents D and M proceed to the office located in the front area of the premises. He and Agent Da left the premises without waiting for Agents D and M emerge from the office. Neither he nor Agent Da identified himself to anyone.

It was stipulated that Agent Da's testimony would be similar to the testimony offered by Agent S.

In defense of the charge, Lawrence A Wheat (who was employed by the City of Linden as license inspector and as inspector by the local Alcoholic Beverage Board) testified that in pursuit of his official duties, he was called to the licensed premises. He saw Terry performing a go-go dance on December 19, 1968. She wore a transparent "like glass" blouse over the upper part of her body and black pasties similar to those received in evidence at the within hearing. He informed Chrone that there was no local ordinance forbidding the performance and advised him to consult with the State ABC. Chrone stated that he had been informed by the State ABC that there was no "ordinance" against it. Additionally, he (Wheat) informed Detectives Eichorn and Carvalho, who were assigned to the local ABC Board, of the nature of the performance.

On cross examination Wheat testified that, although he returned to the licensed premises approximately three times after December 19, 1968, he was not in the premises on either January 14 or 15, 1969. Unquestionably, the females were topless except for the pasties. Upon checking, he found no ordinance prohibiting the performance.

When questioned on redirect, Wheat stated that it was his opinion that the females did not perform in a lewd, indecent or immoral manner.

Michael A. Chrone testified that, prior to permitting the performances complained of (approximately a week or ten days prior to Christmas 1968), he called the State ABC office and spoke to Hugo Stockburger (later identified as aDDeputy Director of the State ABC) and explained to him that the females were going to wear material that was "completely transparent like looking through a store window." Stockburger responded, "there is no ordinance against it as far as he knows, and he also stated that to be sure to check with my municipality to make sure they in turn haven't got an ordinance against this." Chrone did not identify himself to Stodkburger. He discontinued the performances voluntarily only after John Gregorio (the Mayor of the municipality) called him in and complained to him of the adverse newspaper publicity relative to the performances. The Mayor informed Chrone that he knew of no law prohibiting such performances.

On cross examination Chrone testified that it may have been from one week to three weeks prior to December 18 that he called Deputy Director Stockburger for an opinion. He did not inform Stockburger as to his identity or identify the licensed premises involved because "this was only an idea." He did not recall the agents informing him at the confrontation to call a Mr. Piltzer at the ABC office if he had any questions. He did not recall calling Mr. Piltzer some time between January 15 and January 22, 1969.

John T. Gregorio (Mayor of the City of Linden) testified that he requested Detectives Eichorn and Carvalho (who were in charge of the local ABC squad) to investigate the matter of the alleged topless go-go-dancers. After receiving a written report from Detective Eichorn dated December 19, 1968 (received in evidence as Exhibit L-1), it was the Mayor's opinion that the performances were not illegal and instructed the detectives "to keep a very close watch on the premises to see that the dance didn't become lewd." The municipality took no disciplinary action against the licensee. However, after receiving calls from residents of the city objecting to the performances, he called Chrone into his office and requested him to discontinue the performances. Chrone then discontinued the performances prior to receiving notice of the alleged violation from the State ABC.

On cross examination the Mayor asserted that he did not confer with anyone at the State ABC office concerning the legality of the performances prior to the date of a letter dated January 16, 1969, sent to the State Director (received in evidence as Exhibit D-5). He did recall speaking with someone on the telephone at the ABC office on the morning of January 16, 1969, prior to sending the letter (D-5); however, he did not recall with whom he spoke nor what was said. He did not recall being informed that the performance was not permitted in New Jersey.

Detective Warren P. Eichorn testified that, during the course of a routine check of the various licensed premises in the City of Linden, he and his partner Detective Carvalho stopped in the licensed premises one morning. Chrone called him into the office and showed him a costume go-go girls were going to wear consisting of "a bottom, pasties, with like a negligee top." The detective questioned Chrone as to whether he had checked "the legal end of it." Chrone replied that he had called the State ABC and was informed by Hugo Stockburger that "it's legal." Detective Eichorn then called Stockburger and described the costume the go-go girls proposed to wear (as described in his report L-1 in evidence). He then asked Stockburger as to whether he had received a telephone call from Chrone the day previous concerning the pastie-type tops. Stockburger informed the detective that he had informed Chrone that the costume was legal. Finally, he testified that Detective Carvalho was listening in the telephone conversation on an extension telephone in an adjoining office.

The testimony of Detective Raymond F. Carvalho corroborated Detective Eichorn's testimony.

In rebuttal, ABC Deputy Director Hugo Stockburger, in charge of enforcement, testified that he did not, a week or two prior to December 18, 1968, receive a telephone call from a Mr. Chrone wherein Chrone inquired as to the legality of

permitting go-go girls wearing pasties and a see-through top perform, nor did he inform Chrone that there was no law against it and that Chrone should check with the municipality. He did, on the morning of December 18, 1968, receive a telephone call from Detective Eichorn. However, there was no discussion concerning the costumes the performers at the licensed premises had proposed to wear. The Deputy Director then testified as follows:

> "Q What is your opinion based upon the law and regulations and based upon your experience with respect to go-go girls performing on liquor licensed premises with pasties?
> A My own personal opinion?
> Q As an officer of the Division of Alcoholic Beverage Control.
> A They're not permitted."

Agent D testified that Mayor Gregorio spoke with him on the telephone on January 16, 1969, and that he (Agent D) had the call transferred to the Director's office.

It is apparent that no factual issue was presented as to the state of dress or undress of the performers on January 14 and January 15, 1969 (the dates alleged in the charge). Additionally, I have examined the items of apparel received in evidence as exhibits D-3 and D-4 and find ample justification for characterizing the female performers as being "topless."

The licensee argues that the Division has failed to prove that the garments as worn by the entertainers, without any other consideration, constitutes lewd, indecent and immoral activity in accordance with contemporary standards.

The complete answer to this argument is found in Re Play Pen Incorporation, Bulletin 1778, Item 5, aff'd Play Pen Incorporation v. Division of Alcoholic Beverage Control, not officially reported, reprinted in Bulletin 1805, Item 1.

In so far as New Jersey is concerned, there exists no conflict of authority with reference to the lex mammilaria or the legal principles relating to the topless female.

In McFadden's Lounge v. Div. of Alcoholic Bev. Control, 33 N.J. Super. 61 (App.Div. 1954), Judge Jayne aptly remarked:

> "Experience has firmly established that taverns where wine, men, women and song centralize should be conducted with circumspect respectability. Such is a reasonable and justifiable demand of our social and moral welfare intelligently to be recognized by our licensed tavern proprietors in the maintenance and continuation of their individualized privilege and concession...."

In Davis v. New Town Tavern, 37 N.J. Super. 376 (App. Div. 1955), the court held at p. 378:

> "What is lewdness or immorality for purposes of a rule regulating premises licensed for the sale of alcoholic beverages may be determinable on a distinctly narrower basis than for purposes of regulation of commercial entertainment generally...."

Of course, no one is surprised by Agent D's testimony that "the majority of the patrons gave the performer their

undivided attention", and "during her performance here and there an occasional whistle or cat call or comments on her dance or her body by one patron or another" and that comments were heard such as "Move it!"

One does not need be a sage to observe that the capacity patronage and the concomitant rapid tinkling of the cash register were caused by the appearance of the topless performers and not by the higher quality of the bartender service or by the superlative efforts of the chef toiling in the kitchen.

If the Division were now to permit "topless" performers, I am certain that in the future (human nature being what it is) some enterprising licensee, in order to enrich himself economically, would seek to provide "bottomless" entertainers.

In a business as highly sensitive as the traffic of liquor, the Director is charged with the exercise of constant vigilance in the enforcement of the various statutes and the rules and regulations pertaining thereto. A relaxation from the requirements of the provisions contained in the Alcoholic Beverage Law and the rules and regulations of this Division would be contrary to their intendment and against the dictates of sound public policy. A public convenience should not be allowed to degenerate into a social evil. See Jeanne's Enterprises, Inc. v. Division of Alcoholic Beverage Control, 93 N.J. Super. 230 (App.Div. 1966), aff'd 48 N.J. 359 (1966). The licensee further argued that it obtained an advisory opinion to the effect that the apparel would not be violative of State law. In any event, at best this argument might be urged to indicate that licensee's conduct was not willful and that there are mitigating circumstances to be considered. However, all licensees are charged with knowledge of the admonition of former Director Joseph P. Lordi expressed in Re Play Pen Incorporation, (Bulletin 1778, Item 5) supra, as follows:

> "...In passing, however, I wish emphatically to advise all licensees that so-called 'topless' female employees, whether entertainers or otherwise, and whether with pasties described by the Division agents or the larger ones described by the licensee's witnesses, will not be tolerated on licensed premises in this State...."

Accordingly, after examining the various precedents cited, I am persuaded by the clear and convincing proof in this case that the charge has been sustained by a fair preponderance of the credible evidence. I therefore recommend that the licensee be found guilty of the charge.

Licensee has no prior adjudicated record of suspension of license. I further recommend that the license be suspended for thirty days. Re Play Pen Incorporation, supra.

Conclusions and Order

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

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

Accordingly, it is, on this 5th day of February 1970,

ORDERED that Plenary Retail Consumption License C-12 issued by the Municipal Board of Alcoholic Beverage Control of the City of Linden to Club "D" Lane, Inc., t/a Club "D" Lane for premises 2005 East Linden Avenue, Linden, be and the same is hereby suspended for thirty (30) days, commencing*at 2:00 a.m. Wednesday, February 11, 1970, and terminating at 2:00 a.m. Friday, March 13, 1970.

RICHARD C. McDONOUGH
DIRECTOR

*By order dated February 10, 1970, the suspension was deferred to commence at 2:00 a.m. Monday, February 23, 1970 and to terminate at 2:00 a.m. Wednesday, March 25, 1970.

4. DISCIPLINARY PROCEEDINGS - APPEAL WITHDRAWN - SUSPENSION REIMPOSED.

In the Matter of Disciplinary Proceedings against	)
SHAMROCK BAR, INC. t/a Shamrock Bar 28 South Warren Street Trenton, New Jersey	) SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-214, issued by the City Council of the City of Trenton	)

Daniel F. Gilmore, Esq.,Attorney for Licensee
Louis F. Treole, Esq., Appearing for the Division

BY THE DIRECTOR:

On November 17, 1969 Conclusions and Order were entered in this Division suspending the licensee's license for sixty days for permitting gambling on its licensed premises. Re Shamrock Bar, Inc., Bulletin 1892, Item 3.

Prior to the effectuation of the suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

On January 16, 1970 the appeal was withdrawn by stipulation entered into by the attorneys for the parties to the said appeal. The suspension may now be reimposed.

Accordingly, it is, on this 11th day of February 1970,

ORDERED that the sixty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-214, issued by the City Council of the City of Trenton to Shamrock Bar, Inc., t/a Shamrock Bar, for premises 28 South Warren Street, Trenton, commencing at 2 a.m. Thursday, February 19, 1970, and terminating at 2 a.m. Monday, April 20, 1970.

RICHARD C. McDONOUGH
DIRECTOR

5. DISCIPLINARY PROCEEDINGS - PERMITTING FEMALE ENTERTAINERS TO ACCEPT DRINKS FROM PATRONS - PRIOR SIMILAR RECORD - LICENSE SUSPENDED FOR 60 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
SAULEN, INC. t/a Hialeah Club 1917 Atlantic Avenue & 13-15 N. Michigan Avenue Atlantic City, N. J.	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-137, issued by the Board of Commissioners of the City of Atlantic City	)

Edwin H. Helfant, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on November 21, 1969 it permitted a female entertainer to accept drinks at the expense of a male patron, in violation of Rule 22 of State Regulation No. 20.

Reports of investigation disclose that on the date alleged a female entertainer drank at the expense of a male patron splits (6.4 ounces) of a domestic champagne, retailing at 69¢, at a charge of $7 each.

Licensee has a previous record of suspension of license by the Director for fifteen days effective April 21, 1969 for permitting hostess activity on the licensed premises. Re Saulen, Inc., Bulletin 1861, Item 10.

Deeming the violation aggravated on the facts and further considering the prior record of suspension of license for similar violation occurring within the past five years, the license will be suspended for sixty days (Re Fantaco, Inc., Bulletin 1794, Item 3), with remission of five days for the plea entered, leaving a net suspension of fifty-five days.

Report of recent investigation discloses that the licensed premises is presently being conducted only on a minimal basis, following conclusion of the summer season. Thus no effective penalty can be imposed at this time. Hence the effective dates for the suspension will be fixed by the entry of a further order herein after the operation of the licensed business shall have been fully resumed on a substantial basis.

Accordingly, it is, on this 5th day of February 1970,

ORDERED that Plenary Retail Consumption License C-137, issued by the Board of Commissioners of the City of Atlantic City to Saulen, Inc., t/a Hialeah Club, for premises 1917 Atlantic Avenue & 13-15 N. Michigan Avenue, Atlantic City, be and the same is hereby suspended for fifty-five (55) days, the effective dates of such suspension to be fixed by further order as aforesaid.

RICHARD C. McDONOUGH
DIRECTOR

6. DISCIPLINARY PROCEEDINGS - SALE IN VIOLATION OF STATE REGULATION NO. 38 - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against	)
CARL MOSCATELLO, INC. t/a Sal's Tavern 200 Monticello Avenue Jersey City, N. J. 07304	) CONCLUSIONS AND ORDER
Holder of Plenary Retail Consumption License C-383, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)

Miller, Hochman, Meyerson & Miller, Esqs., Attorneys for Licensee.
Walter H. Cleaver, Esq., Appearing for Division.

BY THE DIRECTOR:

Licensee pleads non vult to a charge alleging that on Saturday, August 2, 1969, its predecessor in interest, Carl R. Moscatello, Jr., t/a Sal's Tavern, from whom the license was transferred effective August 15, 1969, sold a pint bottle of gin for off-premises consumption during hours prohibited by Rule 1 of State Regulation No. 38.

Absent prior record, the license will be suspended for fifteen days, with remission of five days for the plea entered, leaving a net suspension of ten days. Re Alviggi, Bulletin 1893, Item 8.

Accordingly, it is, on this 5th day of February 1970,

ORDERED that Plenary Retail Consumption License C-383, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City for the period commencing July 1, 1969 to Carl R. Moscatello, Jr., t/a Sal's Tavern, for premises 200 Monticello Avenue, Jersey City, and transferred by said Board, effective August 15, 1969, to Carl Moscatello, Inc. for the same premises, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, February 16, 1970, and terminating at 2:00 a.m. Thursday, February 26, 1970.

RICHARD C. McDONOUGH
DIRECTOR

7. DISCIPLINARY PROCEEDINGS - SUPPLEMENTAL ORDER - SUSPENSION REIMPOSED.

In the Matter of Disciplinary Proceedings against	)	
FINBAR, A CORPORATION t/a Finbar Journal Square Terminal Jersey City, N. J.	)	SUPPLEMENTAL ORDER
Holder of Plenary Retail Consumption License C-462, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City	)	

Robert H. Wall, Esq., Attorney for Licensee
Edward F. Ambrose, Esq., Appearing for the Division

BY THE DIRECTOR:

On March 6, 1969 an order was entered herein suspending the license for sixty days effective March 13, 1969, after finding the licensee guilty of allowing, permitting and suffering gambling, viz., the making and accepting of bets in a lottery commonly known as the "numbers game", on the licensed premises. Re Finbar, A Corporation, Bulletin 1851, Item 3.

Prior to the effectuation of the suspension, upon appeal filed the Appellate Division of the Superior Court stayed the operation of the suspension until the outcome of the appeal.

The court affirmed the action of the Director on February 2, 1970. In re Finbar (App.Div. 1970), not officially reported, recorded in Bulletin 1898, Item 3. The suspension may now be reimposed.

Accordingly, it is, on this 9th day of February 1970,

ORDERED that the sixty-day suspension heretofore imposed and stayed during the pendency of proceedings on appeal be reinstated against Plenary Retail Consumption License C-462, issued by the Municipal Board of Alcoholic Beverage Control of the City of Jersey City to Finbar, A Corporation, t/a Finbar, for premises Journal Square Terminal, Jersey City, commencing at 2 a.m. Monday, February 16, 1970, and terminating*at 2 a.m. Friday, April 17, 1970.

RICHARD C. McDONOUGH
DIRECTOR

*By Order dated February 18, 1970, the suspension was deferred to commence at 2 a.m. Monday, March 2, 1970, and to terminate at 2 a.m. Friday, May 1, 1970

8. STATE LICENSES - NEW APPLICATION FILED.

Mogen David Wine Corporation
3737 South Sacramento Avenue, Chicago, Illinois
Application filed March 4, 1970 for wine wholesale license.

Richard C. McDonough
Director