

STATE OF NEW JERSEY
Department of Law and Public Safety
DIVISION OF ALCOHOLIC BEVERAGE CONTROL
1100 Raymond Blvd. Newark 2, N. J.

BULLETIN 1534

October 29, 1963.

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STATE OF NEW JERSEY
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October 29, 1963

1. APPELLATE DECISIONS - BLANCK AND SOUTH JERSEY RETAIL LIQUOR STORE ASSOCIATION v. MAGNOLIA AND D'AMICO.

HORACE W. BLANCK and ANGELA V.)
BLANCK, t/a BLANCK'S LIQUOR STORE,)
and the SOUTH JERSEY RETAIL LIQUOR)
STORE ASSOCIATION,)
Appellants,) ON REMAND
v.) SUPPLEMENTAL
MAYOR AND COUNCIL OF THE BOROUGH OF) CONCLUSIONS
MAGNOLIA, and HARRY R. and CATHARINE) AND ORDER
D'AMICO, t/a D'AMICO LIQUORS,)
Respondents.)

Richman, Berry & Ferren, Esqs., by Grover C. Richman, Jr.,
Esq. and Edwin T. Ferren III, Esq., Attorneys for Appellants.
No appearance on behalf of Respondent Mayor and Council.
Norman Heine, Esq., Attorney for Respondents Harry R. and
Catharine D'Amico.

BY THE ACTING DIRECTOR:

The Hearer has filed the following Supplemental Report
herein:

"This matter was heard by me upon remand by the Supreme Court of New Jersey to the Director for the specific determination of the following questions: (1) Was favoritism or public welfare the basis for the enactment of the subject ordinance under which a license was issued to 'Amico; (2) If it is determined that public welfare was the basis for the enactment of the ordinance, should the license be issued to D'Amico rather than to Meyers, a competing applicant. Blanck et al. v. Magnolia et al., 38 N.J. 484, reprinted in Bulletin 1486, Item 1.

"This matter was originally heard before another Hearer in this Division where the appellants sought to review (a) the passage of an ordinance by the respondent Borough Council providing for the creating of a package goods license in the said Borough, and (b) the subsequent issuance of such license to respondents Harry and Catharine D'Amico, t/a D'Amico Liquor Store. The Hearer, whose recommendation was adopted by the Director, concluded that the action of the respondent Borough Council was proper. Blanck et al. v. Magnolia et al., Bulletin 1400, Item 1. The Conclusions and Order of the Director were affirmed by the Superior Court of New Jersey (Appellate Division). Blanck et al. v. Magnolia et al., 73 N.J.Super. 308 (App. Div. 1962), reprinted in Bulletin 1443, Item 1.

"Subsequently the Supreme Court granted certification and in its opinion (38 N.J. 484) directed the order of remand as hereinbefore set forth.

"The matter thus comes before me as de novo within the contemplation of Rule 6 of State Regulation No. 15, with full opportunity for counsel to present testimony under oath and cross examine witnesses (Low's Liquors, Inc. v. West New York, Bulletin 1497, Item 2) limited to and within the framework of the specific issues, as assigned by the said Court.

"At this hearing, the following facts were stipulated by counsel for all parties: The Borough of Magnolia, by ordinance dated March 12, 1940, limited the number of plenary retail consumption licenses within said Borough to three and the number of club licenses to one. There was no provision within that ordinance for the issuance of plenary retail distribution licenses.

"On August 24, 1960, at a special meeting of the respondent Council, an amendment to the said 1940 ordinance was introduced which provided that, in addition to the three plenary retail consumption licenses and one club license, the respondent Council is authorized to issue one plenary retail distribution license within the Borough. The date for final hearing and final passage of the amendment to the 1940 ordinance was set for October 5, 1960. The respondent Harry D'Amico, who was then president of the respondent Council, did not attend the meeting of August 24, 1960.

"On September 7, 1960, respondent Harry D'Amico did attend the regularly scheduled meeting of the respondent Council and introduced the motion that the minutes be approved for the regular meeting held August 3, and the adjourned meeting held August 24, 1960. On October 1, 1960, D'Amico presented his resignation as president of the respondent Council to Samuel D'Amico (his brother) who was the Borough Clerk of the Borough of Magnolia and clerk of the respondent Council. D'Amico absented himself from the October 5, 1960 meeting. At this meeting, the amendment to the said ordinance was first adopted after a public hearing held, and then D'Amico's resignation was presented to the respondent Council for its action, and was accepted.

"On October 7, 1960, respondents Harry and Catharine D'Amico filed with the Borough Clerk an application for a plenary retail distribution license, then made available under the amended ordinance.

"On October 26, 1960, Roy Meyers, Jr. filed an application for a similar license for premises 432 North White Horse Pike, where Meyers resided, and his application stated that the licensed premises would consist of 'Living room, dining room, and one room in basement'. In addition to Meyers', two other inquiries for applications were received. Applications were mailed out, although they were never filed.

"On November 2, 1960, the next regularly scheduled meeting of the respondent Council was held. At this meeting Councilman Gavin was appointed president to succeed Harry D'Amico. Eight citizens attended the meeting and questioned the respondent Council about rescinding the amendment to the said ordinance. These citizens were advised by the respondent Council that the only course open to them was to present a petition requesting the said council to rescind the amendment to the said ordinance.

"The meeting of November 2 was adjourned to November 7

in order to allow Meyers to complete the proper legal advertisement of his application, and both applications were considered at the November 7, 1960 meeting.

"At the adjourned meeting on November 7, a petition signed by 142 citizens of the Borough of Magnolia was presented to the respondent Council which requested that the said amendment be rescinded. The respondent Council denied the petition and granted a plenary retail distribution license to respondents Harry D'Amico and Catharine D'Amico.

"There was also a petition filed with the respondent Council signed by 164 petitioners, which states that the petitioners do not have any objection to the erection and establishment of a plenary retail distribution license store and residence combination on premises situated at the corner of White Horse Pike and East Monroe Avenue.

"The instant hearing concerned itself, firstly, with the question of whether the ordinance was passed in the public interest or to favor the respondent D'Amico.

"Since this question had to be resolved before the second issue could be considered, testimony with respect thereto presented the following picture: Respondent Harry D'Amico, the president of the respondent Borough Council at the time of the adoption of this ordinance, had been interested in obtaining a liquor license for some months prior to the action herein complained of, and had discussed the matter with the Mayor and fellow-councilmen.

"Samuel D'Amico testified that his brother had come to his house one day in the summertime of 1960 and informed him that he had asked then Mayor Scott 'if there was any possibility to amend the ordinance to permit a liquor store in the Borough.' He also stated that he knew that his brother had made inquiries of this Division and had also discussed it with the Borough Solicitor.

"He knew that his brother had had some difficulty in finding a location, but had succeeded in finding a location before the ordinance was passed. In fact, he added that he had interceded for his brother with respect to two different possible locations for the operation of such liquor license when the same would be issued. The following testimony was elicited:

'Q At that time did Mayor Scott know or mention to you that your brother was interested in the license?

A Yes, he indicated to me that he had been approached by Harry on the possibility of amending the ordinance.

Q And what did Mayor Scott say, that he could amend the ordinance or couldn't?

A Well, he was going to bring it up before Council.'

He was then asked the following:

'Q What was your interest in interceding on behalf of your brother? Why were you doing this?

A Why?

Q Yes.

A Well, firstly, because he is my brother. Secondly, as Borough Clerk I think I was called upon to do more--I wouldn't say favors because I don't like the word--but I think as Borough Clerk I was called upon to do a number of things by the people of the Borough of Magnolia, for which I received nothing except some good will. I don't think that needed any undue influence from me or anybody else. That is run of the mill, part of the job in my opinion.

Q Do you mean it was part of your job, as Borough Clerk, to intercede with property owners to obtain a property that your brother could erect a liquor store on?

A As Borough Clerk I was called upon a number of times to call up Joe Smith and find out if he wanted to sell this property so Sam Jones could buy that.'

"Francis J. Scott, the Mayor of respondent Borough in 1960, testified that the respondent D'Amico had approached him during 1960 regarding the possibility of an amendment to the alcoholic beverage ordinance permitting the establishment of a package liquor store license. This discussion took place well in advance of August 24, 1960, when the amendment was first introduced.

"However, he denied that he informed the members of the Council that D'Amico was interested in the license at the time that he discussed with them the possibility of the passage of such amendment. He did suggest to Council members that there was a possibility that a \$30,000 to \$35,000 ratable would be created upon the enactment of this amendment by reason of a building built on White Horse Pike. However, he denied that he mentioned the name of D'Amico to the Council members, although he had him in mind as well as the site upon which D'Amico contemplated building.

"With respect to a question which had been testified to at the previous Division hearing, Scott was asked:

'Q Well then, in other words, you put in the amendment for Mr. D'Amico?

A I put it in for a ratable. I didn't know who was going to get it.

Q But you didn't do it until Mr. D'Amico asked you to do it, did you?

A I was willing to do it any time at all.

Q But you didn't?

A No, I didn't, but--I told you that before.

Q All right. Now, you did discuss the matter of the ordinance with Mr. D'Amico, didn't you?

A Yes.

Q Why did you testify, when you were here before, to this effect?

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QUESTION: Prior to its introduction on August 24, 1960, did you have any discussions with your fellow Councilman, Mr. D'Amico, about this ordinance?

"ANSWER: I didn't have any discussion with him about the ordinance. I knew that if the ordinance was amended that he would apply for a liquor license."

Now, do you want to change that testimony?

A Well, I think I meant the same as I mean now. That I discussed with him--I knew that he wanted to and was willing to apply for a liquor license and that the ordinance had to be changed.'

"Walter T. Peters, a county committeeman, testified that he had a conversation with Mayor Scott during the summer of 1960 in the living room of his home regarding the amendment to the ordinance and the issuance of a license thereunder. He quoted the Mayor as saying: 'Well, we are going to pass an ordinance for a liquor store. Harry [D'Amico] is going to resign and make application for it.' He further asserted that he understood from this conversation that it was very definitely determined by the Mayor that the respondent D'Amico was going to be the recipient of the liquor license. In supplemental testimony, Peters added the following: The Mayor told him that D'Amico was going to apply for the license and receive the license, and that the construction of the building was going to be financed by one Bill Rohrer, a local merchant.

"Edward Gavin, a councilman, stated that he was in favor of an amendment because he was interested in more ratables for the community, and he discussed the amendment with Mayor Scott during July and August of 1960. Although he knew that a ratable approximating \$35,000 was suggested as the valuation of a site at White Horse Pike, he denied that he knew who the recipient was; more particularly he denied knowing that D'Amico was the one who would be the beneficiary thereof.

"The first knowledge he had of D'Amico's interest in the said license was after the adjourned meeting. He further testified that, after the November 2 meeting, D'Amico called him on the telephone to inquire about what action was taken by the respondent Council with respect to the ordinance and the application. He informed D'Amico that the respondent had postponed the meeting to another date because the Meyers application had not met the statutory requirements as of that date.

"Beverly C. Davis, a councilman, voted for the amendment and stated that he had no knowledge of D'Amico's interest but was merely interested in creating additional ratables for the town.

"George W. Belzer, a councilman in 1960, testified that he had discussed the matter of the amendment to the ordinance with the Mayor during the summer of 1960 and he informed the Mayor that he was in favor of such an amendment if it would bring in ratables. The witness was then asked whether he didn't

think it rather unusual for D'Amico (who had never missed a meeting in twelve years) to be absent from the meeting of August 24, 1960, when the amendment was first introduced, particularly since D'Amico was president of the respondent Council. He felt that it didn't really make any difference because the Council had to make its decision 'on their own.'

"Louis L. Mitten, also a councilman, denied that he had discussed the amendment before it was first introduced at the August 24 meeting. He denied that he knew that D'Amico was interested in the ordinance or in the liquor license until the November meeting, and was asked the following questions:

'Q What reasons did you have for voting in favor of the amendment to the ordinance, if you had any reasons?

A Well, that it would establish a license or chance for somebody to establish a new store or whatever they wanted to do with it.

Q And you didn't take into consideration any other factor?

A No.

Q And that is also true as to your passing on the granting of the license?

A That's right, sir.'

He was then asked by me the following questions:

'THE HEARER: The question was with respect to Mr. D'Amico--this is on Page 42 of the original transcript. I don't have the transcript on appeal, but in the original transcript the question was: "He asked you?" And your answer was: "If we would amend an ordinance for a D license."

"QUESTION: And what did you tell him?

"ANSWER: I told him anybody who would apply would have just as much chance as anybody else.

"QUESTION: You knew he was going to apply?"
And the answer was: 'At that time.' Do you remember testifying to that effect?

THE WITNESS: That's right, sir.

THE HEARER: Well, did Mr. D'Amico discuss with you the question of amending the ordinance?

THE WITNESS: I remember he had--well, being I was new in Council he brought up that they were going to amend an ordinance in Council--present an ordinance in Council to be amended--to establish a retail liquor license.

THE HEARER: Who was that? D'Amico discussed that with you?

THE WITNESS: That's right. Other than that I don't--there wasn't anything else said.

THE HEARER: When did he say that to you?

THE WITNESS: Offhand, sir, I couldn't tell you.

THE HEARER: Well, was it in August, September, October?

THE WITNESS: I believe it was in August.

THE HEARER: In August he asked you whether you would vote to amend the ordinance?

THE WITNESS: Whether I was in favor of amending the ordinance.'

And further:

Q You are telling us that he came to you and asked you if you would vote for the license?

A Being a member of Council we would go along with the ordinance, amending the ordinance.

Q You knew back then?

A Not that he was going to apply.

Q You knew back then he was interested in amending the ordinance?

A It came up in discussion.

Q He asked you if you were going to vote to amend the ordinance? He asked all of them?

A No, I don't know whether he asked the other members or not.

Q He asked you?

A If we would amend an ordinance for a D license.

Q And what did you tell him?

A I told him anybody who would apply would have just as much chance as anybody else.

Q You knew he was going to apply?

A At that time.'

"Alan C. Root, a councilman, also testified that he discussed the matter of the amendment to the ordinance with the Mayor and stated, admonishing the Mayor, that 'This could be a hot potato and if we do this let's do everything legal.' He denied, however, that he knew that D'Amico was interested in having the ordinance amended or in applying for the license if and when it was amended. He too was asked whether he thought it was unusual that D'Amico absented himself from the meeting. His explanation was that he 'just figured he was sick or working night work or something.'

"It was stipulated by counsel that, if the architect who had prepared the plans were called, he would testify that D'Amico ordered the plans and specifications on August 27, 1960, paid for same in September, and that they were completed on October 3, 1960.

"The respondent Harry D'Amico, called as a witness by the appellants, admitted that he had a discussion with the Mayor regarding the proposed amendment to the ordinance and that he told the Mayor that, if the ordinance were amended, he would

probably apply for a license. He further stated that, during the month of July, he met with the architect and discussed the preparation of plans for a liquor store. It was around that time also that he discussed with Mr. Rohrer the possibility of constructing the premises and obtaining a loan for the premises in the event that the ordinance was passed and a license granted to him. It was subsequently developed that Rohrer purchased the property and resold the same to D'Amico, receiving therefor a mortgage in the full amount of the sale price.

"Alfred Anconetani (son-in-law of the appellant Blanck) related a conversation which was alleged to have taken place with Councilman Root. His testimony categorically contradicts the testimony of Root. Anconetani stated that he had received a telephone call from Peters who informed him that the respondent Council was planning to amend the ordinance to permit the granting of another plenary retail consumption license. As a result of that phone call, he discussed the matter with Root in the presence of his mother-in-law, during which the following statement was made to Root: 'I hear there is going to be another liquor store in town, and I also know who is going to get it, Harry D'Amico.' Root did not deny that that was the fact.

"This witness admitted under cross examination that he had an interest in this controversy because he was the owner and operator of a liquor licensed premises.

"Horace W. Blanck (the appellant) testified that he and his wife are the holders of a liquor license and that he was very much concerned with any changes in the ordinance with respect to the number of liquor licenses to be issued in this community. He stated that he first learned that D'Amico was going to get a license from Peters on or about the third day of October 1960. He also had read about this amendment in news releases in the local press.

"In his conversation with Peters on the telephone, Peters informed him that there was going to be a liquor license issued and that it was going to be given to Harry D'Amico. He insisted that he did not attend the November meeting when the license was granted because he had no real interest in the license and felt that there would be an adequate number of protests at that meeting to protect the interests of the community.

"On cross examination he admitted that he attended the November 2 meeting but did not attend the November 7 meeting at which time favorable action was taken on the application for the license. His explanation for that was that he had written a letter to the Director of this Division fully setting forth his position and saw no good reason to be served by his attending said session.

"Blanck is the present Mayor of this municipality and was sharply examined on the apparent conflict in his position as appellant and as Mayor. He admitted that, on the advice of the City Solicitor, the Borough of Magnolia did not enter an appearance at this hearing.

"George F. Stoddert, produced by the respondent, testified that he had had negotiations with the appellant Blanck during 1958 with respect to the possible construction of a bowling alley and these negotiations fell through. At that time Blanck

himself had sought to amend the ordinance because he wanted to separate the liquor licensed premises from the bowling alley. This could only have been done by such ordinance amendment.

"Edward Gertzman, testifying as a witness for the respondent, set forth his reasons for his opposition. He is an owner and operator of a liquor store and is president of the South Jersey Retail Liquor Stores Association. This association is opposed to the action of the Mayor and Council and he expressed that opposition in the following language:

'Objection is that the association has an objection to this sort of thing; it is that whenever a politician paves a way to get himself a license, we have objection to this type of operation. We have had many since the D'Amico matter. It has come to the floor, we have had many members of the Association call and want to know how come this politician is getting a license for his aunt, this one is getting one for his daughter, trying to get it for his daughter, this is the interest of the Association.'

"Roy Clark Meyers, the competing applicant for the subject license, was served with a notice of hearing, so that he might have an opportunity to be heard in accordance with the opinion of the Supreme Court which formed the basis of the order of remand. Meyers testified that he was given insufficient notice of the date of the local hearing and was unable to have completed plans prepared. He further asserted that he would, if given an opportunity, pursue his application for such license and his plans would include the construction of a building at a cost of approximately \$50,000.

"My examination, consideration and analysis of the testimony in this matter leads me to the inescapable conclusion, and I so find, that the ordinance in question was adopted in favor of D'Amico and for his sole benefit. The testimony of the witnesses, which was set forth in great detail hereinabove, is persuasive that D'Amico, the president of the respondent Council at the time this ordinance was introduced and passed, had conversations not only with the Mayor (which is admitted) but with the other members of the Council.

"As president of the Council, it is assumed that he had the respect and loyalty of the other members and, once his intentions were made known, it would follow in the normal course of human experience that these councilmen would want to cooperate with and favor him.

"I am convinced that, before the amendment to the ordinance was first introduced on August 24, 1960, a number of councilmen made known to D'Amico their intention to vote favorably for such amendment. I am equally impressed with the credibility of the testimony of Councilman Peters, and particularly that part of the testimony wherein he says that Mayor Scott told him in the summer of 1960 that it was 'all set' that Harry D'Amico would get the liquor license after the amendment was passed. I have observed the demeanor of Peters, as well as that of Anconetani, and am satisfied that they have given accurate accounts of what occurred.

"The sequence of events and the peculiar circumstances interwoven therein lend natural force to the position of the appellants. It is a singular coincidence that D'Amico should have absented himself (without any explained reason) from the

meeting of August 24, 1960, when the amendment to the ordinance was introduced. Although he had never absented himself during his twelve-year tenure, apparently none of the councilmen questioned said absence or suggested that such ordinance be delayed until the return of their Council president. D'Amico did attend the meeting of September 7 when, as stipulated, the minutes of the August 24 meeting were approved. Thus, in a sense, he did become a party to the formal action taken by the respondent Council on August 24.

"At the November meeting he absented himself and previously presented his resignation to his brother. However, this formal resignation was not made known to the other members of the Council until they had finally adopted the subject ordinance. This was a clear violation of his obligation to respondent Mayor and Council and to the public. In these circumstances, it may well be reasonably inferred that D'Amico gave his brother instructions that, in the event, for whatever reason, this ordinance was not adopted, the resignation should not be presented for action by the respondent Council. D'Amico was indeed, playing it safe.

"However, I do not think he had to be quite that cautious because it is my conviction that the whole deal was sealed before the meeting. It is crystal clear that the Mayor and members of the respondent Council felt obligated to D'Amico and pursued a course of conduct consistent with such friendship and obligation without the primary regard for the public welfare.

"The opinion of the Supreme Court of New Jersey which served as a basis for this remand (supra) specifically emphasizes that, if favoritism is found to be the basis for the enactment of the ordinance, the Director cannot issue any license under the ordinance.

'In our view, the Director should have taken petitioners' appeal and molded it as if it were a direct application by the D'Amicos for a license. He would have had before him the competing applicant, Myers, and could have then decided all the issues. He would have made a determination as to whether public welfare, or favoritism was the basis for enacting the ordinance. If he found public welfare, he would have then considered the relative merits of the two applications. If he found that the amendment was passed for a reason not permitted by the Legislature, he would not have granted a license to either applicant. Cf. Board of Commissioners of the Town of Phillipsburg v. Burnett, 125 N.J.L. 157 (Sup. Ct. 1940). Nevertheless, the power he would exercise would be in the nature of an issuing authority (such as he exercises under R.S. 33:1-20) rather than an appellate one.' (emphasis supplied)

"The respondent Borough Council acted in a legislative capacity in passing the ordinance, but the granting of the liquor license involved an act judicial in nature, and the standards of disqualifying interest can be no less exacting with respect to such body acting as a liquor license issuing authority than in the case of purely judicial action. Township Committee of Freehold Township v. Gelber, 26 N.J. Super. 388, 98 Atl. 2d 63.

"The duty of the judge is to discover objective truth. If the judge has any personal favoritism or bias or friendship or partiality, his actions become distorted and true justice cannot prevail. Cf. Cardozo, 'Nature of the Judicial Process' p. 173.

"A public office is a public trust. Council members, as fiduciaries and trustees of the public interest, must serve that interest with the highest fidelity. The law tolerates no partisanship nor mingling of self-interests. It demands exclusive loyalty. Cf. Driscoll v. Burlington-Bristol Bridge Co., 8 N.J. 433, 474 (1952); certiorari denied Bell v. Driscoll, 344 U.S. 838, 73 S. Ct. 34, 97 L. ed. 652 (1952).

"The mere fact that the members of the respondent Council apparently had nothing to gain personally, financially or otherwise, by their action, except perhaps to do a favor as an act of friendship to the then president of their Council, does not remove such action from the scope or without the principles applicable to self-interest. As Judge, now Mr. Justice, Francis, speaking for the Appellate Division in Aldom v. Borough of Roseland, 42 N.J. Super. 493, 502, stated:

'The interest which disqualifies is not necessarily a direct pecuniary one, nor is the amount of such an interest of paramount importance. It may be indirect; it is such an interest as is covered by the moral rule: no man can serve two masters whose interests conflict. Basically the question is whether the officer, by reason of a personal interest in the matter, is placed in a situation of temptation to serve his own purposes to the prejudice of those for whom the law authorizes him to act as a public official. And in the determination of the issue, too much refinement should not be engaged in by the courts in an effort to uphold the municipal action on the ground that his interest is so little or so indirect. Such an approach gives recognition to the moral philosophy that next in importance to the duty of the officer to render a righteous judgment is that of doing it in such a manner as will beget no suspicion of the pureness and integrity of his action. (Cit. cas.)

"Then, as the Court stated in McNamara v. Saddle River Borough, 64 N.J. Super. 426, 429 (App.Div. 1960):

'If there is "interest", there is disqualification automatically, entirely without regard to actual motive, as the purpose of the rule is prophylactic, that is, to prevent the possibility of an official in a position of self-interest being influenced thereby to deviate from his sworn duty to be guided only by the public interest in voting as such official. Van Itallie v. Franklin Lakes, 28 N.J. 258, 268 (1958); Griggs v. Princeton Borough, 33 N.J. 207, 219 (1960). The question whether disqualifying interest exists in any particular case is necessarily factual and depends upon the circumstances of the particular case. Ibid. See cases collected in S. & L. Associates Inc. v. Washington Twp., 61 N.J. Super. 312, 329, 330, 335 (App. Div. 1960).'

"This is not to say that these men were not men of integrity or were even aware that they were acting in violation

of the public interest. However, that is not the crucial test. Cf. Griggs v. Princeton Borough, 33 N.J. 207; Zell v. Borough of Roseland, 42 N.J. Super. 75, 82 (App. Div. 1956).

"It is significant enough that the subject ordinance was enacted while the respondent D'Amico was a member of that body even though he was absent at the time it was finally adopted. I am satisfied that there were discussions, however informal, between the other members of the Council and him with respect to the ordinance, and that they were aware that the amendment was proposed for D'Amico's personal benefit. I do not believe that his brother Samuel D'Amico, who was the clerk, was not fully aware of the purpose of the ordinance and was not a participant in the timetable involved in the passage of the ordinance and the submission of D'Amico's letter of resignation.

"It is understandable that the former Hearer in this Division came to the conclusion that he did because many of the influential facts which entered into my determination were developed in evidence at the hearing on this remand. He did not consider the facts and circumstances surrounding the adoption of the ordinance since it was implicit in his findings that the validity of the said ordinance could have been determined only by a civil court of competent jurisdiction since the ordinance was valid on its face. Cf. Klein & Tucker v. Fair Lawn and Schweder, Bulletin 1175, Item 3; Matthews et al. v. Orange et al., Bulletin 936, Item 9. The Hearer did not concern himself with the validity of the ordinance which the order of remand imperatively requires the Director to determine.

"It is unarguable that actions which reflect favoritism by members of a municipal governing body to their own member must be discouraged, for, if such practice is permitted, the public will no longer have confidence in the impartial administration of the liquor industry in the State of New Jersey.

"In view of the aforesaid, since the issue has been identified and determined, it is unnecessary to consider the other point raised by the Supreme Court in its order of remand for a specific determination herein.

"Considering all the facts and circumstances herein, and the legal principles applicable thereto, I conclude that the appellants have established by a fair preponderance of evidence that the ordinance of the respondent Council, herein impugned, was adopted to favor the respondent Harry D'Amico. I, therefore, recommend that an order be entered determining that the action of the respondent Council in granting the license and renewals thereof under the subject ordinance to respondent D'Amico be reversed and that the current license granted pursuant thereto be cancelled."

Written exceptions to the Hearer's Report and written argument thereto were filed with me by the attorney for the respondents D'Amicos. Written answers to the exceptions were filed by the attorneys for the appellants. Oral argument is deemed unnecessary and unwarranted and, accordingly, the request for same by counsel for respondents D'Amicos is hereby denied.

I have given careful consideration to the evidence and exhibits, the Hearer's Report, the memoranda submitted by counsel at the conclusion of the hearing, the written exceptions and argument thereto of counsel for the respondents D'Amicos, and the written answers to the exceptions of counsel for the appellants.

I concur in the conclusions of the Hearer and adopt them as my conclusions herein.

Accordingly, it is, on this 17th day of September 1963,

ORDERED that the action of the respondent Council in granting the license and renewals thereof under the subject ordinance to respondents D'Amicos be reversed, and that the current license granted pursuant thereto be cancelled, effective immediately.

EMERSON A. TSCHUPP
ACTING DIRECTOR

2. DISCIPLINARY PROCEEDINGS - SALE TO MINOR - LICENSE SUSPENDED FOR 15 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

WILSON & ALFRED TAYLOR)
Lacey Road West of Route #9)
Lacey Township)
PO Forked River, N. J.)

CONCLUSIONS
AND ORDER

Holders of Plenary Retail Distribution License D-101, issued by the Township Committee of the Township of Lacey.)

Harold Lipsky, Esq., Attorney for Licensees.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensees plead non vult to charge alleging that on July 5, 1963 they sold three 6-packs of canned beer to a minor, age 18, in violation of Rule 1 of State Regulation No. 20.

Absent prior record, the license will be suspended for fifteen days with remission of five days for plea entered, leaving a net suspension of ten days. Re Jersey City Liquor Mart, Inc., Bulletin 1523, Item 4.

Accordingly, it is, on this 16th day of September, 1963,

ORDERED that Plenary Retail Distribution License D-101, issued by the Township Committee of the Township of Lacey to Wilson & Alfred Taylor, for premises Lacey Road West of Route #9, Lacey Township, PO Forked River, be and the same is hereby suspended for ten (10) days, commencing at 2:00 a.m. Monday, September 23, 1963, and terminating at 2:00 a.m. Thursday, October 3, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

3. NUMBER OF MUNICIPAL LICENSES ISSUED AND AMOUNT OF FEES PAID FOR THE PERIOD JULY 1, 1963 to SEPTEMBER 30, 1963 AS REPORTED TO THE DIVISION OF ALCOHOLIC BEVERAGE CONTROL BY THE LOCAL ISSUING AUTHORITIES PURSUANT TO R.S. 33:1-19

CLASSIFICATION OF LICENSES

County	Plenary Retail Consumption		Plenary Retail Distribution		Club		Limited Retail Distribution		Seasonal Retail Consumption		Number Surrendered	Number Licenses in Effect	Total Fees Paid
	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid	No. Issued	Fees Paid			
Atlantic	487	\$ 208,410.00	73	\$ 27,525.00	27	\$ 2,445.00						587	\$ 238,380.00
Bergen	814	321,248.55	301	90,615.80	139	13,040.00	49	\$ 2,311.50	5	\$ 1,398.75		1308	428,614.60
Burlington	195	88,670.00	41	13,260.00	47	6,700.00	1	50.00				284	108,680.00
Camden	452	223,050.00	83	35,745.00	80	7,810.41			1	450.00		616	267,055.41
Cape May	137	78,500.00	17	5,050.00	13	1,650.00						167	85,200.00
Cumberland	80	40,623.97	15	4,200.00	32	4,250.00						127	49,073.97
Essex	1322	751,721.73	350	211,100.00	97	13,475.00	26	1,300.00	1	750.00	1	1795	978,346.73
Gloucester	109	39,460.00	15	3,845.00	23	2,070.00						147	45,375.00
Hudson	1487	675,380.41	298	122,400.00	81	9,626.45	61	2,600.00				1927	810,006.86
Hunterdon	79	28,400.00	12	5,810.00	10	1,100.00						101	35,310.00
Mercer	422	262,500.00	51	22,510.00	55	8,100.00			1	121.50		529	293,231.50
Middlesex	632	316,395.00	85	28,555.00	114	9,860.00	4	200.00				835	355,010.00
Monmouth	555	293,475.00	126	44,860.00	58	6,391.25	10	435.00	23	11,214.33		772	356,375.58
Morris	355	140,535.00	105	41,166.66	65	6,060.58	15	750.00	4	1,200.00		544	189,712.24
Ocean	186	102,839.56	49	21,622.00	35	4,135.22						270	128,596.78
Passaic	853	354,286.35	170	52,700.00	46	5,425.00	7	350.00				1076	412,761.35
Salem	50	19,630.00	8	1,640.00	19	1,625.00						77	22,895.00
Somerset	187	87,255.00	41	12,925.00	33	3,900.00						261	104,080.00
Sussex	166	47,005.00	21	4,260.00	11	645.00	1	50.00	1	225.00		200	52,185.00
Union	547	314,146.00	144	71,652.00	81	8,825.00	29	1,425.00				801	396,048.00
Warren	146	43,960.00	20	5,120.00	30	3,250.00			2	375.00		198	52,705.00
Totals	9261	\$4,437,491.57	2025	\$826,561.46	1096	\$120,383.91	203	\$9,471.50	38	\$15,734.58	1	12622	\$5,409,643.02

1 "C" surrendered

Emerson A. Tschupp
Acting Director

October 4, 1963

4. DISCIPLINARY PROCEEDINGS - POSSESSION OF ALCOHOLIC BEVERAGES NOT TRULY LABELED - PRIOR DISSIMILAR RECORD - LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary Proceedings against)

MICHAEL POPELAR)
t/a MIKE'S BAR & GRILL)
5209 Park Avenue)
West New York, N. J.)

CONCLUSIONS AND ORDER

Holder of Plenary Retail Consumption License C-55, issued by the Board of Commissioners of the Town of West New York.)

Harry Irwin, Esq., Attorney for Licensee.
David S. Piltzer, Esq., Appearing for the Division of Alcoholic Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on September 4, 1963, he possessed alcoholic beverages in four bottles bearing labels which did not truly describe their contents, in violation of Rule 27 of State Regulation No. 20.

Licensee has a previous record of suspension of license by the municipal issuing authority for five days, effective January 9, 1961, for "hours" violation.

The prior record considered, the license will be suspended for twenty-five days, with remission of five days for the plea entered, leaving a net suspension of twenty days. Re The Living Room, Bulletin 1519, Item 4.

Accordingly, it is, on this 18th day of September, 1963,

ORDERED that Plenary Retail Consumption License C-55, issued by the Board of Commissioners of the Town of West New York to Michael Popelar, t/a Mike's Bar & Grill, for premises 5209 Park Avenue, West New York, be and the same is hereby suspended for twenty (20) days, commencing at 3:00 a.m. Friday, September 20, 1963, and terminating at 3:00 a.m. Thursday, October 10, 1963.

EMERSON A. TSCHUPP
ACTING DIRECTOR

5. DISCIPLINARY PROCEEDINGS - GAMBLING (HORSE RACE BETS) -
LICENSE SUSPENDED FOR 25 DAYS, LESS 5 FOR PLEA.

In the Matter of Disciplinary)
Proceedings against)

ARMENTI LIQUORS, INC.)
t/a LINCOLN TAVERN)
624 Lincoln Boulevard)
Middlesex, N. J.)

CONCLUSIONS
AND ORDER

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

Doren & Stanton, Esqs., by Joseph C. Doren, Esq., Attorneys for
Licensee.
Edward F. Ambrose, Esq., Appearing for the Division of Alcoholic
Beverage Control.

BY THE ACTING DIRECTOR:

Licensee pleads non vult to a charge alleging that on
March 8, 16, 20, 27 and 29, 1963, it permitted the acceptance
of horse race bets on the licensed premises, in violation of
Rule 7 of State Regulation No. 20.

Absent prior record, the license will be suspended for
twenty-five days with remission of five days for the plea entered,
leaving a net suspension of twenty days. Re Deutsch, Bulletin
1512, Item 8.

Accordingly, it is, on this 23rd day of September, 1963,

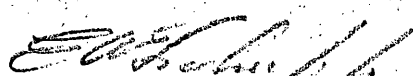
ORDERED that Plenary Retail Consumption License C-9,
issued by the Borough Council of the Borough of Middlesex to
Armenti Liquors, Inc., t/a Lincoln Tavern, for premises 624
Lincoln Boulevard, Middlesex, be and the same is hereby
suspended for twenty (20) days, commencing at 2:00 a.m. Sunday,
September 29, 1963, and terminating at 2:00 a.m. Saturday,
October 19, 1963.

Emerson A. Tschupp,
Acting Director.

6. STATE LICENSES - NEW APPLICATION FILED

Edward Buchanan and Elizabeth Buchanan
t/a Buchanan's Beer Distributor
Herbertsville Road, 17th Avenue
Brick Township, New Jersey

Application filed October 22, 1963 for person-to-person,
place-to-place transfer of State Beverage Distributor's
License SBD-34 from Anders Beverage Co., Inc., 14-16-18
Grove Terrace, Irvington, New Jersey.


Emerson A. Tschupp,
Acting Director.